



# Constitution of Chorus Limited

## CONTENTS

PART A - INTRODUCTION	1
1 DEFINED TERMS	1
2 CONSTRUCTION	2
3 [INTENTIONALLY DELETED]	3
4 [INTENTIONALLY DELETED]	3
5 THE RELATIONSHIP BETWEEN THIS CONSTITUTION AND THE RULES	4
6 [INTENTIONALLY DELETED]	4
7 COMPLIANCE WITH DEED	5
PART B - SHARES AND SHAREHOLDERS	5
8 [INTENTIONALLY DELETED]	5
9 ISSUE OF NEW EQUITY SECURITIES	5
10 SHARE REGISTER	5
11 TRANSFER OF EQUITY SECURITIES	5
12 CALLS, FORFEITURE AND LIENS	6
13 ACQUISITION OF OWN SHARES AND REDEMPTIONS	7
14 SHAREHOLDER RIGHTS	7
15 DISTRIBUTIONS	7
16 MEETINGS OF SHAREHOLDERS	8
PART C: DIRECTORS	8
17 APPOINTMENT AND REMOVAL	8
18 CHAIRPERSON	10
19 VACATION OF OFFICE	10
20 [INTENTIONALLY DELETED]	10
21 PROCEEDINGS OF THE BOARD	11
22 DELEGATION OF POWERS	11
23 [INTENTIONALLY DELETED]	12
24 REMUNERATION	12
25 ALTERNATE DIRECTORS	12
26 MANAGING DIRECTOR	13
PART D: GENERAL	14
27 SECRETARY	14
28 INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES	14
29 SERVICE OF DOCUMENTS ON SHAREHOLDERS	15
30 EXECUTION OF DEEDS	16
31 REMOVAL OF COMPANY FROM NEW ZEALAND REGISTER	16

FIRST SCHEDULE: OWNERSHIP RESTRICTIONS	18
SECOND SCHEDULE: SALE OF LESS THAN MINIMUM HOLDINGS	26
THIRD SCHEDULE: CALLS, FORFEITURE AND LIEN	28
FOURTH SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS	33
FIFTH SCHEDULE: PROCEEDINGS OF THE BOARD	41

# CONSTITUTION OF CHORUS LIMITED

## PART A - INTRODUCTION

### 1 DEFINED TERMS

1.1 In this constitution the following expressions have the following meanings:

*the Act* means the Companies Act 1993;

*the Company* means Chorus Limited;

*this constitution* means this constitution as it may be altered from time to time in accordance with the Act;

*Court* means the High Court of New Zealand;

*Crown* means Her Majesty the Queen in right of New Zealand;

*Deed* means the deed relating to certain operational and governance undertakings dated 11 November 2011 between the Company and the Crown, and includes that document as amended, varied, novated or substituted from time to time;

*New Zealand citizen* means any New Zealand citizen, or any person who has attained the age of 18 years and is of full capacity who would, in the opinion of the Board, meet the requirements for citizenship set out in section 8(2) of the Citizenship Act 1977 (or any provision enacted in substitution for that section) if that person made an application for citizenship on the date on which his or her status is considered for the purposes of this constitution;

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

*ordinary resolution* has the same meaning in relation to the Company as the expression "Ordinary Resolution of the Issuer" under the Rules;

*the Rules* means the Listing Rules applying to the NZX Main Board (or any successor to that market) as altered or substituted from time to time by NZX;

*Secretary* means any person or persons appointed as Secretary of the Company pursuant to clause 27 of this constitution, and includes a deputy secretary;

*special resolution* means:

- (a) subject to paragraph (b) below, a resolution approved by a majority of 75% of the votes of those shareholders entitled to vote and voting on the question; and
- (b) but for so long as clauses 4.4 and 4.5 of the Deed remain in full force and effect, on any resolution to amend or remove clause 6 of the First Schedule or any of the definitions or clauses listed in clause 6.1 of the First Schedule, or any resolution to revoke this constitution or adopt a constitution which has the effect of altering or removing clause 6 of the First Schedule or any of the

definitions or clauses listed in clause 6.1 of the First Schedule, a resolution approved by a majority of 100% (or, if specified in the Deed at any time, 75%) of the votes of those shareholders entitled to vote and voting on the question;

*Telecommunications Service* means a telecommunications service as defined in the Telecommunications Act 2001;

*treasury stock* means shares in the Company acquired by the Company and held as treasury stock pursuant to the Act and includes shares in the Company held by a subsidiary other than in accordance with section 82(6) of the Act; and

*written or in writing* in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

- 1.2 Expressions and words (whether or not expressed with initial capital letters) which are defined in the Rules and which are not defined in clause 1.1 have the meanings given by the Rules.
- 1.3 Subject to clause 1.2, expressions which are defined in the Act and/or the Financial Markets Conduct Act 2013 (whether in section 2, section 6, or elsewhere for the purposes of a particular subsection, section or sections) have the meanings given to them by the Act and/or the Financial Markets Conduct Act 2013. Where an expression is defined in the Act and/or the Financial Markets Conduct Act 2013 more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.

## 2 **CONSTRUCTION**

- 2.1 In this constitution:
  - (a) headings appear as a matter of convenience and do not affect the interpretation of this constitution;
  - (b) the singular includes the plural and vice versa, and words importing one gender include the other genders;
  - (c) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
  - (d) a reference to a Rule or the Rules includes that Rule or the Rules as from time to time amended or substituted;
  - (e) [Intentionally deleted]
  - (f) the Schedules form part of this constitution;
  - (g) where in any document entered into by the Company prior to the date that this constitution came into effect there is a reference to the previous constitution of the Company and to defined terms in the constitution such references shall be read and construed as references to this constitution and

to the nearest equivalent defined term in the constitution or incorporated by reference into the constitution;

- (h) a reference to permitted by the Act or permitted by the Rules means not prohibited by the Act or not prohibited by the Rules; and
- (i) a person is interpreted as an Associated Person of another person if:
  - (i) they are acting jointly or in concert; or
  - (ii) either person acts in accordance with the wishes of the other person; or
  - (iii) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
  - (iv) they are both, directly or indirectly under the control of the same person; or
  - (v) the persons have a business relationship, personal relationship or an ownership relationship such that they should under the circumstances, be regarded as associated; or
  - (vi) the first person is an associate of a third person who is an associate of the other person (in both cases under any of paragraphs (i) to (v)) and the nature of the relationships between the first person, the third person and the other person (or any of them) is such that, under the circumstances, the first person should be regarded as an associate of the other person,

provided that a person will not be an Associated Person of another person if:

- (vii) the first person fits within one or more of the categories of Associated Person above by reason of an employment relationship with, or a directorship of, a person who provides Telecommunications Services, and that employment relationship or directorship is no longer in existence and has not been in existence during the previous 12 months; or
- (viii) under the circumstances, the first person, in making a decision or exercising a power affecting Chorus, is unlikely to be influenced as a consequence of the circumstances referred to above which caused those persons to be Associated Persons; or
- (ix) the Crown rules they are not Associated Persons.

3 **[INTENTIONALLY DELETED]**

4 **[INTENTIONALLY DELETED]**

**5 THE RELATIONSHIP BETWEEN THIS CONSTITUTION AND THE RULES**

**Company must comply with listing rules of exchanges while listed**

5.1 Notwithstanding anything else in this constitution, for so long as the Company is listed on the NZX:

- (a) the Company must comply with the Rules (as modified by any waiver or ruling); and
- (b) if this constitution contains any provision inconsistent with the Rules , as modified by any waiver or ruling relevant to the Company, then the relevant Rules (as modified by any such waiver or ruling) prevail.

**Incorporation of Rules while listed**

5.2 For so long as the Company is listed on the NZX:

- (a) this constitution is deemed to incorporate all provisions of the Rules required under the Rules to be contained or incorporated by reference in this constitution, as those provisions apply from time to time (and as modified by any waiver or ruling relevant to the Company); and
- (b) if the Rules are changed so that any act or omission by the Company, which was formerly prohibited by the relevant Rules, is subsequently required or permitted by the change, the act or omission is deemed to be authorised by this constitution with effect from the date of the change, provided this clause shall not negate the need to comply with whichever of the Rules has not been so changed (subject to any waiver or ruling relevant to the Company).

**Effect of a waiver or ruling from NZX**

5.3 If any act or omission which in the absence of a ruling and/or waiver from NZX would be in contravention of the Rules and/or this constitution, and rulings or waivers are granted by NZX, that act or omission will, unless a contrary intention appears in this constitution, be regarded as being authorised by this constitution and the relevant listing rules.

**Failure to comply with Rules has limited effect in some cases**

5.4 Any failure to comply with:

- (a) the Rules; or
- (b) clause 14.4;

does 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 clause 14.4 is not entitled to enforce that transaction or contract. This clause 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 clause 14.4.

**6 [INTENTIONALLY DELETED]**

## 7 **COMPLIANCE WITH DEED**

- 7.1 The Company must comply with all of its obligations under the Deed (unless, for the avoidance of doubt, it has been terminated with the consent of the Crown). Notwithstanding this clause 7.1, the Deed may be cancelled or terminated, or varied, at any time by the parties to it by written agreement without the consent or approval of shareholders under the Act or this constitution.

