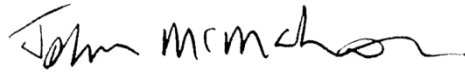


# WELLINGTON DRIVE TECHNOLOGIES LIMITED

## CONSTITUTION

This document is the Constitution of Wellington Drive Technologies Limited as proposed to be adopted by the Company by Special Resolution at its Annual Shareholders' Meeting to be held on 25 June 2020

Signed for the purposes of identification



A handwritten signature in black ink, appearing to read "John McMichael", is written over a solid red horizontal line.

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Chairman of the Board

LeeSalmonLong

## 1. INTERPRETATION

1.1 **Definitions:** In this Constitution unless the context otherwise requires the following initially capitalised terms shall have the meanings specified:

<b>Act</b>	Companies Act 1993.
<b><u>Alternate Director</u></b>	<u>a person appointed by a Director as his or her alternate under clause 14.</u>
<b><u>Board</u></b>	<u>Directors who number not less than the required quorum acting together as the board of directors of the Company.</u>
<b><u>Class</u></b>	<u>a class of Financial Products having identical rights, privileges, limitations and conditions and includes or excludes Financial Products which NZX in its discretion deems to be of or not of that Class.</u>
<b>Company</b>	Wellington Drive Technologies Limited.
<b>Constitution</b>	this Constitution as amended from time to time.
<b><u>Directors</u></b>	the directors for the time being of the Company appointed in accordance with this Constitution.
<b><u>Equity Security</u></b>	<u>an Equity Security, as defined in the NZX Rules, which has been issued, or is to be issued, by the Company, as the case may require.</u>
<b><u>Financial Product</u></b>	<u>has the meaning given in the NZX Rules.</u>
<b><u>FMC Act</u></b>	<u>the Financial Markets Conduct Act 2013.</u>
<b><u>Interest Group</u></b>	<u>has the meaning set out in section 116 of the Act.</u>
<b><u>Listed</u></b>	<u>has the meaning given in the NZX Rules.</u>
<b><u>Minimum Holding</u></b>	<u>has the meaning given in the NZX Rules.</u>
<b>NZX</b>	<u>New Zealand Exchange</u> <del>NZX</del> Limited, and includes its successors, <u>predecessors</u> and assigns and, as the context permits, includes any duly authorised delegate of NZX <u>(including the Tribunal).</u>
<b>NZX Rules</b>	the Listing Rules of NZX <del>as are</del> in force <del>and as are amended</del> from time to time, <u>subject to any waiver or Ruling relevant to the Company granted by NZX from time to time.</u>
<b><u>Ordinary Resolution</u></b>	<u>a resolution passed by a simple majority of the votes of Shareholders of the Company entitled to vote and voting on the resolution.</u>
<b><u>Personal Representative</u></b>	<p>(a) <u>in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;</u></p> <p>(b) <u>in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and</u></p> <p>(c) <u>in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act.</u></p>

<b><u>Representative</u></b>	<u>a person appointed as a proxy or representative under clause 7 or clause 10 of Schedule 1 or a Personal Representative.</u>
<b><u>Ruling</u></b>	<u>has the meaning given in the NZX Rules.</u>
<b><u>Share</u></b>	<u>a share issued, or to be issued, by the Company, as the case may require.</u>
<b><u>Shareholder</u></b>	<u>a person whose name is entered in the share register as the holder for the time being of one or more Shares.</u>
<b><u>Special Resolution</u></b>	<u>a resolution approved by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the resolution.</u>
<b><u>Subsidiary</u></b>	(a) <u>a subsidiary within the meaning of section 5 of the Act (read together with sections 7 to 8 of the Act); and</u>  (b) <u>an entity treated as a subsidiary within the meaning of any financial reporting standard approved in terms of the Financial Reporting Act 2013.</u>
<b><u>Tribunal</u></b>	<u>has the meaning given in the NZX Rules.</u>

1.2 **Definitions in NZX Rules and Act:** Any Words or expressions not defined in this Constitution but defined in the Act or the NZX Rules shall have the same meanings in this Constitution as in the Act or the NZX Rules.

1.3 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) Words importing the singular number includes the plural number and vice versa;
- (b) 1.4 — H headings shall not affect the interpretation of this Constitution; and
- (c) 4.5 in the absence of an express indication to the contrary, rReferences to sections, clauses and or paragraphs (other than sections of the Act or the FMC Act) shall be deemed are to be references to sections, clauses and or paragraphs in of this Constitution or to clauses in the Schedules to this Constitution as the context requires.

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

4.4.1.5 **Confirmation of office:** All offices, elections, and appointments (including of or to the Board and committees of the Board), registers, registrations, records, instruments, delegations, plans and generally all acts of authority that originated under any previous constitution of the Company and are subsisting and in force on the day on which this Constitution is adopted by the Shareholders shall continue and be deemed to be effective and in full force under this Constitution.

## 2. GENERAL

2.1 **Companies Act 1993:** The Company, the Board, every each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.

2.2 **Compliance with NZX Rules:** Notwithstanding anything else in this Constitution, Ffor so long as the Company is a party to any listing agreement with NZX Listed:

- (a) This Constitution is deemed to incorporate all those provisions of the NZX Rules which are required under by the NZX Rules to be contained or incorporated by reference in this Constitution, as those provisions may apply from time to time (and as may be modified by any Ruling relevant to the Company), and those provisions will have the same effect as if they were set out in full with any necessary modification;
- (b) The the Company shall comply with the NZX Rules, subject only to:
  - (i) the requirements of the Act and any other applicable legislative or regulatory requirements;
  - and

~~(+)(ii)~~ the terms of any applicable ~~R~~ruling ~~from time to time given by NZX~~; and

- (c) ~~If subject to clause 2.4, if~~ a provision in this Constitution is inconsistent with the NZX Rules ~~relevant to the Company, then~~ the NZX Rules ~~shall prevail and no provision in this Constitution will prohibit or restrict any action which is or may be permitted by the NZX Rules or NZX to be taken by the Company, the Board, a Director or the Shareholders of the Company.~~

2.3 **References to NZX Rules:** A reference in this Constitution to a ~~specific~~-NZX Rule includes that NZX Rule as ~~it may be amended~~ from time to time ~~amended or~~ ~~and any NZX Rule which may be~~ substituted for that NZX Rule.

2.4 **Exchange-NZX Ruling:** If NZX has granted a ~~R~~ruling in relation to the Company authorising any act or omission which in the absence of a ~~R~~ruling would be in ~~contravention breach~~ of ~~the NZX Rules or~~ this Constitution, that act or omission ~~shall~~will, unless a contrary intention appears in this Constitution, be deemed to be authorised ~~by the NZX Rules and~~ by this Constitution.

2.5 **Effect of ~~F~~ailure to ~~c~~omply:** Failure to comply with any of the NZX Rules ~~or a provision of this Constitution corresponding with a provision of the NZX Rules (whether such provision is set out in full in this Constitution or incorporated in it pursuant to clause 2.2)~~ ~~does shall~~ not affect the validity or enforceability of any transaction, contract, action, ~~decision or vote taken at a meeting of Equity Security holders~~ 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 NZX Rules shall~~non-compliance is not ~~be~~entitled to enforce that transaction or contract.

2.6 This clause 2.5 ~~does not affect limit~~ the rights of any holder of any ~~Equity Security~~ies of the Company against the Company or the Directors ~~arising from failure to comply with the NZX Rules.~~

~~2.5 2.6~~ If the NZX Rules are changed so that any act or omission by the Company, which was formerly prohibited by the relevant NZX Rules, is subsequently required or permitted by any such change to the NZX Rules, the act or omission is deemed to be authorised by this Constitution with effect from the date of such change in the NZX Rules, provided that this clause shall not negate the need to comply with whichever of the NZX Rules has not been so changed (subject to any waiver or NZX ruling relevant to the Company).

