



FOLEY FAMILY WINES

CONSTITUTION OF FOLEY FAMILY WINES LIMITED

Certified as the Constitution of **Foley Family Wines Limited** adopted on the day of
2018.

AM Turnbull - Executive Director

Date:

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CONSTITUTION OF FOLEY FAMILY WINES LIMITED

1. STATUS, DEFINITIONS AND INTERPRETATION

1.1 Registration

The Company is registered under the Companies Act 1993 and is regulated by the Act and this Constitution (to the extent it is in accordance with the Act), subject to clause 1.6.

1.2 Powers and capacity

The Company, the Board, 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, as permitted by the Act, by this Constitution.

1.3 Definitions

In this Constitution, the following words and expressions have the meanings set out next to them:

“Act” means the Companies Act 1993.

“Alternate Director” means a person appointed by a Director as his or her alternate in accordance with clause 12.

“Audit Committee” means the audit committee of the Board.

“Board” means the directors numbering not less than the required quorum acting as the board of directors of the Company.

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

“Company” means **Foley Family Wines Limited**.

“Constitution” means this constitution, as amended from time to time.

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

“Dividend” means a distribution by the Company other than a distribution to which section 59 (acquisition of Company's own Shares) or section 76 (financial assistance in acquisition of Company's Shares) of the Act applies.

“Employee” has the meaning given in the Listing Rules.

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

“Executive Director” is a Director who is appointed in accordance with clause 11.

“FMCA” means the Financial Markets Conduct Act 2013.

“Independent Director” has the meaning given in the Listing Rules.

“Interest Group” has the meaning given in section 116 of the Act.

“Listed” has the meaning given in the Listing Rules.

“Listing Rules” or “Rules” means the NZX Main Board Listing Rules governing the NZX Main Board market (or any successor to that market) in force from time to time (except to the extent of any Ruling).

“Main Board” means the main board equity security market operated by NZX.

“Minimum Holding” has the meaning given in the Listing Rules.

“NZ Markets Disciplinary Tribunal” has the meaning given in the Listing Rules.

“NZX” means NZX Limited, its successors and assigns and, as the context permits, includes any duly authorised delegate of NZX (including the NZ Markets Disciplinary Tribunal).

“Ordinary Resolution” means a resolution approved by a simple majority of Shareholders entitled to Vote and voting on the resolution.

“Quotation” means, in respect of a Class of Securities of the Company, the granting of a right for Trading Participants to quote bids and offers for that Class of Security on NZX. **“Quote” and “Quoted”** have corresponding meanings.

“Representative” means a person appointed as a proxy or representative under clause 6 of Schedule 1;

“Ruling” has the meaning given in the Listing Rules.

“Security” has the meaning given in the Listing Rules.

“Share” means a share issued, or to be issued, by the Company, as the case may require.

“Shareholder” means a person whose name is entered in the Share Register as the holder for the time being of one or more Shares.

“Share Register” means the share register of the Company kept in accordance with the Act.

“Special Meeting” means any meeting (other than an annual meeting) of Shareholders entitled to Vote on an issue, called at any time by the Board.

“Special Resolution” means a resolution approved by a majority of 75 percent or more of the Votes of those Shareholders entitled to Vote and voting on the resolution.

“Subsidiary” has the meaning given in the Listing Rules.

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

“Vote” has the meaning given in the Listing Rules.

“**Working Day**” has the meaning given in section 2(1) of the Act.

1.4 Interpretation

- a. The singular includes the plural and vice versa and words including gender includes all genders.
- b. A reference to a “person” includes any association of persons whether corporate or unincorporated, and any state or government or department or agency thereof, whether or not having a separate legal personality.
- c. Subject to the above, words or expressions contained in this Constitution which are defined in:
 - i. the Listing Rules (whether or not expressed with an initial capital letter) bear the same meaning as in the Listing Rules; and
 - ii. the Act (whether or not expressed with an initial capital letter) bear the same meaning as in the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this Constitution,

except as otherwise expressly provided in this Constitution.
- d. A reference to a clause means a clause of this Constitution, unless expressly indicated to the contrary.
- e. The clause headings are included for the purposes of convenience and do not affect the construction of this Constitution.
- f. The Schedules included in this Constitution form part of this Constitution.
- g. Unless otherwise stated, a reference to time refers to New Zealand time and references to monetary amounts are to New Zealand currency.
- h. A reference to a Listing Rule includes that Listing Rule as from time to time amended or substituted.
- i. Any reference to a statute, statutory provision or regulation will be construed as a reference to that statute, statutory provision or regulation as it may be amended or re-enacted or substituted from time to time.
- j. The words “written” and “in writing” include e-mail communications and any other means of communication resulting in permanent visible reproduction.

1.5 Power 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.

1.6 Incorporation of provisions

Notwithstanding anything else in this Constitution, for so long as the Company is Listed, this Constitution is deemed to incorporate all provisions of the Listing Rules required under the Listing Rules to be contained or incorporated by reference (and

as modified by, and subject to, any Ruling relevant to the Company), as those provisions apply from time to time and as if those provisions were set out in full with any necessary modification .

1.7 Compliance with Listing Rules

- a. For so long as the Company is Listed, the Company shall comply with the Listing Rules subject to:
 - i. the terms of any relevant Ruling from time to time given by NZX; and
 - ii. the requirements of the Act and any other applicable legislative or regulatory requirement.
- b. The Listing Rules (as modified by the terms of any Ruling) prevail to the extent of any inconsistency with this Constitution.
- c. If the Listing Rules are changed so that any act or omission by the Company which was formerly prohibited by the Listing 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.