## **PART B - SHARES AND SHAREHOLDERS**

### 8 **[INTENTIONALLY DELETED]**

### 9 **ISSUE OF NEW EQUITY SECURITIES**

#### **Board may issue equity securities**

- 9.1 The Board may issue equity securities that rank as to voting or distribution rights or both, equally with or prior to any existing equity securities in the Company in accordance with this constitution and (for so long as the Company is listed) the provisions of the Rules. Any such issue shall not be treated as an action affecting the rights attached to the existing equity securities.

#### **Board need not comply with statutory pre-emptive rights**

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

### 10 **SHARE REGISTER**

- 10.1 [Intentionally deleted]

#### **Share register may be divided**

- 10.2 The share register may be divided into 2 or more registers kept in different places.

- 10.3 [Intentionally deleted]

#### **Record date for shareholder voting**

- 10.4 The Board may determine in a notice of meeting that for the purposes of voting at that meeting those registered holders as at a day and time not more than 2 working days before the meeting shall be the only persons entitled to exercise the right to vote at that meeting and only the equity securities registered in the name of those holders at that time may be voted at that meeting. This clause 10.4 does not limit the right of a registered holder to appoint a proxy or corporate representative.

### 11 **TRANSFER OF EQUITY SECURITIES**

- 11.1 [Intentionally deleted]

- 11.2 [Intentionally deleted]

#### **Board must refuse or delay a transfer**

- 11.3 The Board must refuse or delay the registration of any transfer of equity securities if permitted to do so by the Act or the Rules, in any of the following circumstances:

- (a) when it must do so under clause 4 of the First Schedule; or



- (b) where the registration of the transfer would or would be likely to breach clause 4 of the First Schedule.

**Board may refuse or delay a transfer**

11.4 The Board may in its absolute discretion refuse or delay the registration of any transfer of equity securities if permitted to do so by the Act or the Rules, in any of the following circumstances:

- (a) the Company has a lien on those securities; or
- (b) the transfer is not accompanied by documentation that establishes the entitlement to transfer; or
- (c) registration of the transfer, 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; or
- (d) such action is permitted by the Rules.

**The Board may require forfeiture of securities**

11.5 The Board may by notice to a holder of securities require the forfeiture of that holder's securities where those securities have been registered under a system of transfer approved under section 376 of the Financial Markets Conduct Act 2013 and the Board has reasonable grounds to believe that it would have had grounds under clause 11.3 or 11.4 to refuse to register the transfer at the time the transfer was registered.

**Registration not to affect other powers**

11.6 The registration of any transfer shall not prejudice or affect in any way the powers exercisable by the Board under clause 3 of the First Schedule or otherwise.

**Sale of minimum holdings**

11.7 The Company may sell securities of less than a minimum holding in accordance with the procedures set out in the Second Schedule.

**12 CALLS, FORFEITURE AND LIENS**

**Board may make calls**

12.1 The Board may make calls on any holder of securities for any money that is unpaid on that holder's securities and not otherwise payable at a specified time or times under this constitution or the terms of issue of those securities or any contract for the issue of those securities. An obligation to pay amounts unpaid of the issue price of any securities must not be cancelled, reduced or deferred without the authority of an ordinary resolution. The Third Schedule governs calls on securities.

**Forfeiture of securities where calls or other amounts unpaid**

12.2 The Board may commence procedures in accordance with the Third Schedule for forfeiture of any securities if the holder of those securities fails to pay:

- (a) a call, or an instalment of a call, on those securities; or

- (b) any amount that is payable under this constitution or the terms of issue of those securities or any contract for the issue of the securities.

**Company's lien**

- 12.3 The Company has a lien on the securities and dividends in respect of such securities on the terms and conditions set out in the Third Schedule.

**13 ACQUISITION OF OWN SHARES AND REDEMPTIONS**

**Company may acquire and hold its own equity securities**

- 13.1 The Company may purchase or otherwise acquire equity securities issued by the Company and may hold those equity securities as treasury stock in accordance with the Act. Subject to the Rules, the Act and this constitution the Board may make an offer to one or more holders of equity securities to acquire equity securities issued by the Company in such number or proportions as the Board thinks fit in accordance with the Act and the Rules.

**Company may issue or redeem redeemable equity securities**

- 13.2 The Company may issue or redeem redeemable equity securities subject to this constitution, the Act and the Rules
- 13.3 Subject to this constitution, the Act and the Rules, the Company may exercise an option to redeem redeemable equity securities issued by the Company in relation to one or more holders of redeemable equity securities in accordance with this constitution, the Act and the Rules.

**14 SHAREHOLDER RIGHTS**

- 14.1 [Intentionally deleted]
- 14.2 [Intentionally deleted]
- 14.3 [Intentionally deleted]

**Voting restrictions under Rules**

- 14.4 A person who is prohibited by the Rules from casting a vote in favour of any resolution must not cast a vote on any securities held by that person in favour of any such resolution.

**15 DISTRIBUTIONS**

- 15.1 [Intentionally deleted]
- 15.2 [Intentionally deleted]
- 15.3 [Intentionally deleted]
- 15.4 [Intentionally deleted]

**No interest on distributions**

- 15.5 A distribution shall not bear interest against the Company, unless the terms of issue or the contract for issue expressly provide otherwise.

**Board may deduct from distribution amounts owed to Company or as required by law**

15.6 The Board:

- (a) may, at its discretion, deduct from any distribution payable to any shareholder any amount owed by the shareholder to the Company on account of any call or otherwise; and
- (b) must deduct from any distribution payable to any shareholder any amount it is required by law to deduct.

**Unclaimed dividends or other distributions**

15.7 All dividends or other distributions unclaimed for one year after having been authorised may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the amounts of any such dividends or other distributions with other money of the Company or spend any such dividends or other distributions, and shall not be required to hold them or regard them as being impressed with any trust.

15.8 All dividends or other distributions, and any other moneys payable to any shareholder or former shareholder in respect of shares and/or interest in respect of debt securities issued by the Company remaining unclaimed for five years after having been authorised or otherwise having become payable, may, at the expiry of such period of five years after having been authorised or otherwise having become payable, be forfeited by resolution of the Board for the benefit of the Company. The Board must at any time after such forfeiture annul the forfeiture, and subject to compliance with the solvency test, pay the dividend or other distribution to any person producing evidence of its, his or her entitlement.

**16 MEETINGS OF SHAREHOLDERS**

16.1 [Intentionally deleted]

16.2 [Intentionally deleted]

16.3 [Intentionally deleted]

**Proceedings at meetings of shareholders and interest groups**

16.4 The Fourth Schedule governs the proceedings at meetings of shareholders. The Fourth Schedule also governs the proceedings of meetings of any interest group required to be held by the Act, the Rules or this constitution, with all necessary consequential modifications, except that the quorum shall be members of the interest group holding 5% or more of the total number of securities held by all members of that group having the right to vote at the meeting.

**PART C: DIRECTORS**

**17 APPOINTMENT AND REMOVAL**

**Board Composition**

17.1 The minimum number of directors (other than alternate directors) is 5. The maximum number of directors (other than alternate directors) is 12. The shareholders may increase the maximum number of directors by an ordinary

resolution. Subject to these limitations the number of directors to hold office shall be fixed from time to time by the Board.

17.2 There is no shareholding qualification for directors.

**Special restriction**

17.3 No person who is an Associated Person of a person which provides Telecommunications Services in New Zealand (other than the services to be provided by Chorus) shall be appointed or hold office as a director.

**Half of Board to be New Zealand citizens**

17.4 A person who is not a New Zealand citizen shall not be eligible for appointment or election as a director if, immediately after his or her appointment or election as such, the number of directors who are New Zealand citizens would be less than one half of the total number of directors then in office.

17.5 If at any time the number of directors who are New Zealand citizens is reduced below one half of the total number of directors then in office, the Board shall ensure (whether by exercising its powers under clause 17.12 or otherwise) that within two months of the date of that reduction, sufficient directors are appointed so that not less than one half of the total number of directors then in office are New Zealand citizens.

**Fewer than 5 directors may act for limited purposes**

17.6 The Board may act notwithstanding any vacancy, but if and for so long as the number of directors is reduced below the minimum number of 5, the continuing directors may act for the purpose of increasing the number of directors to that minimum number (by the Board making an appointment to fill the vacancy in accordance with this constitution), or of summoning a meeting of security holders, but for no other purpose.

**Appointment of directors by security holders**

17.7 Any person who is not disqualified under the Act or this constitution and, if required under the Rules, has been nominated in compliance with the time limits under the Rules, may be appointed as a director by an ordinary resolution of security holders either to fill a casual vacancy or, subject to clause 17.1, as an additional director.

17.8 [Intentionally deleted]

**Rotation of directors**

17.9 At the annual meeting in every year the directors required to retire at that meeting by the Rules must retire from office, but shall be eligible for re-election at that meeting. One managing director appointed by the Board is exempted from the requirement to retire pursuant to this clause.

17.10 Subject to the Rules, the directors to retire at an annual meeting pursuant to clause 17.9 will be those directors who have been longest in office since they were last elected or deemed elected. Persons who became directors on the same day must retire in the order the Board resolves.