### 3. ~~NAME AND ALTERATION OF THE CONSTITUTION~~

3.1 **Name:** The name of the Company shall be ~~Wellington Drive Technologies Limited.~~ An application to change the name of the Company may be made in accordance with the Act by a Director with the approval of the Board.

### 4.3. ~~SHARES~~

4.4.3.1 **Classes:** ~~Subject to clause 4,~~ Shares of different ~~C~~lasses may be issued in the Company, and without limiting the generality of this, Shares may be redeemable.

3.2 **Board need not comply with statutory pre-emptive rights:** Sections ~~45(1) and 45(2)~~ of the Act ~~does~~ not apply to ~~any issue or proposed issue of Shares by~~ the Company.

### 5.4. ~~ISSUES, CONSOLIDATION AND SUBDIVISION OF SHARES AND EQUITY SECURITIES~~

5.14.1 **Issue by Board:** Subject to this Constitution and the NZX Rules, the ~~b~~Board may issue Shares ~~or other Equity Securities~~ at any time, to any person, and in any number it determines. ~~The consideration for such issue of Shares may take any form.~~

5.24.2 **Other ~~i~~ssues:** ~~Subject to clause 4.1, T~~he ~~B~~board ~~may~~ issue Shares ~~or other Equity Securities~~ that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares ~~or other Equity Securities~~. Any such issue will not be treated as an action affecting the rights attached to those existing Shares ~~or other Equity Securities~~ unless the terms of issue of those Shares ~~or other Equity Securities~~ expressly provide otherwise.

5.34.3 **Consolidation and ~~S~~ubdivision:** The ~~B~~board may:

- (a) ~~C~~onsolidate and divide the Shares ~~or other Equity Securities~~ or ~~Shares or other Equity Securities of~~ any ~~e~~Class; and

- (b) ~~Subdivide the Shares or other Equity Securities or Shares or other Equity Securities of any Class;~~

in each case in proportion to those Shares or other Equity Securities or the Shares or other Equity Securities in that Class, as the case may be.

#### 5.4.4 Sale of less than Minimum Holdings:

- (a) ~~The Board may at any time, after giving not less than 3 months' prior notice to any Shareholders of securities of holding less than a Minimum Holding of Shares that if, at the expiration of three months after the date the notice is given, the Shares then registered in the name of the Shareholder are less than a Minimum Holding, the Company may sell such securities those Shares (through NZX or in some other manner approved by NZX) and account to the holders for the proceeds of sale after deduction of reasonable sale expenses.~~

- (b) If the power of sale under clause 4.4(a) is exercised:

- (i) the Board may authorise the transfer of the Shares to the purchaser of the Shares;
- (ii) the Shareholder shall be deemed to have authorised the Company to act on the Shareholder's behalf and to execute all necessary documents for the purposes of that sale;
- (iii) the proceeds of sale of the Shares must be applied as follows:
- (A) first, in payment of any costs and expenses of such sale or any attempted sale;
- (B) second, in satisfaction of any unpaid calls, instalments, premiums or other amounts owing to the Company in respect of the Shares (including any interest payable on such amounts); and
- (C) the balance, if any, must be paid to the person who was the Shareholder immediately before the sale (or, if applicable, his or her Personal Representatives);
- (iv) the title of a purchaser of any Shares sold pursuant to this clause 4.4 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself; and
- ~~5.5(v) the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.~~

- (c) A certificate, signed by a Director, that records that a power of sale under this clause 4.4 has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

#### 4.5 Bonus issues: Subject to any applicable provisions of the NZX Rules or this Constitution, the Board may resolve to apply any amount which is available for distribution to Shareholders either:

- (a) in paying up in full Shares or other Financial Products of the Company to be issued credited as fully paid to:
- (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
- (ii) if applicable, the holders of any other Financial Products of the Company who are entitled by the terms of issue of those Financial Products to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any other Shares of the Company held by the Shareholders referred to in clause 4.5(a)(i),

or partly in one way and partly in the other. **Unclaimed Proceeds:** ~~Proceeds of any sale made under clause 5.4 unclaimed for 1 year after having become payable 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 proceeds with other money of the Company and shall not be required to hold it or regard it as being impressed with any trust. Proceeds unclaimed for 5 years after having become payable may at the expiry of such period be forfeited by the board for the benefit of the Company, provided always that the board~~

~~may, subject to compliance with the solvency test, at any time after such forfeiture annul the same and pay such proceeds to the person producing evidence of entitlement.~~

## ~~6.5. BUY BACKS OF EQUITY SECURITIES AND FINANCIAL ASSISTANCE~~

~~6.15.1 Company may acquire and hold Shares or other Equity Securities: Subject to this Constitution and the NZX Rules, the~~ Company may:

- (a) ~~P~~urchase or otherwise acquire Shares or other Equity Securities issued by the Company from one or more holders. Shares or other Equity Securities so purchased or acquired may be held by the Company as treasury stock;
- (b) redeem any redeemable Shares or other Equity Securities held by one or more holders; and
- (c) ~~M~~ake an offer to one or more holders of Shares or other Equity Securities issued by the Company in such numbers and in such proportions as it thinks fit,

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

## ~~7.6. CALL ON SHARES~~

~~7.46.1 Power to cCall:~~ The ~~B~~oard may from time to time, by notice in writing to a Shareholder or Shareholders, make calls in respect of all monies unpaid on Shares and which are not payable at fixed times. A call may be made payable by instalments. A call shall be deemed to have been made at the time when the resolution of the ~~B~~oard making authorising the call was passed. Each relevant Shareholder shall be liable to pay, in accordance with the relevant notice, every the call so made to the Company or any person so appointed for the purpose, at the times and places appointed by the ~~B~~oard, and shall remain liable to do so notwithstanding the subsequent transfer of the relevant Shares.

~~7.2 Cancellation of Unpaid Amounts:~~ ~~No obligation to pay any amount which is unpaid on any Share shall be cancelled, reduced or deferred without the authority of an ordinary resolution.~~

~~7.36.2 Revocation or pPostponement:~~ A call may be revoked, reduced or postponed as the Board determines.

~~7.46.3 Joint hHolders:~~ Joint Shareholders shall be jointly and severally liable to pay all calls in respect of Shares held by them.

~~7.56.4 Interest:~~ Interest on a call shall be payable from the day appointed for payment to the day of actual payment at such rate as may be applicable under the terms of issue or as the ~~B~~oard determines. The ~~B~~oard may waive the payment of interest either in whole or in part.

~~7.66.5 Term of iIssue:~~ Any sum which by the terms of issue of a Share becomes payable on a particular day shall for the purposes of this Constitution be deemed to be a call duly made and payable on that day and, if not paid, the provisions of this clause 6 and clauses 7 and 8 shall apply as if that sum had become payable by the making of a call.

~~7.76.6 Different aAmounts:~~ Calls may be made in respect of certain Shares and not others and for different amounts in respect of certain Shares from others. The ~~b~~oard may, on the issue of Shares, differentiate between Shareholders as to the amount of calls to be paid and the time of payment.

~~6.7 Calls Ppaid in aAdvance:~~ The Board may receive from any Shareholder advances of all or part of the money uncalled and unpaid on any Shares held by that Shareholder. The ~~b~~oard may pay interest on the money so advanced at such rate as the ~~b~~oard determines. Distributions shall not be made on uncalled amounts paid in advance. The Company may at any time repay the amount so advanced.