17.11 A retiring director continues to hold office until:

- (a) he or she is re-elected; or

- (b) if he or she is not re-elected, until the shareholders' meeting at which he or she retires (or any adjournment of that meeting) elects someone in his or her place; or
- (c) if the meeting does not elect someone in his or her place, until the end of the meeting or any adjournment of the meeting.

**Board may fill casual vacancy on the Board**

17.12 The Board may appoint any person who is not disqualified under the Act or this constitution to be a director to fill a casual vacancy or as an addition to the existing directors, but subject to the maximum number of directors under clause 17.1.

**18 CHAIRPERSON**

**Directors to elect chairperson of the Board**

18.1 The directors may elect one of their number as chairperson of the Board and (if they think fit) a deputy chairperson, and determine the period for which each is to hold office.

**19 VACATION OF OFFICE**

**Office of director vacated in certain cases**

19.1 The office of director is vacated if the person holding that office:

- (a) dies; or
- (b) becomes disqualified from being a director pursuant to section 151 of the Act; or
- (c) resigns that office in accordance with clause 19.2; or
- (d) absents himself or herself from attendance at meetings of the Board continuously for the space of six months without special leave of absence from the Board and his or her alternate (if any) shall not have attended any such meetings in his or her stead, unless the Board resolves otherwise; or
- (e) is removed from office in accordance with this constitution or the Act; or
- (f) being a managing director, ceases for any reason to be in the salaried employment of the Company or any of its subsidiaries, unless the Board resolves otherwise; or
- (g) retires from office under clauses 17.9 to 17.11 and is not re-elected.

**Directors' resignation procedure**

19.2 A director may resign office by delivering a signed notice of resignation in writing to the address for service of the Company. The notice is effective when it is received at that address or at any later time specified in the notice.

**20 [INTENTIONALLY DELETED]**

## 21 PROCEEDINGS OF THE BOARD

### Meetings of the Board

- 21.1 The Fifth Schedule governs the proceedings at meetings of the Board except where otherwise agreed by all the directors for the time being in relation to any particular meeting or meetings. The third schedule to the Act does not apply to proceedings of the Board.

### Written resolutions of Board permitted

- 21.2 A resolution in writing signed or assented to by all of the directors entitled to vote on that resolution (or their alternate directors) is as valid and effective as if it had been passed at a meeting of the Board duly convened and held provided that prior notice of the resolution has been given to those directors not entitled to vote and those directors have acknowledged in writing that they do not require a meeting to be held.

### Written resolutions of all available directors permitted in certain cases

- 21.3 A resolution in writing which is signed or assented to by a majority of the available directors who are entitled to vote on that resolution (or by their alternate directors) is valid and effective as if it had been passed at a meeting of the Board duly convened and held, provided the resolution is signed by at least a majority of 75% of directors who are entitled to vote (or their alternate directors). For the purposes of this clause a director is not "available" if the Secretary has not been able to contact the director after using all reasonable endeavours to do so.

### Written resolutions may be in counterparts

- 21.4 Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the directors (or their alternate directors). A copy of a written resolution, which has been signed and is sent by facsimile, email or any similar means of communication, will satisfy the requirements of this clause. A copy must be sent to any director who did not sign the resolution.

## 22 DELEGATION OF POWERS

- 22.1 [Intentionally deleted]

### Board delegates to comply with regulations

- 22.2 In exercising the Board's delegated powers, any committee of directors, director, employee of the Company or any other person must comply with any regulations that the Board may impose.

### Committee proceedings

- 22.3 Subject to any appointment of committee chairs by the Board, a committee of the Board comprising more than one person may elect a chairperson of its meetings. If no such chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- 22.4 A committee of the Board may meet and adjourn as it thinks proper. Questions arising at any meeting of a committee comprising more than one person shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairperson of the meeting shall have a second and casting vote except when only two members are present at the meeting.

22.5 The provisions of this constitution (including those relating to the signing of written resolutions and to teleconference meetings) relating to the meetings and proceedings of the Board shall, so far as not altered by any regulations made by the Board, apply also to the meetings and proceedings of any committee. The quorum of any committee shall be:

(a) the number of members of the committee where the committee comprises not more than two members; and

(b) two members where the committee comprises three or more members,

in both cases unless the Board specifies otherwise.

23 **[INTENTIONALLY DELETED]**

24 **REMUNERATION**

**Directors' remuneration**

24.1 The power of the Board to authorise the payment of remuneration by the Company to a director in his or her capacity as a director is subject to the Rules.

24.2 Notwithstanding clause 24.1 a director is entitled to be paid or reimbursed for reasonable travelling, accommodation and other expenses incurred in relation to management of the Company without requiring authorisation of shareholders.

24.3 Notwithstanding clause 24.1, in no instance will remuneration paid by the Company to a director (whether that director is an executive or non-executive director), or remuneration paid by the Company to a managing director in his or her capacity as an executive, include a commission on, or percentage of, operating revenue.

**Shareholders may determine directors' remuneration**

24.4 The shareholders may at any shareholders' meeting by ordinary resolution determine the sum or sums to be paid to the directors for their services as directors of the Company (but excluding services as an executive director) in accordance with the Rules.

25 **ALTERNATE DIRECTORS**

**Directors may appoint and remove alternate directors**

25.1 Every director may:

(a) appoint any person who is not a director and is not disqualified by this constitution or the Act from being a director, and whose appointment has been approved in writing by a majority of the other directors, to act as an alternate director in his or her place either for a specified period, or generally during the absence or inability to act from time to time of such director; and

(b) remove his or her alternate director from that office,

by giving written notice to that effect to the Company. A majority of the other directors may similarly remove an alternate of a director from that office. No director shall appoint a deputy or agent otherwise than by way of appointment of an alternate director under this clause.

**Alternate director has powers of appointor**

- 25.2 While acting in the place of the director who appointed him or her, the alternate director:
- (a) has, and may exercise and discharge, all the powers, rights, duties and privileges of that director (including the right to receive notice of, and participate in, meetings of the Board, and the power to sign any document, including a written resolution, but excluding the right to act as chairperson, deputy chairperson or managing director, and the right to appoint an alternate); and
  - (b) is also subject to the same terms and conditions of appointment as that director, except that he or she shall not be entitled to receive remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointor as the appointor may by notice in writing to the Company from time to time direct.

**Automatic termination of appointment of alternate director**

- 25.3 The appointment of an alternate director terminates automatically if the director who appointed him or her ceases to be a director, or if an event occurs which if he or she were a director would cause him or her to vacate such office. A director retiring by rotation at a meeting of the Company and being re-elected at that meeting shall not be treated as having ceased to be a director.

26 **MANAGING DIRECTOR**

**Board may appoint managing director**

- 26.1 The Board may appoint one of the directors to the office of managing director for a term not exceeding 5 years and on such other terms as the Board thinks fit. If the Board determines, a managing director may be referred to as the Chief Executive of the Company. A managing director may be reappointed at any time in accordance with this clause.

**Managing director subject to same provisions**

- 26.2 Subject to this constitution and the terms of any agreement entered into between the Board and the director concerned, the managing director is subject to the same provisions regarding resignation, removal and disqualification as the other directors of the Company, and the Board may revoke the appointment with or without cause, and the remedy for any breach of such agreement shall be in damages only, and he or she shall have no right to claim to continue in office contrary to the will of the Board. The appointment of a managing director shall terminate automatically if he or she ceases to be a director.

**Remuneration of managing director**

- 26.3 A managing director will receive in addition to remuneration for services as a director such remuneration and benefits as the Board may determine.

**Powers conferred on managing director**

- 26.4 The Board may:
- (a) confer on a managing director any of the powers exercisable by the Board;



- (b) without affecting the powers of the managing director to act as a member of the Board, impose such terms and conditions and such restrictions as the Board thinks fit; and
- (c) withdraw, alter, vary or revoke any of the powers it confers under this clause 26.4.

**Managing director has no power to appoint alternate managing director**

- 26.5 The power to appoint an alternate director conferred on directors by this constitution does not confer on any managing director the power to appoint an alternate managing director.

**PART D: GENERAL**

**27 SECRETARY**

- 27.1 The Board may from time to time appoint one or more persons (other than a body corporate) to act as Secretary or deputy Secretary of the Company for such terms, at such remuneration, and upon such conditions as the Board thinks fit.
- 27.2 The Secretary has the powers conferred by this constitution and any other powers the Board may confer on the Secretary.
- 27.3 If the Board thinks fit, two or more persons may be appointed under clause 27.1 as joint Secretaries.
- 27.4 Any Secretary or joint Secretary may, at any time, be removed from office by the Board, but without prejudice to any claim for damages for breach of any contract of service between him or her and the Company.

**28 INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES**

**Indemnity for directors and others**

- 28.1 Subject to clause 28.3 every director of the Company shall be indemnified by the Company:
- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a director of the Company or a director of a subsidiary of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
  - (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in his or her capacity as a director of the Company or a director of a subsidiary of the Company, or costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

**Indemnity power**

- 28.2 Subject to clause 28.3, the Company may, with the prior approval of the Board, indemnify a director or an employee of the Company or a related company:
- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
  - (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, or costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

**Exceptions and definitions**

- 28.3 An indemnity conferred by clause 28.1(b) or given pursuant to clause 28.2(b), shall not apply in respect of:
- (a) any criminal liability; or
  - (b) in the case of an employee of the Company or a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
  - (c) in the case of a director of the Company or a director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Act; or
  - (d) any other liability in respect of which an indemnity is prohibited by any legislation.

**Company may effect insurance for directors and employees**

- 28.4 The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

**Definitions**

- 28.5 In clause 28 "director" includes a former director and other words given extended meanings in section 162(9) of the Act have those extended meanings.

**29 SERVICE OF DOCUMENTS ON SHAREHOLDERS**

**Notice to natural persons**

- 29.1 Section 391 of the Act applies to notices and other documents given by the Company to a shareholder that is a natural person.

**Notice to companies**

- 29.2 Section 388 of the Act applies to notices and other documents given by the Company to a shareholder that is a company.

**Notice to overseas companies**

- 29.3 Section 390 of the Act applies to notices and other documents given by the Company to a shareholder that is an overseas company.

**Manner and proof of service**

- 29.4 Section 392(1) of the Act provides additional rules on the manner and proof of service of notices and other documents by the Company.

**Effect of not receiving a document**

- 29.5 Section 392(2) of the Act provides when a document is not deemed to have been served or sent or delivered.

**Notice where shareholder has no registered address**

- 29.6 If a shareholder has no registered address that shareholder shall not be entitled to have any notice from the Company and all proceedings taken without notice to any such shareholder shall be as valid as if that shareholder had due notice. If a shareholder has no registered address, a notice may (but need not) be given by the Company to any such shareholder by advertisement in a newspaper circulating in the neighbourhood of the registered office addressed to the shareholders of the Company generally and any notice so given shall be deemed to have been duly given at noon on the day on which the advertisement appears.

**Notice to joint holders**

- 29.7 A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

**Notice to representatives or manager**

- 29.8 A notice may be given by the Company to the person entitled to a share in consequence of the mental disorder, death or bankruptcy of a shareholder, by sending it to him or her by name, or by the title of the manager of the mentally disordered person, or the legal personal representatives of the deceased, or the assignee of the bankrupt, or by any like description, as the case may be. The notice may be sent to the address, if any, supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the mental disorder, death or bankruptcy had not occurred.

30 **EXECUTION OF DEEDS**

- 30.1 An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by a director, or any other person or class of persons authorised by the Board, whose signature must be witnessed, or as otherwise permitted by the Act.

31 **REMOVAL OF COMPANY FROM NEW ZEALAND REGISTER**

**Directors may remove Company from New Zealand register**

- 31.1 If the Company:
- (a) has ceased to carry on business, discharged in full its liabilities to all known creditors, and distributed its surplus assets in accordance with the Act; or

(b) has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the Company into liquidation,

the Board may request the Registrar to remove the Company from the New Zealand register.

**FIRST SCHEDULE:**  
**OWNERSHIP RESTRICTIONS**

**1 Definitions**

In this Schedule, if not inconsistent with the context:

*affected share* means any share which is treated as such pursuant to clause 3;

*capital* means the share capital of the Company;

*employee* means an employee or officer of the Company or of any subsidiary or associated company of the Company, a labour-only contractor, consultant, or consultant company who or which contracts with the Company or with any subsidiary or associated company of the Company, any person whose services are provided or are to be provided to the Company or to any subsidiary or associated company of the Company pursuant to any contract or other arrangement, any trustee or trustees on behalf of any of the above persons, and any trustee or trustees of or in respect of any pension, superannuation or like fund established for the benefit of any of the above persons;

*New Zealand business* means, for the purposes of paragraph (d) of the definition of the term New Zealand national, any one or more of the following:

- (a) a person exempted from the requirements of Parts 2 and 3 of the Overseas Investment Regulations 2005 by virtue of an exemption notice issued under those regulations; or
- (b) any person named in, or in a schedule to, any such exemption notice; or
- (c) if the regulations referred to in paragraph (a) of this definition are revoked, any person falling within that paragraph or paragraph (b) of this definition at the date of the revocation; or
- (d) any subsidiary of any person referred to in paragraph (a) or paragraph (b) or paragraph (c) of this definition; or
- (e) underwriters or sub-underwriters of any offer of voting shares for subscription or purchase;

*New Zealand national* means:

- (a) any New Zealand citizen, or any person who has attained the age of 18 years and is of full capacity who would, in the opinion of the Board, meet the requirements for citizenship set out in section 8(2) of the Citizenship Act 1977 (or any provision enacted in substitution for that section) if that person made an application for citizenship on the date on which his or her status as a New Zealand national is considered for the purposes of this constitution; or
- (b) the Crown or any department or instrument of the executive government of New Zealand or any person acting on behalf of the Crown or any such department or instrument; or

- (c) any municipal, local, statutory or other authority formed or established in New Zealand or any instrument of local government in New Zealand; or
- (d) any New Zealand business; or
- (e) any company, or other body corporate, that:
  - (i) is established in New Zealand and has its registered office in New Zealand and that is substantially owned and effectively controlled by persons coming within any of paragraphs (a) to (d) of this definition; or
  - (ii) is not an overseas person within the meaning of the Overseas Investment Act 2005; or
- (f) the trustees of any employee share purchase scheme operated by way of a trust for the benefit of any employees, where all the trustees are persons coming within any of paragraphs (a) to (e) of this definition and where all voting rights in respect of all shares to which the scheme relates are held by the trustees;

*person* includes a natural person, a company, a corporation, and any combination or association of natural persons or corporate or unincorporated bodies (in each case whether or not having a separate legal identity);

*relevant interest* has the meaning set out in clause 5;

*representative* means a person authorised by a corporation in accordance with clause 49 of the Fourth Schedule;

*subsidiary* has the meaning set out in section 5 of the Act (read as if the expression "company" in that subsection included any body corporate, wherever incorporated);

*voting share* means a security that confers a right to vote at meetings of the shareholders of the Company (whether or not there is any restriction or limitation on the number of votes that may be cast by or on behalf of the holder of the security), not being a right to vote that, under the conditions attached to the security, is exercisable only in one or more of the following circumstances:

- (a) during a period in which a dividend (or part of a dividend) in respect of the security is in arrears; or
- (b) on a proposal to reduce the capital; or
- (c) on a proposal that affects rights attached to the security; or
- (d) on a proposal to put the Company into liquidation; or
- (e) on a proposal for the disposal of the whole of the property, business, and undertaking of the Company; or
- (f) during the liquidation of the Company;

For the purposes of this Schedule, a body corporate is related to another body corporate if:

- (a) the other body is its holding company or subsidiary; or
- (b) there is another body corporate to which both bodies are related by virtue of paragraph (a) of this definition, and related body corporate has a corresponding meaning.

## **2 Limitations on shareholdings**

- 2.1 No person shall have a relevant interest in 10% or more of the total voting shares for the time being without, and except in accordance with, the prior written approval of the Crown under the Deed (unless it has been terminated with the consent of the Crown).
- 2.2 No person who is not a New Zealand national shall have a relevant interest in more than 49.9% of the total voting shares for the time being without, and except in accordance with the terms of, the prior written approval of the Crown given under the Deed (unless it has been terminated with the consent of the Crown).

## **3 Power to sell where clause 2 breached**

- 3.1 The provisions of clauses 3.2 to 3.11 inclusive shall apply if the Board or, pursuant to the Deed (unless it has been terminated with the consent of the Crown), the Crown, determines that there are reasonable grounds for believing that a person has a relevant interest in voting shares in breach of clause 2.
- 3.2 After such determination, the Board must (except where the prior written approval of the Crown has been given under the Deed), by notice in writing served on any registered holder of voting shares to which the determination relates, require that holder to lodge with the Board within 21 days of the date on which such notice is served by the Board, a statutory declaration (or other disclosure if required by the Board) giving such information as the Board may reasonably require for the purposes of determining whether to exercise its powers under this clause 3.
- 3.3 Where the registered holder of any voting shares does not comply with clause 3.2, or the Board in its discretion considers that any disclosure required by clause 3.2 or other information reveals that any person, without the written consent of the Crown, holds a relevant interest in any voting shares in contravention of clause 2, the Board must (except where the prior written approval of the Crown has been given under the Deed (unless it has been terminated with the consent of the Crown)), subject to clause 3.4, serve a notice on the registered holder of those voting shares declaring those voting shares to be affected shares.
- 3.4 The Board shall serve notice upon the registered holder of any voting shares of its intention to declare those shares to be affected shares. The holder may make representations to the Board as to why any such voting shares should not be treated as affected shares, within 14 days of receiving the above mentioned notice from the Board. If after taking into consideration any such representations, the Board in its discretion (but acting reasonably on the basis of evidence available and resulting from the Board's due enquiry, which inquiry must be made by it) determines that such shares shall be treated as affected shares, it must (except where the prior written approval of the Crown has been given under the Deed (unless it has been

terminated with the consent of the Crown)) immediately serve a notice on the registered holder declaring those voting shares to be affected shares.