~~6.8 Evidence:~~ In any proceedings for the recovery of moneys due in respect of any call a certificate of a Director or any other person authorised by the Board that:

- (a) the name of the Shareholder is entered in the share register as the holder (or one of the holders) of the relevant Shares;
- (b) the resolution making the call is recorded in the records of the Company; and
- (c) notice of the call was sent to the Shareholder,

shall be conclusive evidence of the indebtedness of the Shareholder to the Company in respect of the call.

## **8.7. LIEN AND FORFEITURE**

**8.7.1 Lien:** The Company shall have a first and paramount lien on ~~the every~~ Shares registered in the name of each or the proceeds of sale of such Share and on the ~~D~~distributions declared on such Shares for:

- (a) ~~all Unpaid calls, and instalments,~~ premiums or other amounts, and any interest payable on such amounts, ~~in respect of those relating to that~~ Shares; ~~and~~
- (b) ~~Such any~~ amounts as which the Company may be called upon under any legislation to pay in respect of ~~th~~ese Shares, ~~including withholding and other taxes whether or not the due date for payment has passed;~~ and
- ~~(b)(c)~~ sale expenses owing to the Company in respect of that Share.

**8.7.2 Sale of Shares:** The Company may sell any Share, on such terms as the ~~B~~board may determine, on which it has a lien if:

- (a) ~~a~~A sum in respect of which the lien exists is presently payable; ~~and:~~
  - (i) 14 days' notice in writing requiring payment of such sum has been given to the relevant Shareholder; ~~and~~
  - (ii) ~~T~~he sum in respect of which the lien exists has not been received by the Company at the expiry of ~~the said that~~ 14 day ~~term~~period; ~~and.~~

(b) ~~T~~o give effect to any such sale, ~~a Director~~the Board may authorise any person to execute a share transfer of the Shares to, or at the direction of, the transferee, and may receive the consideration from such transfer.

~~(c) Upon registration of such transfer, the transferee shall be the Shareholder of such Shares discharged from all calls due prior to the date of sale.~~

**7.3 Absolute title of purchaser:** ~~(d)~~ The transferee shall not be bound to see the application of the purchase money, neither shall the transferee's title to the Shares be affected by any irregularity or invalidity of the sale.

**7.4 Damages exclusive remedy:** ~~(e)~~ The remedy of the former Shareholder, and of any person claiming under or through the former Shareholder, shall be against the Company exclusively and in damages only.

**7.5 Application of sales proceeds:** ~~(e)~~ If Shares are sold to enforce a lien the proceeds of sale shall first be applied in payment of all costs and expenses of such sale and any attempted sale, and then in satisfaction of unpaid calls, instalments, premiums or other amounts and interest on such other amounts. Any residue shall be paid to the former Shareholder, or to the ~~executors, administrators or assigns of the former Shareholder~~ Personal Representative of the former Shareholder.

**7.6 Waiver of lien:** ~~(f)~~ ~~Unless otherwise agreed between the Company and the relevant Shareholder,~~ ~~T~~he registration of a transfer of Shares shall operate as a waiver of the lien by the Company but not as a release of any outstanding liability owed by any previous Shareholder.

## **8. FORFEITURE**

**8.38.1 Notice of liability for Forfeiture:**

- (a) If on the day appointed for payment a Shareholder fails to pay any call (including any instalment) or any other sum which by the terms of issue of a Share becomes payable at a fixed time, on the day appointed for payment the ~~b~~Board may ~~serve~~ give 14 days' notice ~~on to~~ the Shareholder requiring payment of the call or other sum, together with any interest which may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.
- (b) The notice shall specify the relevant Share and name a date (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made. The notice shall also state that in the event of non-payment the relevant Share will be liable to be forfeited.



~~8.48.2~~ **8.4 Forfeiture:** If any notice issued pursuant to clause ~~8.18.3~~ is not complied with, the Share may be forfeited by a resolution of the ~~B~~board. Such forfeiture shall include any distribution declared in respect of the forfeited Share and not made before the forfeiture.

~~8.58.3~~ **8.5 Sale or Disposal:** A forfeited Share may be disposed of in such manner as the ~~b~~Board determines. The ~~b~~Board may annul the forfeiture upon such terms as it determines.

~~8.68.4~~ **8.6 Ceasing to be a Shareholder:** A person whose Shares have been forfeited shall cease to ~~be a Shareholder have any rights~~ in respect of the forfeited Shares ~~and shall surrender the share certificate (if any) for cancellation~~, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable in respect of the Shares ~~together with interest thereon until the Company receives payment in full of all money owing for those Shares~~. The Shareholder's liability shall cease when the Company receives payment in full of all such money in respect of the forfeited Shares.

~~8.78.5~~ **8.7 Evidence of fForfeiture:** ~~An entry in the share register~~A certificate of a Director or any other person authorised by the Board that a Share has been forfeited on a ~~specified date stated in the share register~~ shall be conclusive evidence of ~~those facts as against all persons claiming to be entitled to the Share that forfeiture~~.

~~8.8~~ **Application of sale proceeds:** The net proceeds of sale of any forfeited Share shall be applied in the same manner as set out in clause ~~7.5~~~~8.8~~**8.8 Sale of Forfeited Shares:** A forfeited Share may be disposed of in such manner as the board determines, and:

~~(a)~~ A Director may execute a transfer of forfeited Shares in favour of the person to whom the Shares are disposed of, and the Company may receive the consideration for such disposal.

~~8.6~~ ~~(b)~~ Upon registration of such transfer the transferee shall be the Shareholder of such Shares discharged from all calls due prior to transfer.

~~8.7~~ **Absolute title of purchaser:** ~~(c)~~The transferee shall not be bound to see to the application of the purchase money nor shall the transferee's title to the Shares be affected by any irregularity or invalidity in the forfeiture or disposal.

~~8.98.8~~ ~~(d)~~ **Damages exclusive remedy:** The remedy of ~~the former Shareholder, and of any person claiming under or through the former Shareholder, any person aggrieved by a sale pursuant to clause 8.3~~ shall be against the Company exclusively and in damages only.

~~(e)~~ If Shares are forfeited and sold, the proceeds of sale shall first be applied in payment of all costs and expenses of such sale and any attempted sale and then in satisfaction of unpaid calls, instalments or other amounts and interest on any such amounts. Any residue shall be paid to the former Shareholder, or to the executors, administrators or assigns of the former Shareholder.

## 9. DISTRIBUTIONS TO SHAREHOLDERS

9.1 **Solvency tTest:** The ~~B~~board, if it is satisfied on reasonable grounds that the Company will, immediately after the distribution, satisfy the solvency test, may authorise a distribution at a time, and of an amount, to any Shareholders it determines.

9.2 **No iInterest:** No distribution shall bear interest against the Company.

9.3 **Deductions from dDistribution:** The ~~B~~board may deduct from any distribution payable to a Shareholder ~~all such money as may be due from any amount owed by~~ that Shareholder to the Company on account of:

~~(a)~~ ~~U~~npaid calls and instalments and any interest payable on such amounts, in respect of the Shares for which the distribution is being paid; and

~~(b)~~ ~~S~~such amounts as the Company ~~may be called upon under any legislation is required by law to pay deduct in respect of those Shares~~, including withholding and other taxes.

~~9.4~~ **Method of payment:** A distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the share register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct.



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

9.4.9.6 **Unclaimed dDistributions:**

(a) A distribution unclaimed for 1 year after having become payable may be invested or otherwise made use of by the Bboard for the benefit of the Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or regard it as being impressed with any trust.

9.5(b) A distribution unclaimed for 5 years after having become payable may at the expiry of such period be forfeited by the Bboard for the benefit of the Company, provided always that the Bboard mayshall, subject to compliance with the solvency test, at any time after such forfeiture annul the same and pay such distribution to the person producing evidence of entitlement.