- 3.5 A registered holder of affected shares shall, unless the prior written approval of the Crown has been given under the Deed (unless it has been terminated with the consent of the Crown), not be entitled to vote in respect of such affected shares at any shareholders' or class meeting of the Company and in that event the votes attached to such affected shares shall vest in and may be exercised by the chairperson of any such meeting who may act entirely at his or her discretion. This shall be without prejudice to the right of any such registered holder to attend or speak at any shareholders' or class meeting of the Company.
- 3.6 A registered holder of affected shares shall, within three months (or such longer period as the Board, may determine, provided that such determination by the Board is the subject of a written approval of the Crown given under the Deed (unless it has been terminated with the consent of the Crown)), of receiving the notice declaring those voting shares to be affected shares, ensure that either the affected shares or one or more persons' relevant interests therein are disposed of, in whole or in part, so that no person has a relevant interest in the affected shares in breach of clause 2. If, after three months (or such longer period determined as set out above), the Board is not satisfied that such a disposal has been made, the Board must (except where the prior written approval of the Crown has been given under the Deed (unless it has been terminated with the consent of the Crown)) arrange for the sale of some or all of the affected shares on behalf of the registered holder at the best price reasonably obtainable at the relevant time, based upon advice obtained by it for the purpose, so that no person has a relevant interest in the affected shares in breach of clause 2. For this purpose, the registered holder shall be deemed to have appointed, and does hereby appoint, the Company as its agent and its attorney, in each case with full authority to act on its behalf in relation to the sale of the affected shares and to sign all documents relating to such sale and transfer of the affected shares and the Board must (except where the prior written approval of the Crown has been given under the Deed (unless it has been terminated with the consent of the Crown)) register a transfer of the affected shares so sold, whether or not the transfer has been properly completed.
- 3.7 If the Board considers that no person has a relevant interest in breach of clause 2, in any voting shares which have been declared to be affected shares, (whether because of the sale of the affected shares or otherwise), it shall withdraw the declaration. On withdrawal, those voting shares shall cease to be affected shares. The Board shall serve notice on the then holder of those voting shares of such withdrawal within 14 days of having so resolved.
- 3.8 The Board shall not be obliged to serve any notice required under this clause to be served upon any person if it does not know either the identity or address of the person. The absence of service of such a notice in such circumstances, and any accidental error in or failure to give any notice to any person upon whom notice is required to be served under this clause shall not prevent the implementation of or invalidate any procedure under this clause. Clauses 29.1 to 29.8 of this constitution shall apply to the service on persons of notices required under this clause 3 as if references in clauses 29.1 to 29.8 of this constitution to shareholders were references to those persons and references to the registered addresses of shareholders were references to the last addresses of those persons known to the Company.



- 3.9 Any resolution or determination of, or decision or declaration or exercise of any discretion or power by, the Board or by the chairman of any meeting under or pursuant to this clause 3 shall, provided the prior written approval of the Crown to such resolution or determination of, or decision or declaration has been given under the Deed (unless it has been terminated with the consent of the Crown) be final and conclusive; and any disposal or transfer made, or other things done, by or on behalf of, or on the authority of, the Board pursuant to this clause 3, and which is strictly in accordance with the written approval of the Crown given under the Deed (unless it has been terminated with the consent of the Crown), shall be conclusive and binding on all persons concerned and shall not be open to challenge, whether as to its validity or otherwise on any ground whatsoever.
- 3.10 The proceeds of sale of any voting shares sold on behalf of the registered holder under this clause 3 shall be applied as follows:
- (a) first, in payment of any expenses incurred in regard to the sale; and
  - (b) the residue (if any) shall be paid to, or in accordance with a direction of, the person who was the registered holder of the voting shares immediately before the sale.
- 3.11 A certificate signed by a director and countersigned by the Secretary, or by a second director, that a power of sale under this clause 3 has arisen and is exercisable by the Board, or that a voting share has been duly transferred under this clause 3 on the date stated therein, shall be conclusive evidence of the facts stated therein.
- 3.12 Any approval or consent required of the Crown under the Deed (unless it has been terminated with the consent of the Crown) may be given or withheld in the sole discretion of the Crown and on such terms and conditions as the Crown thinks fit. The giving of any such approval or consent shall not derogate from the need to obtain any approval or consent of the Crown under any enactment.

#### **4 Transfers of shares**

- 4.1 The Board must (except where the prior written approval of the Crown has been given under the Deed (unless it has been terminated with the consent of the Crown)) decline to register a transfer of any voting shares if, in the reasonable opinion of the Board after due enquiry by it (which inquiry must be made by the Board), any person would, upon transfer, have a relevant interest in those voting shares in breach of clause 2.
- 4.2 The Board shall, if it is able to do so, decline to register a transfer of voting shares if it is aware that the acquisition of the voting shares by the transferee results, or would result, in a breach of clause 2.

#### **5 Meaning of "relevant interest"**

- 5.1 For the purpose of this constitution, a person has a relevant interest in a voting share (whether or not that person is the registered holder of it) if that person:
- (a) is a beneficial owner of the voting share; or
  - (b) has the power to exercise any right to vote attached to the voting share; or

- (c) has the power to control the exercise of any right to vote attached to the voting share; or
  - (d) has the power to acquire or dispose of the voting share; or
  - (e) has the power to control the acquisition or disposition of the voting share by another person; or
  - (f) under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the voting share (whether or not that person is a party to it):
    - (i) may at any time have the power to exercise any right to vote attached to the voting share; or
    - (ii) may at any time have the power to control the exercise of any right to vote attached to the voting share; or
    - (iii) may at any time have the power to acquire or dispose of the voting share; or
    - (iv) may at any time have the power to control the acquisition or disposition of the voting share by another person.
- 5.2 For the purposes of this constitution, where two or more persons act jointly or in concert in respect of the exercise of the rights attaching to a voting share in which any one or more of those persons has a relevant interest, then each of those persons shall be deemed to have a relevant interest in the voting share.
- 5.3 A body corporate or other body has a relevant interest in a voting share in which another body corporate that is related to that body corporate or other body has a relevant interest.
- 5.4 A person who has, or may have, a power referred to in any of clauses 5.1(a) to 5.1(f) has a relevant interest in a voting share regardless of whether the power:
- (a) is expressed or implied; or
  - (b) is direct or indirect; or
  - (c) is legally enforceable or not; or
  - (d) is related to a particular voting share or not; or
  - (e) is subject to restraint or restriction or is capable of being made subject to restraint or restriction; or
  - (f) is exercisable presently or in the future; or
  - (g) is exercisable only on the fulfilment of a condition; or
  - (h) is exercisable alone or jointly with another person or persons.

- 5.5 A power referred to in clause 5.1 exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.
- 5.6 A reference to a power includes a reference to a power that arises from, or is capable of being exercised as the result of, a breach of any trust, agreement, arrangement, or understanding, or any of them, whether or not it is legally enforceable.
- 5.7 For the purposes of clause 2, notwithstanding clauses 5.1 to 5.6, no account shall be taken of a relevant interest of a person in a voting share if:
- (a) the ordinary business of the person who has the relevant interest consists of, or includes, the lending of money or the provision of financial services, or both, and that person has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of that person; or
  - (b) that person has the relevant interest by reason only of acting for another person to acquire or dispose of that voting share on behalf of the other person in the ordinary course of business of a sharebroker and that person is a member of a stock exchange; or
  - (c) that person has the relevant interest solely in its capacity as a recognised clearing house, a nominee of a recognised clearing house, a recognised stock or investment exchange or a nominee of a recognised stock or investment exchange; or
  - (d) that person has the relevant interest solely in its capacity as a custodian or depository under arrangements whereby that person holds shares in the Company and either itself or some other person issues receipts or other securities evidencing the right to receive such shares; or
  - (e) that person has the relevant interest solely in its capacity as an underwriter in respect of obligations (whether contingent or otherwise) to acquire or subscribe for shares in the Company pursuant to an underwriting or subscription agreement; or
  - (f) that person has the relevant interest by reason only that he or she has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at any meeting of shareholders or class of shareholders of the Company; or
  - (g) that person has the relevant interest solely by reason of being appointed as a proxy in accordance with clause 43 of the Fourth Schedule to vote at any meeting of shareholders, or of a class of shareholders, of the Company; or
  - (h) that person:
    - (i) is a trustee corporation or a nominee company; and
    - (ii) has the relevant interest by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee company; or

- (i) the person has the relevant interest by reason only that the person is a bare trustee of a trust to which the voting share is subject; or
- (j) that person has the relevant interest solely in its capacity as a trustee of an employee share purchase scheme of the Company.

5.8 For the purposes of clause 5.7(i), a trustee may be a bare trustee notwithstanding that he or she is entitled as a trustee to be remunerated out of the income or property of the trust.

## 6 **No amendment to the Constitution**

6.1 The clauses and definitions of this constitution to which clause (b) of the definition of "special resolution" applies are:

- (a) The following definitions in clause 1.1 of this constitution, or defined by reference to the Rules in clause 1.2 of this constitution or the Act in clause 1.3 of this constitution: *this constitution, Board, Company, director, holding company, New Zealand citizen, share register, the Secretary, security, share, shareholder, special resolution*;
- (b) clause 7 of this constitution;
- (c) clause 11.6 of this constitution;
- (d) clause 17.4 and 17.5 of this constitution;
- (e) this Schedule; and
- (f) clause 21 and 22 of the Fifth Schedule.

6.2 No act or omission to act that contravenes or fails to comply with any of the clauses or provisions specified in clause 6.1, whether or not the act or omission is that of the Board or the shareholders in a meeting and whether or not the act or omission has been approved by a special resolution of shareholders, may be undertaken by the Board or the Company.

## **SECOND SCHEDULE:**

### **SALE OF LESS THAN MINIMUM HOLDINGS**

#### **INTERPRETATION**

##### **1 Construction**

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.

#### **NOTICE**

##### **2 Notice to security holder with less than a minimum holding**

- 2.1 Where securities registered in the name of a holder are less than a minimum holding, the Board may at any time give written notice of that fact and of the provisions of clause 3 to that holder. Notice must not be given before enquiry has been made as to whether any further transfers which may affect the number of securities registered in the name of the holder are pending and the effect of those transfers has been taken into account.

##### **3 Company may sell less than minimum holdings**

- 3.1 Where notice has been given under clause 2, the Company may at any time during the period commencing not less than 3 months after the date on which notice is given and ending 5 months after that date, if the securities then registered in the name of the security holder are less than a minimum holding, sell the securities through NZX or in some other manner approved by NZX.

##### **4 Sale procedures**

- 4.1 The Board may authorise the transfer of the securities sold to a purchaser of the securities through NZX or in some other manner approved by NZX, and the holder is deemed to have authorised the Company to act on behalf of the holder and to sign all necessary documents relating to the sale. The purchaser shall not be bound to see to the application of the purchase money, nor shall the title to the securities be affected by any irregularity or invalidity in the procedures under this constitution relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

##### **5 Application of proceeds**

- 5.1 The proceeds of the sale of any securities sold under clauses 3 and 4 must be applied as follows:
- (a) first, in payment of any reasonable sale expenses;
  - (b) second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the securities; and
  - (c) the residue, if any, must be paid to the person who was the holder of the securities immediately before the sale or his or her executors, administrators or assigns.

**6 Evidence of power of sale**

- 6.1 A certificate signed by a director and countersigned by the Secretary or by a second director that the power of sale under this Schedule has arisen and is exercisable by the Company shall be conclusive evidence of the facts stated in that certificate.

**THIRD SCHEDULE:  
CALLS, FORFEITURE AND LIEN**

**INTERPRETATION**

**1 Construction**

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.

**CALLS ON SECURITIES**

**2 Holders of securities must pay calls**

- 2.1 Every holder of securities on receiving at least 10 working days' written notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any securities that the holder holds. The Board may revoke or postpone a call, or require a call to be paid by instalments.

**3 Call made when Board resolution passed**

- 3.1 A call is regarded as having been made at the time when the Board resolution authorising the call was passed.

**4 Joint holders are jointly and severally liable**

- 4.1 The joint holders of a security are jointly and severally liable to pay all calls for that security.

**5 Unpaid calls will accrue interest**

- 5.1 If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. The Board may waive some or all of the payment of that interest.

**6 Amounts payable under terms of issue treated as calls**

- 6.1 Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of a security or under a contract for the issue of a security, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this constitution will apply as if the amount had become payable by virtue of a call made in accordance with this constitution.

**7 Board may differentiate between holders as to calls**

- 7.1 On the issue of securities, the Board may differentiate between the holders of securities as to the amount of calls to be paid and the times of payment.

**8 Board may accept payment in advance for calls**

- 8.1 Where a holder of securities is willing to advance some or all of the money unpaid and uncalled on any security of that holder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and that holder of securities for the period between the date that the amount is accepted and the date that the amount becomes payable pursuant to a call or the date specified for its payment. The Board

may at any time repay to any holder of securities the whole or any portion of any money so advanced upon giving such holder at least 10 working days' notice in writing and as from the date of such repayment interest (if any) shall cease to accrue on the money so repaid. Holders of securities shall not be entitled as of right to any payment of interest on any amount so paid in advance and the Board may decline to pay any interest. Any amount so paid in advance shall not be taken into account in ascertaining the amount of any dividend or other distribution payable upon the securities concerned.

**9 Proof of liability**

9.1 The amount of any unpaid call may be recovered as a debt due from the holder of a security to the Company by proceedings commenced at any time after the call becomes payable. In any such proceedings it shall be sufficient to prove that:

- (a) the name of the holder of securities sued is entered in the applicable register of securities as the holder or one of the holders of the security in respect of which such debt accrued;
- (b) a resolution of the Board making the call is duly recorded in the Company's records; and
- (c) notice of such call was duly given to the holder sued.

The proof of such matters shall be conclusive evidence of the debt and it shall not be necessary to prove the appointment or qualification of any member of the Board that made such call nor any other matter whatsoever.

**FORFEITURE OF SECURITIES**

**10 Board may by notice require forfeiture of securities if calls unpaid**

10.1 The Board may during the time that a call, instalment, or other amount remains unpaid on a security, serve a notice on the holder of that security requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest and any expenses that may have been incurred by the Company by reason of non-payment and failure to comply with such notice will result in forfeiture of the security.

**11 Notice of forfeiture must satisfy certain requirements**

11.1 The notice served on a holder of securities under clause 10.1 must specify a date not earlier than 10 working days after the date the notice is served by which the payment is to be made. The notice must also state that in the event of non-payment by the appointed time, the securities to which the call, instalment, or other amount relates, will be liable to be forfeited by the holder of securities.



**12 Failure to comply with notice may lead to forfeiture**

- 12.1 Where a valid notice under clause 10.1 is served on a holder of securities and the holder of securities fails to comply with the notice, then the Board may resolve that any security for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited.

**13 Board may deal with forfeited security**

- 13.1 A forfeited security may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. However, the Board may cancel the forfeiture at any time before the sale or other disposition on such terms as the Board thinks fit if the call, instalment or other amount which remains unpaid on the security is paid.

**14 Holder whose securities are forfeited loses rights**

- 14.1 A person whose securities have been forfeited immediately ceases to be a holder in respect of those securities notwithstanding any other provision of this constitution, and remains liable to pay the unpaid amount that the holder owes the Company, but that liability shall cease if the Company receives payment in full of all money owing for those securities.

**15 Notice of forfeiture**

- 15.1 On the forfeiture of a security the Board shall cause a note of the forfeiture and the date to be entered in the applicable register of securities and shall cause notice of the forfeiture and the date to be given to the holder in whose name the security stood immediately prior to the forfeiture. The Board shall upon the disposal of any forfeited security cause a note of the manner and date of such disposal to be similarly entered in the applicable register of securities.

**16 Certificate is conclusive**

- 16.1 A certificate signed by a director that a security has been duly forfeited on a stated date shall be conclusive evidence of the facts stated against any person claiming an entitlement to that security.

**17 Company may sell forfeited security**

- 17.1 The Company may receive consideration, if any, given for a forfeited security following a sale or disposition, and may execute a transfer of the security in favour of the person to whom the security is sold or disposed of, and register that person as the holder of the security. That person shall not be bound to see to the application of the purchase money, if any, nor shall the title to the security be affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or disposal of that security. Any residue after satisfaction of unpaid calls, instalments, premiums or other amounts and interest, and expenses, shall be paid to the previous owner, or his or her executors, administrators or assigns.

**18 Surrender of securities**

- 18.1 The Board may accept from any holder of securities a surrender of all or any part of that holder's securities which are liable to forfeiture upon such terms as may be agreed between the holder and the Board.

## **LIEN ON SECURITIES**

### **19 Company's lien**

19.1 The Company has a lien, ranking in priority over all other equities, on:

- (a) all securities registered in the name of a holder of securities (whether solely or jointly with others);
- (b) all dividends authorised in respect of such securities; and
- (c) the proceeds of sale of such securities,

for:

- (d) unpaid calls and instalments payable in respect of any such securities;
- (e) interest on any such calls or instalments; and
- (f) any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other legislation in respect of the securities of that holder of securities, whether the period for payment has arrived or not.

No equitable interest in any securities other than such lien shall be created and such lien shall extend to all dividends and other distributions from time to time authorised in respect of such securities.

### **20 Waiver of lien**

20.1 Registration of a transfer of securities on which the Company has any lien will operate as a waiver of the lien, unless the Company gives notice to the contrary to the transferee prior to registration.

### **21 Company may sell securities on which it has a lien**

21.1 The Company may sell a security on which it has a lien in such manner as the Board thinks fit, where:

- (a) the lien on the security is for a sum which is presently payable; and
- (b) the registered holder of the security, or the person entitled to it on his or her death or bankruptcy, has failed to pay that sum within 10 working days after the Company has served the registered holder with written notice demanding payment of that sum.