**10. TRANSFER OF SHARES ~~AND OTHER SECURITIES~~**

10.1 **Power to ~~D~~divide ~~S~~share ~~R~~register:** The share register may be divided into 2 or more registers kept in different places.

10.2 **Power to ~~r~~Refuse or ~~d~~Delay:** Subject to the Act, The Bboard may refuse or delay the registration of a transfer of Shares:

(a) ~~i~~f the Company has a lien over any of the Shares; or

(b) ~~i~~f registration, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the transferor or the proposed transferee having a holding belowShares of less than a mMinimum Hholding; or

(c) ~~i~~f ~~s~~Such action is permitted by the Act and the NZX Rules; or

~~i~~f the transfer is not accompanied by the certificate (if any) for the Shares to which it relates or such other evidences as the Board or the Company's share registrar may reasonably require to show the right of the transferor to make the transfer.

(d) **Separate Share Parcels:** ~~The Company may, pursuant to section 95(4) of the Act, separate any holding of Shares entered in the share register into separate parcels.~~

10.3 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share:

(a) under a system of transfer approved under the FMC Act or pursuant to a "designated settlement system" within the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989, which is applicable to the Company; or

(b) under any other share transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which Shares are listed and which is applicable to the Company; or

(c) by an instrument of transfer which complies with this Constitution.

10.4 **Method of transfer:** A Share which is disposed of in a transaction which complies with the requirements of a system of transfer authorised under clause 10.3(a) or clause 10.3(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of the FMC Act if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the share registrar.

10.5 **Forms of transfers:** An instrument of transfer of Shares to which the provisions of clause 10.4 are not applicable shall:

(a) be in any common form or any other form approved by the Company or the share registrar;

(b) be signed or executed by or on behalf of the transferor; and

(c) if registration as holder of the Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.

10.6 **Transfer of Financial Products other than Shares:** This clause 10 shall apply to transfers of Financial Products of the Company other than Shares with any necessary modifications.

10.7 **Transmission on death of Shareholder:** If a Shareholder dies, the survivor, if the deceased was a joint Shareholder, or the Shareholder's Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder. Nothing in this clause 10.7 shall release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.

10.8 **Rights of Personal Representatives:** A Shareholder's Personal Representative is entitled to:

(a) exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and

(b) be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this clause 10.8(b)+10.7(b).

10.9 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

## **11. MEETINGS OF SHAREHOLDERS**

**Proceedings at mMeetings:** The provisions of Schedule 14 to this Constitution govern proceedings at meetings of Shareholders and, with any necessary modification, proceedings at meetings of Interest Groups.

## **12. POWERS OF THE BOARD**

### **12.1 Management by Board:**

(a) The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

(b) Subject to the Act and to this Constitution, the Board has all the powers necessary for managing and for directing and supervising the management of the business and affairs of the Company.

(c) The Board may delegate its power in accordance with the Act.

## **13. APPOINTMENT AND REMOVAL OF DIRECTORS**

13.1 **Composition:** The Company shall comply with the minimum Board composition requirements of the NZX Rules.

13.2 **Election of Directors: Appointment by Ordinary Resolution:** Subject to clause 13.1 and the NZX Rules, any natural person who is not disqualified under the Act and, if required under the NZX Rules, who has been nominated within the time limits in the NZX Rules, may be appointed as a Director ~~may be elected at any time by Ordinary Resolution.~~

13.3 **Existing Directors to continue:** The Directors in office at the date of adoption of the Constitution shall be deemed to be Directors appointed pursuant to the Constitution.

~~(a) No person (other than a Director retiring at the meeting) shall be elected as a Director at a meeting of Shareholders of the Company unless that person has been nominated by a Shareholder entitled to attend and vote at the meeting.~~

~~(b) The opening date (if any) for nominations, shall not be less than 3 Months, and the closing date for nominations shall not be more than 2 Months, before the date of the annual meeting at which the election is to take place. The Company shall make an announcement to the market no less than 3 months prior to the date of the proposed annual meeting of Shareholders advising of the opening date for Director nominations and the closing date for Director nominations.~~

~~(c) — Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting. The Company shall specify in such notice the board's view of whether or not the nominee would qualify as an independent Director.~~

~~13.4 **Appointment by single resolution:** Each ~~no~~ resolution to appoint, ~~elect~~ or ~~re-elect~~ a Director (including a resolution to ~~re-elect~~ any Director under clause 13.2(b)) shall be put to holders of Shares unless ~~must be~~: (i) ~~The resolution is~~ for the appointment, ~~election~~ or ~~re-election~~ of ~~one~~ Director ~~only~~; ~~or~~~~

~~(ii) — The resolution is a single resolution for the appointment of 2 or more Directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.~~

~~(f) — Nothing in clause 13.1(e) prevents the election of 2 or more Directors by ballot or poll.~~

~~13.3 — Apart from the restrictions in the Act, there is no restriction on the persons who may be nominated as directors, nor is there any precondition to the nomination of a Director other than compliance with the time limits in accordance with this clause.~~

~~13.4 — **Board ~~may~~ ~~Appoint~~ Directors:** Subject to clause 13.1 and the NZX Rules, ~~The~~ ~~b~~Board may at any time appoint ~~any natural~~ person who is not disqualified under the Act to be a Director.~~

13.5 A ~~person who is~~ Director appointed ~~as a Director by the board shall~~ under this clause 13.5 ~~must~~ retire from office at the next annual meeting of the Company, but shall be eligible for re-election at that meeting.

#### ~~13.6 —~~ **Rotation:**

~~Each Director shall retire from office when required to do so by the NZX Rules but, subject to the NZX Rules, shall be eligible for re-election (including at any meeting at which the Director retires). (a) — At least one third of the Directors or, if their number is not a multiple of 3, then the number nearest to one third, shall retire from office at each annual meeting, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected. As between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.~~

~~(b) — The following Directors shall be exempt from the obligation to retire pursuant to clause 13.3(a):~~

~~(i) — Directors appointed by the board, who are subject to re-election pursuant to clause 13.2; and~~

~~(ii) — one executive Director.~~

~~(c) — The executive Director referred to in clause 13.3(b)(ii) shall be included in the number of Directors upon which the calculation in clause 13.3(a) is based. The Directors referred to in clause 13.3(b)(i) shall be excluded from that number.~~

#### ~~13.7~~ **13.6 Removal of Directors:**

(a) A Director may be removed from office by ~~e~~Ordinary ~~r~~Resolution of which notice of the intention to so remove the Director has been given under the Act.

(b) The office of Director is vacated if the person holding that office:

(i) ~~R~~esigns ~~from office by notice in writing to the Company;~~ or

(ii) ~~i~~s removed from office ~~in accordance with~~ pursuant to this Constitution or the Act ~~or clause 13.4(a);~~ or

(iii) ~~B~~ecomes disqualified from being a Director pursuant to ~~section 151 of~~ the Act; or

(iv) ~~D~~ies; or

(v) ~~i~~s absent from meetings of the ~~b~~Board for more than ~~3 six m~~Months without the ~~b~~Board's permission, and the ~~B~~oard resolves that the office be vacated; ~~or~~

~~(vi) — becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally.~~

13.7 Timing of retirement and appointment: If:

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

~~(v)~~13.8 No shareholding qualification: There is no shareholding qualification for Directors.

**14. ALTERNATE DIRECTORS**

~~(a) Appointment: Subject to clause 14.1(b), any~~Each Director may ~~by notice to the Company appoint any person, who is not being already a Director and is not disqualified under by the Act or this Constitution from being a Director, to be the alternate of that Director.~~

~~(b) No Director may appoint another person to act as alternate Director for him or her, except with the consent of 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, by giving written notice to that effect to the Company.~~

~~14.3~~14.1 No Director shall appoint a deputy or agent otherwise than by way of appointment of an ~~a~~Alternate Director.