### **22 The Company may transfer security and apply proceeds**

22.1 The Company may receive consideration given for a security sold under clause 21, and may execute a transfer of the security in favour of the person to whom the security is sold, and register that person as the holder of the security discharged from all calls due prior to the purchase. The purchaser shall not be bound to see to the application of the purchase money, and the purchaser's title to the security shall not be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

22.2 The Company must apply the sale proceeds in payment of the sum presently payable in respect of the lien, and the balance, if any, shall (subject to a like lien for sums not presently payable that existed upon the security before the sale) be paid to the person who held the security immediately before the date of sale or his or her executors, administrators or assigns.

## **FOURTH SCHEDULE:**

### **PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

#### **INTERPRETATION**

##### **1 Construction**

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.2 A reference in this Schedule to a shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a shareholder, a representative of a corporate shareholder, an attorney of a shareholder, and any person who may lawfully act on behalf of a shareholder.

#### **NOTICE**

##### **2 Written notice must be given to shareholders, directors and auditors**

- 2.1 Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the Company not less than 10 working days before the meeting.

##### **3 Service of notices outside New Zealand**

- 3.1 If a holder of a quoted security has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices must be posted to that holder at such address and shall be deemed to have been received by that holder 24 hours after the time of posting.

##### **4 Notice must state nature of business**

- 4.1 The notice must:
  - (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it;
  - (b) state the text of any special resolution to be submitted to the meeting;
  - (c) in the case of a special resolution required by section 106(1)(a) or (b) of the Act, state the right of a shareholder under section 110 of the Act;
  - (d) contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice of meeting; and
  - (e) for so long as the Company is listed, comply with the requirements of the Rules.

##### **5 Form of proxy must be included with notice**

- 5.1 A proxy form must be sent with every notice of meeting of shareholders or quoted security holders.

**6 Irregularities in notice may be waived**

- 6.1 Any 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.

**7 Company's accidental failure to give notice does not invalidate meeting**

- 7.1 The proceedings at a meeting are not invalidated if the Company accidentally omits to give notice of a meeting to any person entitled to that notice, or if any person entitled to that notice fails to receive notice of a meeting.

**8 Notice of an adjournment**

- 8.1 If a meeting is adjourned for less than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place.
- 8.2 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

**MEETING AND QUORUM**

**9 Methods of holding meetings**

- 9.1 A meeting of shareholders may be held by a quorum of the shareholders:
- (a) being assembled together at the place, date and time appointed for the meeting; or
  - (b) participating in the meeting by means of audio, audio and visual, or electronic communication; or
  - (c) by a combination of both of the methods described in paragraphs (a) and (b).

A shareholder, or the shareholder's proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if the Board approves those means and the shareholder, proxy, or 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, proxy, or representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).

- 9.2 The Company is not required to hold meetings of shareholders in the manner specified in clause 9.1(b) or 9.1(c). Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so.

**10 Business to be transacted only if a quorum is present**

- 10.1 Subject to clauses 12.1 and 13.1, business may be transacted at a meeting of shareholders only if a quorum is present at the time when the meeting proceeds to business.

**11 Quorum for shareholders' meeting**

- 11.1 A quorum for a meeting of shareholders is present if two or more shareholders are present having the right to vote at the meeting.

11.2 To avoid 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.

**12 Meeting convened at shareholders' request dissolved if no quorum**

12.1 If a quorum is not present within 30 minutes after the time appointed for the meeting convened on the written request of shareholders holding shares together carrying at least 5% of the voting rights entitled to be exercised, the meeting will be dissolved automatically.

**13 Other meetings to be adjourned if no quorum**

13.1 If a quorum is not present within 30 minutes after the time appointed for a meeting (other than a meeting convened on the written request of shareholders holding Shares together carrying at least 5 percent of the voting rights entitled to be exercised), the meeting will be adjourned to the same day in the following week at the same time and place, or to such other day, 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 present will constitute a quorum.

**CHAIRPERSON**

**14 Chairperson of Board to be chairperson of meeting**

14.1 The chairperson of the Board, if one has been elected by the directors and is present at a meeting of shareholders, will chair the meeting.

**15 Directors may elect chairperson if chairperson or deputy chairperson of Board not available**

15.1 If no chairperson of the Board has been elected or, if at any meeting of shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or is unwilling to act, the deputy chairperson (if any) of the Board, shall be the chairperson, or failing him or her, the directors present may elect one of their number to be chairperson of the meeting.

**16 As a last resort shareholders may elect chairperson**

16.1 If at any meeting of shareholders, no director is willing to act as chairperson or if no director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may elect one of their number to be chairperson of the meeting.

**17 Chairperson's power to adjourn meeting**

17.1 The chairperson of a meeting at which a quorum is present:

- (a) may adjourn the meeting to enable the result of a poll to be declared if the chairperson in his or her sole and absolute discretion believes the meeting will become inordinately protracted due to the time expected to be taken to count votes;
- (b) may adjourn the meeting with the consent of the shareholders present who are entitled to attend and vote at that meeting; and
- (c) must adjourn the meeting if directed by the meeting to do so.

The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

**18 Power to dissolve meeting**

18.1 If any meeting shall become 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, either adjourn or dissolve the meeting.

18.2 If any meeting is dissolved by the chairperson pursuant to clause 18.1, the unfinished business of the meeting shall be dealt with by the chairperson directing that any item of business which is uncompleted at the meeting and which in his or her opinion must be voted upon be put to the vote by a poll without further discussion.

18.3 The chairperson may dissolve any meeting prior to completion of the taking of a poll, and the taking of, and counting of votes for, such poll may continue notwithstanding the dissolution of such meeting.

**19 Chairperson's discretion to determine relevancy**

19.1 The chairperson may determine in his or her absolute discretion whether or not any particular matter raised for question, discussion or comment at a meeting, or any resolution proposed by a shareholder at a meeting, concerns the management of the Company.

**VOTING**

**20 Voting by show of hands or voice vote at meeting**

20.1 In the case of a meeting of shareholders held under clause 9.1(b), unless a poll is demanded, voting at the meeting will be by a show of hands or by voice vote, as the chairperson may determine.

**21 Voting by voice if audio-conference meeting**

21.1 In the case of a meeting of shareholders held under clause 9.1(b) or (c), unless a poll is demanded, voting at the meeting will be by any method permitted by the chairperson of the meeting.

**21A Voting by electronic means**

21A.1 To the extent permitted by the Act and the Rules, the Board may allow shareholders to vote by signifying their assent or dissent by electronic means (including, for the avoidance of doubt, voting on a personal computer, with such vote being transmitted to the meeting), instead of the shareholder voting by another method permitted by the Act or this constitution.

**22 Votes of joint holders**

22.1 Where two or more persons are registered as the holders 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.

**23 Shareholder loses voting rights if calls unpaid**

23.1 A shareholder is not entitled to vote at any meeting of shareholders other than a meeting of an interest group, unless all sums due to the Company by that shareholder in respect of any share registered in that shareholder's name have been paid.

**24 Chairperson shall not have a casting vote**

24.1 In the case of an equality of votes, the chairperson shall not have a casting vote.

**25 Chairperson's declaration of result**

25.1 Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote or by such other manner as the Chairperson may have decided under clause 20.1 is carried by the requisite majority or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution, shall be conclusive evidence of that fact.

**POLLS**

**26 Poll may be demanded by chairperson before a meeting**

26.1 The chairperson may in his or her absolute discretion demand a poll before a meeting.

**27 Poll may be demanded at a meeting**

27.1 At a meeting of shareholders, a poll may be demanded, either before or after a vote by show of hands or voice vote is taken on a resolution, by:

- (a) the chairperson; or
- (b) at least 5 shareholders having the right to vote at the meeting; or
- (c) a shareholder or shareholders having the right to exercise at least 10% of the total votes entitled to be exercised on the business to be transacted at the meeting; or
- (d) a shareholder or shareholders holding shares that confer a right to vote at the meeting and on which the total amount paid up is at least 10% of the total amount paid up on all the shares that confer that right.

**28 Time at which polls to be taken**

28.1 A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. A poll demanded on any other question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

**29 Votes need not be cast in same way**

29.1 On a poll, a shareholder entitled to more than one vote need not use all its, his or her votes, or cast all the votes it, he or she uses in the same way.

**30 Counting votes cast in a poll**

30.1 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present at the meeting and voting. A poll may otherwise be taken in such manner as the chairperson directs. If there is any dispute as to the



admission or rejection of a vote, the chairperson shall determine that dispute. The chairperson's determination, if made in good faith, will be final and conclusive.

**31 Counting votes in a particular order is optional**

31.1 The chairperson may direct that proxy votes, votes of corporate representatives and the votes of other shareholders present be counted in any particular order, and that counting cease once the requisite majority is attained with reference to the total number of shares. The chairperson may direct that the votes of any proxy holder be excluded if the chairperson in his or her absolute discretion is satisfied that the appointor of that proxy is present at the meeting and expresses a wish to vote.

**32 Auditor of Company to be scrutineer**

32.1 If the Board elects to appoint a scrutineer, the auditor of the Company for the time being, or if the auditor of the Company is unable or unwilling to act, then such person as the chairperson nominates, shall act as scrutineer for the purposes of a poll.

**33 Outcome of Poll**

33.1 The chairperson may declare the result of a poll (at or after the meeting) after its outcome is known regardless of whether all votes have been counted.