~~14.4~~14.2 **Powers**Rights of Alternate Director: Unless otherwise specified by the terms of his or her appointment, Each ~~Alternate Director~~ shall:

- ~~(a) Be~~be entitled to receive notice of ~~all~~ meetings of ~~Directors~~the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings; and
- ~~(b) D~~during the absence of the appointing Director, be entitled to attend and vote at meetings of Directors and be counted in the quorum at such meetings; and
- ~~(c) during the absence of the appointing Director, perform all the functions, and exercise~~Have all the ~~rights, powers, duties and authorities of the~~at appointing Director except that:
  - ~~(i) T~~he alternate shall not be entitled to appoint an alternate; and
  - ~~(ii) T~~he alternate shall not be entitled to be remunerated otherwise than out of the remuneration of the appointing Director.

~~14.5 No Agency: An alternate shall not be deemed to be the agent of the appointing Director, and shall alone be responsible to the Company for his or her own acts and defaults.~~

~~14.6~~14.3 **Cessation of A**ppointment: An Alternate Director will cease to be an Alternate Director:

- ~~(a) if A~~the Director ~~who appointed the Alternate Director ceases to be a Director or may at any time by notice to the Company revoke~~s the appointment ~~of his or her alternate; or~~
- ~~(b) If a director shall cease to be a Director, the appointment of that Director's alternate shall thereupon cease.~~
- ~~(b) on the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director; or~~
- ~~(c) The appointment of an alternate may be revoked by~~if a majority of the ~~other~~ Directors ~~resolve to revoke the Alternate Director's appointment~~ether than the appointing Director.

**15. MANAGING DIRECTOR**

~~15.1~~ **Appointment:** The ~~B~~board may ~~from time to time~~ appoint one of the Directors to the office of managing Director (by whatever name called) ~~either for a fixed term not exceeding 5 years or otherwise~~ and on other such terms ~~(including remuneration)~~ as the ~~B~~board ~~thinks fit~~determines. ~~A managing Director may be re-appointed at any time within 3 months before expiry of a term of appointment for a further period not exceeding 5 years, and may be re-appointed for a further term of 5 years in the same manner.~~

~~15.2~~ **Removal:** ~~Subject to the terms of any agreement entered into between the board and the Director concerned, t~~The ~~B~~board may ~~from time to time revoke the appointment~~remove any such managing Director and appoint another or others in his or her place. ~~Any managing Director who is removed by resolution of the Board shall have no right or claim to continue in office and his or her only remedy against the Company (if any) shall be in damages.~~

~~15.15.3~~ **Resignation:** ~~Subject to the NZX Rules and the provisions of any contract between him or her and the Company, a managing Director shall be subject to the same provisions concerning rotation, resignation, removal and disqualification as the other Directors.~~ The appointment of a managing Director shall terminate automatically if he or she ceases to be a Director.

~~15.2~~ **Remuneration:** ~~A managing Director will receive, in addition to remuneration for services as a Director, such remuneration and benefits as the board may determine.~~

~~15.3~~ **Powers:** ~~Subject to the restrictions on delegation in the Act, the board may:~~

~~(a) confer on a managing Director any of the powers exercisable by the board; and~~

~~(b) without affecting the powers of a 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) alter or revoke any of the powers it confers under this clause.~~

15.4 **No power to appoint alternate:** The power to appoint ~~a~~Alternate ~~d~~Directors conferred on Directors by this ~~e~~Constitution does not confer on any managing Director the power to appoint an alternate managing Director.

## 16. MEETINGS OF DIRECTORS

16.1 **Proceedings at mMeetings:**

(a) The provisions of Schedule 2 to this Constitution govern the proceedings of the Board.

(b) The provisions of the Third Schedule to the Act shall not apply to the Company except to the extent that those provisions are included in this Constitution.

## 17. REMUNERATION OF DIRECTORS

17.1 **Fixing Authorisation of rRemuneration:** The Board may, subject to the NZX Rules, exercise the power conferred by section 161 of the Act to authorise remuneration and other benefits to and for Directors.

~~(a) No remuneration shall be paid to a Director in his or her capacity as a Director of the Company or any subsidiary, unless that remuneration has been authorised by an ordinary resolution of Shareholders.~~

~~(b) Each such resolution shall express Directors' remuneration as either:~~

~~(i) A monetary sum per annum payable to all directors of the Company taken together (which shall be distributed as the board determines); or~~

~~(ii) A monetary sum per annum payable to any person who from time to time holds office as a Director of the Company.~~

~~(c) No resolution which increases the amount fixed pursuant to a previous resolution shall be approved at a general meeting of the Company unless notice of the amount of increase has been given in the notice of meeting.~~

~~(d) Nothing in this clause 17.1 shall affect the remuneration of executive directors in their capacity as executives.~~

~~17.2~~ **Expenses and Special Remuneration:**

~~(a) Notwithstanding the provisions of clause 17.1:~~

~~(i) 17.2 The Directors shall be entitled to be paid reasonable travelling, accommodation and other expenses incurred in relation to the Directors' attendance at meetings or otherwise in connection with the management of the Company's business; and~~

17.3 **Special remuneration:** Without limiting clause 17.1, but subject to the NZX Rules, ~~the Board~~ may approve ~~authorise special remuneration to any Director who is or has been engaged by the Company or a Subsidiary to carry out any work or perform any services which is for work~~ not in the capacity of a director of the Company or a ~~s~~Subsidiary.

~~17.4 Payments Upon Cessation of Office:~~

~~(a) The Company may make a payment to a Director or former Director of the Company, or his or her dependants, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if the amount of the payment, or the method of calculation of the amount of that payment, is authorised by an ordinary resolution.~~

~~(b) Nothing in this clause 17.3 shall affect any amount payable to an executive Director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.~~

## 18. INDEMNITY AND INSURANCE

~~18.1 Company may indemnify Directors and employees for certain liabilities to Maximum Extent Permitted by Law:~~ The Company:

~~(a) shall indemnify every a Director; and employee of the Company and every wholly owned subsidiary and~~

~~(b) may, with the prior approval of the Board, indemnify any dDirector of a related company or an employee of the Company or a related company;~~

~~for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of such an indemnity. in respect of:~~

~~(a) Any costs incurred by him or her in any proceeding:~~

~~(i) That relates to liability for any act or omission in his or her capacity as a Director or employee; and~~

~~(ii) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and~~

~~(b) Liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee and costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability, not being criminal liability or liability in respect of a breach, in the case of a Director, of the duty specified in section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the Company or related company.~~

~~18.2 Company may effect Insurance insurance against Liability for Directors and employees:~~ The Company may, with the prior approval of the ~~b~~Board, effect insurance for a Director or employee of the Company or ~~a director or employee of 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 terms and conditions of any such insurance.~~

~~in respect of:~~

~~(a) Liability, not being criminal liability, for any act or omission in any Director's or employee's capacity as Director or employee;~~

~~(b) Costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability;~~

~~18.3 (e) — Costs incurred by that Director or employee in defending any criminal proceedings in which he or she is acquitted. Definitions: In this clause 18:~~

~~(a) — “Director” includes a former Director and “director” includes a former director; and~~

~~(a)(b) other words given extended meanings in section 162(9) of the Act have those extended meanings.~~

## 19. GENERAL

19.1 **Manner of execution of deeds:** An obligation or contract 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 authorised by the Board, whose signature must be witnessed, or as otherwise permitted by the Act.