**34 Result of a poll to be treated as resolution of the meeting**

34.1 The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

**35 Proxy allowed to demand a poll**

35.1 The instrument appointing a proxy to vote at a meeting confers authority to demand, or join in demanding a poll, and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

**SHAREHOLDER PROPOSALS**

**36 Shareholder proposals by written notice**

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

36.2 The chairperson may determine in his or her absolute discretion whether or not any matter so proposed by a shareholder to be raised for discussion or resolution concerns the management of the Company.

37 **[Intentionally deleted]**

38 **[Intentionally deleted]**

39 **[Intentionally deleted]**

40 **[Intentionally deleted]**

41 **[Intentionally deleted]**

42 **[Intentionally deleted]**

**PROXIES**

43 **Proxies permitted**

- 43.1 A shareholder may exercise the right to vote by being present in person or represented by proxy.
- 43.2 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.

44 **Proxy to be treated as shareholder**

- 44.1 A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

45 **Appointment of proxy must be in writing and specify restrictions**

- 45.1 A proxy must be appointed by a notice in writing that is signed by or, in the case of an electronic notice, sent by the shareholder, or by appointing the proxy online in accordance with the Company's instructions in a notice of meeting, and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a shareholder of the Company.

46 **Notice of proxy to be produced before meeting**

- 46.1 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received at the registered office, or such other place within New Zealand as is specified for that purpose in the notice convening the meeting, at least 48 hours (or such lesser time as may be specified in the relevant notice of meeting) before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote, unless the Board agrees otherwise in any particular case. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney and a signed certificate of non-revocation of the power of attorney must accompany the notice.

47 **Form of notice of proxy**

- 47.1 A notice appointing a proxy shall be in such form as the Board may direct.
- 47.2 Proxy forms must as a minimum (so far as the subject matter and form of resolutions reasonably permits), provide for two-way voting (for or against) on all resolutions, enabling the shareholder to instruct the proxy as to the casting of the vote, and must not be sent by the Company with any name or office (e.g. "chairperson of directors") filled in as proxy holder.
- 47.3 So far as reasonably practicable, resolutions must be framed in a manner which facilitates two way voting instructions for proxy holders.

48 **Vote by proxy valid where Company not notified before meeting of disqualified proxy**

- 48.1 Where:
- (a) the shareholder has died or become incapacitated; or

- (b) the proxy, or the authority under which the proxy was executed, has been revoked; or
- (c) the share in respect of which the notice of proxy is given has been transferred,

before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

## **CORPORATE REPRESENTATIVES**

### **49 Corporations may act by representative**

- 49.1 A body corporate which is a shareholder may appoint a representative to attend any meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. The representative shall be entitled to attend and be heard at a meeting of shareholders as if the representative were the shareholder.

## **POSTAL VOTES**

### **50 Postal votes**

- 50.1 Unless the Board determines otherwise, shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the first schedule of the Act. If the Board elects to allow postal votes it may allow the cut-off for postal voting to be less than 48 hours prior to the meeting, as may be specified in the relevant notice of meeting.

## **MINUTES**

### **51 Board must keep minutes of proceedings**

- 51.1 The Board must ensure that minutes are kept of all proceedings at meetings of shareholders and that a record is kept of all written resolutions of shareholders. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

## **OTHER PROCEEDINGS**

### **52 Meeting may regulate other proceedings**

- 52.1 Except as provided in this Schedule, a meeting of shareholders may regulate its own procedure.

**FIFTH SCHEDULE:  
PROCEEDINGS OF THE BOARD**

**INTERPRETATION**

**1 Construction**

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.

**NOTICE OF MEETING**

**2 Convening meetings**

- 2.1 Subject to clauses 3.1 and 6.1, the Board may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. The chairperson, or in his or her absence the deputy chairperson (if any), or in the absence of both, the managing director (if any), may at any time, and the Secretary of the Company at the request of a director shall, convene a meeting of the Board in accordance with this Schedule. Notice of the meeting shall be given in accordance with clause 7.1.

**3 Notice to contain certain details**

- 3.1 The notice of meeting must be in writing, except in the case of meetings convened on short notice under clause 8.1, and include the date, time (being the time in the city in which the meeting is to be held) and place of the meeting.

**4 Directors may waive irregularities in notice**

- 4.1 Any irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

**5 Omission of notice**

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

**6 Regular meetings**

- 6.1 The Board shall schedule its regular meetings in advance as follows:
- (a) as soon as reasonably practicable after the commencement of each calendar year, the Board shall decide upon the date, time and place of every meeting ("scheduled meeting") of the Board then proposed to be held during the remainder of the then current calendar year; and
  - (b) as soon as reasonably practicable after the Board has decided upon the date, time and place of every scheduled meeting of the Board for any calendar year, the Secretary shall give a notice to every director setting out that information and such notice shall serve as notice of each such meeting for the purposes of this clause 6.1.

**7 Notice periods**

- 7.1 The following periods of notice shall apply to the convening of meetings of the Board:

- (a) in the case of a scheduled meeting of the Board, where notice of that meeting has previously been given in accordance with clause 6.1(b) no further notice shall be required. The minimum period of notice required in order to change the scheduled date, time or place of a scheduled meeting of the Board shall be 5 clear days;
- (b) except in the case of urgency falling within clause 7.1(c), the minimum period of notice for convening a meeting of the Board other than a scheduled meeting shall be 5 clear days; and
- (c) in the case of urgency where, in the opinion of the chairperson or in his or her absence the deputy chairperson (if any) or in the absence of both the managing director (if any) a meeting of the Board is required in the interests of the Company to be convened on less than 5 clear days' notice, the meeting may be convened on shorter notice provided that:
  - (i) not less than a majority of the directors consent to such shorter notice; or
  - (ii) the chairperson or in his or her absence the deputy chairperson (if any) or in the absence of both the managing director (if any) consider that by reason of extreme urgency, a meeting on shorter notice determined by them is required in the interests of the Company and that it is not practicable to comply with clause 7.1(c)(i).

**8 Meetings convened on short notice**

8.1 In the case of a meeting convened on short notice pursuant to clause 7.1(c):

- (a) notice to a director of a meeting may be given to every director prior to the holding of the meeting either:
  - (i) personally; or
  - (ii) shall be sent by facsimile transmission to his or her facsimile number; or
  - (iii) to the address provided to the Company by that person for the receipt of documents electronically; or
  - (iv) shall be given to the director in person by telephone or other oral communication;
- (b) the Secretary shall use all reasonable endeavours to contact every director 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; and
- (c) 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.

9 **[Intentionally deleted]**

10 **[Intentionally deleted]**

**11 Notices**

- 11.1 Each director shall from time to time give written notice to the Company of his or her address, electronic mail address, facsimile number, or telephone number or numbers for the purposes of service of notices convening meetings of the Board.
- 11.2 A notice convening a meeting of the Board given to a director shall be deemed to be given when:
- (a) delivered at the address of the addressee; or
  - (b) in the case of a facsimile transmission when the Company receives an acknowledgement of receipt; or
  - (c) in the case of transmission electronically at the time of transmission, or in the case of communication in person by telephone or other oral communication, at the time of communication.

**MEETING AND QUORUM**

**12 Methods of holding meetings**

- 12.1 A meeting of the Board may be held either:
- (a) by a number of directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) by means of audio, audio and visual, or electronic, communication by which all directors participating can simultaneously hear each other throughout the meeting; or
  - (c) by a combination of the methods described in clauses 12.1(a) and 12.1(b) of this Schedule.

**13 Quorum for Board meeting**

- 13.1 Unless otherwise determined by the Board, the quorum necessary for the transaction of business at a meeting of the Board is 3 of the directors. No business may be transacted at a meeting of the Board unless a quorum is present.

**14 [Intentionally deleted]**

**15 Meeting adjourned if no quorum**

- 15.1 If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the following working day at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the directors present will constitute a quorum.

**16 [Intentionally deleted]**

**17 [Intentionally deleted]**

**18 [Intentionally deleted]**

## **CHAIRPERSON**

### **19 Chairperson to chair meetings**

19.1 The chairperson of the Board or in his or her absence the deputy chairperson (if any) will chair all meetings of the Board.

### **20 Directors may elect chairperson of meeting if chairperson of Board is not present**

20.1 If no chairperson is elected, or if at a meeting of the Board neither the chairperson nor the deputy chairperson (if any) is present within 15 minutes after the time appointed for the commencement of the meeting, then the directors present may elect one of their number to be chairperson of the meeting.

## **VOTING**

### **21 Voting on resolutions**

21.1 Subject to clause 22.1, each director has one vote. However, a director must not vote where that director is not permitted to vote by the Rules or this constitution. A resolution of the Board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it. A director present at a meeting of the Board may abstain from voting on a resolution, and any director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

### **22 Chairperson shall not have a casting vote**

22.1 The chairperson shall not have a casting vote.

## **MINUTES**

### **23 Board must keep minutes of proceedings**

23.1 The Board must ensure that minutes are kept of all proceedings of meetings of the Board and that a record is kept of all written resolutions of directors. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

## **OTHER PROCEEDINGS**

### **24 Board may regulate other proceedings**

24.1 Except as set out in this Schedule, the Board may regulate its own procedure.