19.2 **Distribution of surplus assets in kind:** If the Company is liquidated the liquidator may, with the approval of sShareholders by Special Resolution, but subject to any other sanction required by the Act:

~~(a) — divide among the sShareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may :~~

~~(b) — fix such values for surplus assets as the liquidator considers to be appropriate, and~~

~~(c) — determine how the division will be carried out as between sShareholders or different classes of sShareholder;~~

~~(a) — and~~

~~(b) — vest the whole or any part of any such surplus assets in trustees upon such trusts for the benefit of such of those sShareholders as the liquidator thinks fit, but so that no sShareholder is compelled to accept any shares or other securities on which there is any liability.~~

~~19.3 **Notices to joint holders:** A notice may be given by the Company to the joint holders of a Financial Product by giving the notice to the joint holder named first in the register in respect of the Financial Product.~~

~~19.3~~19.4 **Inspection of records by Shareholders:** No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders (who are not also Directors).



## SCHEDULE 1

### Proceedings at Meetings of Shareholders

#### 1. Chairperson

- 1.1 ~~Subject to clause 1.2 of this Schedule 1, if~~ the Directors have elected a chairperson of the ~~b~~Board, and the chairperson of the ~~b~~Board is present at the meeting of Shareholders, he or she must chair the meeting.
- 1.2 If no chairperson of the ~~b~~Board has been elected or if, at any meeting of Shareholders, the chairperson of the ~~b~~Board is not present within 15 minutes of the time appointed for the commencement of the meeting or is unwilling or unable to act for all or part of the meeting, the Directors present if any, may choose one of their number to be chairperson of the meeting or such part of the meeting.
- 1.3 If no Director is present within 15 minutes of the time appointed for commencement of the meeting, or no Director is willing or able to act as chairperson, the Shareholders present may choose one of their number to be chairperson of the meeting.

#### 2. Notice of ~~m~~Meetings

- 2.1 Written notice of the time, date and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and the auditor of the Company not less than 10 business days before the meeting.
- 2.2 The notice must ~~comply with the requirements of the NZX Rules and must state:~~
- 2.2.1 ~~state~~ 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; ~~and~~
- 2.2.2 ~~state~~ state ~~the~~ text of any ~~s~~Special ~~R~~Resolution to be submitted to the meeting;
- 2.2.3 ~~state the text of any resolution for the purposes of sections 207I or 207J of the Act to be submitted to the meeting;~~
- 2.2.4 ~~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;~~
- 2.2.5 ~~contain or be accompanied by sufficient explanation, reports, valuations and other information as to enable a reasonable person entitled to vote to understand the effect of each resolution proposed;~~
- 2.2.6 ~~state that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder; and~~
- 2.2.7 ~~for so long as the Company is Listed, comply with the requirements of the NZX Rules.~~
- 2.3 An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 2.4 The accidental omission to ~~give~~ send notice of a meeting to, or the failure to receive notice of a meeting by, any person entitled to receive notice, ~~a Shareholder~~ does not invalidate the proceedings at a meeting.

#### 3. Methods of ~~h~~olding ~~m~~Meetings, ~~appointments and voting~~

- 3.1 A meeting of Shareholders may be held ~~either~~ by a number of Shareholders, who constitute a quorum:
- 3.1.1 ~~By a number of Shareholders who constitute a quorum,~~ being assembled together at the time and place, ~~date and time~~ appointed for the meeting; or
- 3.1.2 participating in the meeting ~~By~~ means of audio, ~~or~~ audio and visual, or electronic communication ~~by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting; or~~
- 3.1.3 by a combination of both of the methods described in clauses 3.1.1 and 3.1.2 of this Schedule 1.

3.2 The Company is not required to hold meetings of Shareholders in the manner specified in clauses 3.1.2 or 3.1.3 of this Schedule 1. 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. To avoid doubt, if a meeting is held in the manner specified in clauses 3.1.2 or 3.1.3 of this Schedule 1, a Shareholder participating in a meeting by means of audio, audio and visual, and/or electronic communication is present at the meeting and part of the quorum.

3.3 A Shareholder, or the Shareholder's proxy or Representative, may, to the extent permitted by the Act and the NZX Rules, participate in a meeting by means of audio, audio and visual, or electronic communication if:

3.3.1 the Board approves those means; and

3.3.2 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).

To avoid doubt, participation in a meeting includes participation in any manner specified in Schedule 1 of the Act or this Constitution.

3.4 The Board may permit, in relation to a particular meeting of Shareholders or generally in relation to meetings of Shareholders:

3.4.1 the appointment of Representatives to be made by electronic means;

3.4.2 postal votes to be cast by electronic means; and

3.4.3 to the extent permitted by the Act and, if applicable, the NZX Rules, Shareholders to vote by signifying their assent or dissent by electronic means (including, for the avoidance of doubt, voting on a personal computer or other electronic device, with such vote being transmitted to the meeting), instead of the Shareholder voting by another method permitted by the Act or this Constitution.

#### **4. Quorum**

4.1 Subject to clause 4.3 of this Schedule 1, no business may be transacted at a meeting of Shareholders if a quorum is not present.

4.2 Subject to clause 4.3 of this Schedule 1, Aa quorum for a meeting of Shareholders is present if 3 Shareholders having the right to vote at the meeting:

4.2.1 are present in person or by proxy or by Representative; and/or

4.2.2 to the extent such participation is permitted by the Board, are participating by means of audio, audio and visual, and/or electronic communication, or if Shareholders or their proxies or their representatives are present who are between them able to exercise 1 per cent or more of the votes to be cast on the business to be transacted by the Company. For the purposes of determining whether a quorum is present a person who holds proxies for more than 1 Shareholder or who has been appointed as a representative by more than 1 Shareholder shall be counted not as proxy or representative for 1 Shareholder but according to the number of proxies or appointments held.

4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:

4.3.1 in the case of a meeting called by the Board on the request of Shareholders under section 121(b) of the Act, the meeting shall be dissolved; and

4.3.2 in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint, and, if at the adjourned meeting, a quorum is not present within 45-30 minutes after the time appointed for the commencement of the meeting, the Shareholders or their proxies Representatives present are will constitute a quorum.

#### **5. Adjournment**

~~5.1 The chairperson may, at any time during a meeting of Shareholders or any business being considered or remaining to be considered at which a quorum is present, adjourn the meeting (including either to a later time at the same meeting or to an adjourned meeting), may be adjourned if:~~

~~5.1.1 The chairperson of the meeting in his or her sole discretion so determines; or~~

~~5.1.25.1 The chairperson of the meeting is directed by the meeting (in which case the meeting shall be adjourned).~~

5.2 No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as the original meeting. If a meeting of Shareholders is adjourned for less than 30 days, it is not necessary to give notice of ~~the time and place of the adjournment or of the business to be transacted at the adjourned meeting~~ meeting other than by announcement at the meeting which is adjourned.

5.3 Without limiting clause 5.1 of this Schedule 1, ~~a meeting of Shareholders or any business being considered or remaining to be considered may be adjourned indefinitely,~~ if ~~the a~~ meeting becomes so unruly, disorderly or inordinately protracted that, in the opinion of the chairperson, ~~in his or her sole discretion~~ the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving reasons, either adjourn or dissolve the meeting.

5.4 If any meeting is adjourned pursuant to clauses ~~5.1 or~~ 5.3 of this Schedule 1, then ~~with respect to any unfinished business of such the meeting shall be dealt with as follows:~~

~~5.4.1~~ 5.4.1 in respect of any resolution concerning the approval or authorisation of a distribution, the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise the distribution;

~~5.4.15.4.2~~ 5.4.2 in respect of any ~~A~~ resolution ~~not voted upon~~ concerning the remuneration of the auditors, ~~the meeting shall will~~ be deemed to have ~~been withdrawn and a resolution~~ resolved that the Board be authorised ~~ing the board~~ to fix the remuneration of the ~~A~~ auditors ~~will be deemed to have been passed~~; and

~~5.4.25.4.3~~ 5.4.3 ~~t~~ The chairperson may direct that any other item of business uncompleted at the original meeting, and which in his or her opinion requires to be voted upon, ~~(of which notice was given in the notice convening the original meeting)~~ be put to the ~~v~~ote ~~on by~~ a poll without further discussion in accordance with clauses 6.9 to 6.11 of this Schedule 1.

## 6. Voting

6.1 In the case of a meeting of Shareholders held under clause 3.1.1 of this Schedule 1, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:

6.1.1 ~~v~~oting by voice; or

6.1.2 ~~v~~oting by show of hands.

6.2 In the case of a meeting of Shareholders held under clause 3.1.2 or clause 3.1.3 of this Schedule 1, unless a poll is demanded, voting at the meeting shall be by ~~the Shareholders signifying individually their assent or dissent by voice~~ any method permitted by the chairperson of the meeting.

~~6.3~~ 6.3 Subject to the terms of issue of any Share, and to clause 6.10,

~~6.3.1~~ 6.3.1 where voting is by show of hands or by voice, every person ~~each Shareholder present in person or by proxy (whether as a Shareholder or as a Representative)~~ shall have ~~1~~ has one vote ~~on a Vote by voices or by show of hands; and~~

~~6.3~~ 6.3 ~~.~~

~~6.3.2~~ 6.3.2 Subject to the terms of issue of any Share, and to clause ~~6.11~~, a Share confers the right to ~~1 vote~~ where voting is by ~~a~~ poll, every Shareholder present in person or by Representative has:

(a) in respect of each fully paid Share held by that Shareholder, one vote; and

~~6.4(b) in respect of each Share held by that Shareholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Share was fully paid. That fraction must be proportionate to the payment which has been made (excluding amounts credited and amounts paid in advance of a call), at a meeting of Shareholders.~~

~~6.56.4~~ A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause ~~6.6.5~~ of this Schedule 1.

~~6.66.5~~ At a meeting of Shareholders a poll may be demanded by:

~~6.6.46.5.1~~ Not less than 5 Shareholders having the right to vote at the meeting; or

~~6.6.26.5.2~~ A Shareholder or Shareholders representing not less than 10 per cent of the total voting rights of all Shareholders having the right to vote at the meeting; or

~~6.6.36.5.3~~ A Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all Shares that confer that right; or

~~6.6.46.5.4~~ The chairperson of the meeting.

~~6.76.6~~ For the purposes of clause 6.5 of this Schedule 1, ~~the instrument proxy notice~~ appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll. A demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder ~~appointing the proxy~~.

~~6.86.7~~ A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

~~6.96.8~~ A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. ~~The chairperson may determine~~ The poll shall be taken at the time and in the manner determined by the chairperson of the meeting in which a poll on which any other question is to be taken and ~~any other business other than that upon which a poll has been demanded~~ may be proceeded with pending the taking of the poll.

~~6.106.9~~ If a poll is taken:

~~6.10.46.9.1~~ Votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy or representative and voting;

~~6.10.26.9.2~~ The scrutineer shall be the Auditor unless the Auditor is unable or unwilling to act or unless the chairperson directs to the contrary in which case the scrutineer shall be appointed nominated by the chairperson;

~~6.10.3~~ The chairperson of the meeting shall finally determine in good faith the admission or rejection of any Vote;

~~6.10.46.9.3~~ The chairperson of the meeting may declare the result of a poll either at or after the meeting and, when the outcome is known, may do so regardless of whether all votes have been counted; and

~~6.10.56.9.4~~ The chairperson may declare the result of the poll at or after the meeting 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.

~~6.10~~ In the case of any dispute as to the admission or rejection of a vote, the chairperson of the meeting shall finally determine the same and such determination made in good faith shall be conclusive.

~~6.11~~ Where there are Shares of the same class, some of which are fully paid and some of which are not fully paid, each Share which is not fully paid shall carry only a proportion of the vote which would be exercisable if the Share were fully paid, equivalent to the portion of the total issue price of that Share which has been paid (disregarding any amounts credited and amounts paid in advance of a call). No Shareholder shall be entitled to vote at any meeting in respect of Shares on which any call or other moneys are due and unpaid other than at a meeting of an Interest Group.

## 7. Proxies

- 7.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 7.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- ~~7.27.3~~ 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 that Shareholder.
- ~~7.37.4~~ A proxy must be appointed by notice in writing signed by or, in the case of an electronic notice, sent by the appointing ~~s~~Shareholder, or by appointing the proxy online as per 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 not exceeding 12 Months.
- 7.5 A form of notice of appointment of proxy form shall be sent (either by mail or electronically) with every notice ~~of convening~~ a meeting of ~~quoted security holders~~Shareholders to every Shareholder entitled to attend and vote at the meeting.
- 7.4 and:
- ~~7.4.1~~ Shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two way voting on all resolutions, enabling the quoted security holder to instruct the proxy as to the casting of the vote; and
- ~~7.4.2~~ Shall not be sent with any name or office (e.g. chairperson of Directors) filled in as proxy holder (though the proxy may include a footnote to the effect that certain officers of the Company or other persons are willing to act as proxy if the Shareholder wishes to appoint them).
- ~~So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates two-way voting instructions for proxy holders.~~
- ~~7.57.6~~ No proxy is effective in relation to a meeting unless the notice of appointment proxy form is received by or on behalf of the Company at ~~the any~~ place ~~nominated specified for that purpose~~ in the notice of meeting. The notice of meeting may provide for different matters for different kinds of proxies (for example, a different specified time for the receipt of a proxy by electronic means). In any case, the time or times specified may not be more ~~not later~~ than 48 hours before the start of the meeting.
- ~~7.67.7~~ A proxy is effective in relation to a meeting notwithstanding the previous:
- ~~7.6.47.7.1~~ Ddeath of the principal; or
- ~~7.6.27.7.2~~ Insanity of the principal; or
- ~~7.6.37.7.3~~ Revocation of the proxy; or
- ~~7.6.47.7.4~~ Transfer of the Shares in respect of which the proxy is given;
- unless notice in writing of any such matter has been produced to the satisfaction of the chairperson before the start of the meeting at which the proxy is to be used.

## 8. Minutes

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

## 9. Shareholder **P**roposals

- ~~9.1~~ A Shareholder may give written notice to the **B**oard of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the First Schedule of the Act apply to any notice given pursuant to this clause 9.1 of this Schedule 1.
- ~~9.2~~ If the notice is received by the board not less than 20 business days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the board, the board must, at the expense

~~of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.~~

~~9.3 If the notice is received by the board not less than 5 business days and not more than 20 business days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the board, the board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.~~

~~9.4 If the notice is received by the board less than 5 business days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the board, the board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.~~

~~9.5 The board must give the proposing Shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.~~

~~9.6 The board is not required to include in or with the notice given by the board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous or vexatious.~~

~~9.1 Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.~~

## 10. Corporations may aAct by Representatives

10.1 Any ~~corporation whether a company within the meaning of the Act or not and whether incorporated, registered or resident in New Zealand or in any other country~~body corporate which is a Shareholder may appoint a Representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. A Representative shall have all the same rights and powers as if the Representative were a proxy.

## 11. Votes of joint holders

11.1 Where 2 or more persons are registered as the holder of a Share, the vote of the person named first in the sShare register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

## 12. Postal voting

12.1 Postal voting shall only be permitted at any particular meeting if the Board designates such meeting as one at which postal votes may be cast and so identifies the meeting in the relevant notice of meeting given to Shareholders. Where the Board has authorised postal voting then the procedures set out in clause 7 of the First Schedule to the Act together with any other procedures determined by the Board shall apply. For clarity, a postal vote may be cast using electronic means permitted by the Board.

## 13. Other proceedings

13.1 Subject to the provisions of the Act, and Eexcept as otherwise provided in this Constitution, Schedule 4 the chairperson of a meeting of Shareholders may regulate the procedure at that meeting.

## SCHEDULE 2

### Proceedings of the Board

#### 1. Chairperson

- 1.1 The Directors may elect one of their number as chairperson of the ~~B~~board.
- 1.2 The Director elected as chairperson holds that office for the period of appointment determined by the Directors, if any, or otherwise until he or she dies or resigns or the Directors elect a chairperson in his or her place. ~~The chairperson shall resign as chairperson effective from the commencement of the first Board meeting following the annual meeting and the Directors may elect a chairperson for the ensuing year. The chairperson so resigning shall be eligible for re-election as chairperson.~~
- 1.3 If no chairperson is elected, or if at a meeting of the ~~b~~Bboard the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

#### 2. Notice of ~~M~~meeting

- 2.1 A Director, or if requested by a Director to do so, an employee of the Company may convene a meeting of the ~~b~~Bboard by giving notice in accordance with this clause 2 of this Schedule 2.
- ~~2.2~~ Reasonable ~~Not less than two days'~~ notice of a meeting of the ~~B~~Bboard must be given to all ~~d~~Directors, unless the Director waives that right or in the opinion of the chairperson or of Directors who would together constitute a quorum at the meeting, the meeting is necessary as a matter of urgency, in which event such notice as is practicable in the circumstances must be given. Notice may be given to a Director at their nominated postal, delivery, facsimile, email or other communication address (including any electronic address) or number (including any telephone number).
- ~~2-22.3~~ The notice must include the date, time, and place of the meeting and the matters to be discussed. If the meeting is to be by means of audio, or audio and visual, and/or electronic communication, the notice must specify the manner in which the Director will be able to participate at the time of the meeting. The notice need not be in writing.
- ~~2.4~~ If all reasonable efforts are made to contact a Director or Alternate Director to give notice of a meeting, including by telephone, and the Director or Alternate Director cannot be contacted, notice of the meeting shall be deemed to have been given.
- ~~2-32.5~~ An irregularity in the giving of notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

#### 3. Methods of ~~h~~Holding ~~m~~Meetings

- 3.1 A meeting of the ~~B~~Bboard may be held either:
- 3.1.1 ~~b~~By a number of the Directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- 3.1.2 ~~b~~By alternative means of communication pursuant to clause 3.2, means of audio, audio and visual, or electronic communication, by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting; or
- 3.1.2 ~~by a combination of the methods described in clauses 3.1.1 and 3.1.2 of this Schedule 2.~~
- The contemporaneous linking together by any audio or audio and visual communication, which enables instantaneous communication, of a number of the Directors not less than the quorum, whether or not any 1 or more of the directors is out of New Zealand, shall be deemed to constitute a meeting of the Directors. The following conditions shall be met in relation to such a meeting:*
- 3.1.3 ~~Notice of any such meeting may be given by telephone, facsimile or email; and~~



~~3.1.4 — If all reasonable efforts are made to contact a Director or alternate Director to give notice of a meeting, including by telephone, and the Director or alternate Director cannot be contacted, notice of the meeting shall be deemed to have been given; and~~

~~3.1.5 — Each of the Directors participating in the meeting by telephone must be able to hear each of the other Directors participating in the meeting; and~~

~~3.1.6 — At the commencement of the meeting and at or about the closure of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Directors to all the other Directors participating; and~~

~~3.1.7 — A Director may not leave the meeting unless he or she has previously obtained the express consent of the chairperson of the meeting. A director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously obtained the express consent of the chairperson to leave the meeting; and~~

~~3.1.8 — A minute of the proceedings at such meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting.~~

~~3.1.3 — The board may grant leave of absence to a Director in respect of the attendance at specified meetings of the board or for a specified time. For the duration of such leave notice of meetings of the board shall not need to be given to the relevant director pursuant to clauses 2.2 and 3.2 and such director shall, for the purposes of clause 7.1, not be taken into account in determining a majority.~~

#### 4. Quorum

~~4.1 — Unless otherwise determined by the Board, a quorum for a meeting of the board is 3 of the Directors present and entitled to vote on the matter (or such other number as the Board may determine from time to time, provided that such number is not less than 3).~~

~~4.2 — No business may be transacted at a meeting of Directors if a quorum is not present.~~

~~4.3 — If notice of a meeting of the board has been properly given under clause 2 of this Schedule 2 and a quorum is not present within 30 minutes after the time appointed for the meeting, any Director may, by not less than 2 days' notice to every Director, convene a further meeting of the board. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any director present is a quorum.~~

~~4.4 — The Directors may continue to act where there is a vacancy in their body, but where the number of Directors has fallen below the minimum number fixed by clause 13.1 of this Constitution, the continuing Directors may act to remedy the shortfall in Directors to that number or to summon a meeting of Shareholders, but for no other purpose.~~

#### 5. Voting

~~5.1 — Subject to clause 5.2, every Director has 1 vote.~~

~~5.2 — 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 the resolution are in favour of it.~~

~~5.3 — In the case of an equality of votes the chairperson shall not have a second and casting vote, provided that if at any time the Constitution or Act enable 2 directors to form a quorum, the chairperson of a meeting at which only 2 Directors are present shall not have a casting vote.~~

~~5.4 — Any Director who abstains from voting shall not be deemed to have voted for or against the proposal or issue being voted on, and accordingly shall not be required to sign any Director's certificates required under the Act.~~

~~5.45.5 — A Director must not vote where that Director is not permitted to vote by the NZX Rules or this Constitution.~~

#### 6. Minutes

~~6.1 — The board shall ensure that minutes are kept of all proceedings at meetings of the board.~~

6.2 Minutes that have been signed correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings.

~~6.3 A copy of any written resolution under clause 7 shall be entered in the minute book of board proceedings.~~

## 7. **Written Resolution**

~~7.1 A resolution in writing, signed or assented to by a majority of the Directors then entitled to receive notice of a board meeting, vote on the resolution is as valid and effective as if it had been passed at a meeting of the Board duly convened and held provided that:~~

~~7.1.1 notice of the proposed form of such resolution has been given to all Directors at their nominated postal, facsimile, email or other communication address or number in accordance with clause 2.2 of this Schedule 2; and~~

~~7.1.2 those Directors would constitute a quorum for consideration of the resolution at a meeting of the Board and that those Directors have made all efforts they consider reasonable to contact the other Directors for the purposes of determining whether they will sign or assent to the resolution.~~

7.2 A resolution in writing may consist of 1 or more documents (including facsimile or other electronic means of communication) in like form, each signed or assented to by 1 or more Directors (whose assent may be given by electronic communication, including by email) and a copy, facsimile transmission or other electronic reproduction of any such document signed or assented to by 1 or more Directors shall be conclusive evidence of the execution of the original document by those Directors.

~~7.3 A copy of any written resolution under this clause 7 of this Schedule 2 must be entered in or kept with the records of Board proceedings.~~

## 8. **Committees**

8.1 The proceedings of committees of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors (including be governed by this Schedule 2) apply, with any necessary appropriate modifications, to meetings of a committee of Directors.

## 9. **Interested Directors**

9.1 Subject to clause 9.2 of this Schedule 2, a Director shall not vote on any Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term *interested* bears the meaning assigned to that term in section 139 of the Act.

9.2 Notwithstanding clause 9.1 of this Schedule 2, a Director may vote in respect of, and be counted in the quorum for the Board for the purposes of consideration of, a matter in which that Director is interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

## 10. **Validity of actions**

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

## ~~10.11.~~ **Other Proceedings**

~~10.11.1~~ Except as provided in this Schedule 2, the Board may regulate its own procedure.