1.8 NZX rulings

If NZX has granted a Ruling relevant to the Company authorising any act or omission which in the absence of that Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission shall, unless a contrary intention appears in this Constitution, be deemed to be authorised by the Listing Rules and by this Constitution from the date of the Ruling.

1.9 Votes must comply

Shareholders must not cast a Vote if prohibited from doing so by the Listing Rules.

1.10 Effect of failure to comply

Failure to comply with:

- a. the Listing Rules; or
- b. a provision of this Constitution corresponding with a provision of the Listing Rules (whether such provision is set out in full in this Constitution or incorporated in it pursuant to clause 1.6),

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

1.11 Alteration of Constitution – change of name not an alteration

- a. Subject to the Act, this Constitution may be altered at any time by Special Resolution.
- b. An application to change the name of the Company is not an amendment of this Constitution for the purposes of this Constitution or the Act, and may be made by a Director, or other person instructed by a Director with the approval of the Board.

1.12 Cessation

Clauses 1.4(i), 1.6 to 1.10 apply only for so long as the Company is Listed. If the Company ceases to be Listed, those clauses shall cease to have effect in so far as they relate to the Company's listing on the Main Board.

2. SHARE ISSUES

2.1 Rights and powers

- a. On adoption of this Constitution, the Company has not issued Shares in different classes or with rights different to those standard rights set out in section 36(1) of the Act.
- b. This Constitution does not set out types of Shares that the Board may, or may not, issue without Shareholder approval.

2.2 Issue of Shares

- a. The Board may issue Shares or other Equity Securities of the Company to any person and in any number it thinks fit, provided that, while the Company is Listed, the issue is made in compliance with the Listing Rules. The provisions of section 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of any Shares or other Equity Securities by the Company.
- b. Subject to clause 2.2(a), further shares may be issued ranking equally with, or in priority to, existing Shares and in such event the provisions of section 117 of the Act do not apply.

2.3 Consolidation and subdivision of Equity Securities

Subject to any applicable provisions of this Constitution, the Board may:

- a. consolidate and divide Equity Securities or any Class of Equity Securities in proportion to those Equity Securities or the Equity Securities in that Class; or
- b. subdivide Equity Securities or any Class of Equity Securities in proportion to those Equity Securities or the Equity Securities in that Class.

2.4 Financial assistance

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

2.5 Bonus issues

Subject to any applicable provisions of 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 Securities of the Company to be issued credited as fully paid to:
 - i. the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - ii. if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of those Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- b. in paying up any amount which is unpaid on any Shares or other Securities held by the Shareholders or holders referred to in clause 2.5(a),

or partly in one way and partly in the other.

3. CALLS ON SHARES

3.1 Board may make calls

- a. The Board may, by notice in writing to a Shareholder or Shareholders, make such calls as the Board thinks fit on the Shareholders in respect of any moneys unpaid on Shares and not, by the conditions of issue, made payable at a fixed time or times.
- b. Shareholders must comply with the terms of payment set out in the Board resolution.
- c. A call may be revoked or postponed by the Board.

3.2 Notice of call

- a. Notice and particulars of call must be given to the holder of those Shares at the time the call is made. A call shall be deemed to have been made at the time the resolution of the Board authorising the call was passed.
- b. The Company is not required to give notice and particulars of call to a subsequent holder of those Shares.

3.3 Liability

- a. Each relevant Shareholder shall be liable (joint holders of a Share are jointly and severally liable) to pay all calls in respect of those Shares.
- b. The liability for a call which has become due and payable attaches to the holder of those Shares and not a prior holder of the Shares.

3.4 Interest and expenses

If a call is not paid, the person from whom the sum is due must pay:

- a. all interest on that sum from the day payment was due to the day of actual payment at such rate as the Board may determine; and
- b. all expenses which the Company has or may incur by reason of non-payment of the call.

The Board may waive payment of all or part of that interest or expense.

3.5 Instalments

Any sum which by the terms of issue of a Share becomes payable on issue or at any fixed time will, for all purposes, be deemed to be a call duly made and payable at the time at which by the terms of issue it becomes payable. In case of non-payment, all the relevant provisions of this Constitution relating to payment of interest and expenses, forfeiture or otherwise will apply as if the sum had become payable by a call duly made and notified.

3.6 Different amounts

The Board may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

4. SUSPENSION OF RIGHT TO DISTRIBUTIONS, LIEN AND FORFEITURE

4.1 Notice of suspension of rights to distributions

If a Shareholder fails to pay any call or instalment of a call on the day payment is due, the Board may, at any time after that date, while any part of the call or instalment payable by the Shareholder remains unpaid, suspend payment of any distributions payable to the Shareholder until so much of the call or instalment as is unpaid together with any interest and expenses pursuant to clause 3.4 have been paid to the Company in full.

4.2 Application of suspended distributions

All distributions which would have been payable in respect of Shares which are subject to a suspension of the right to Dividends or distributions must be withheld and applied by the Company to reduce the amount owing under the call, including amounts owing under clause 3.4.

4.3 Liability not discharged by suspension of right to distributions on transfer of Shares

A Shareholder whose Shares have the right to distributions suspended remains liable to the Company for all money owing under the call. That liability is not extinguished by a transfer of the Shares subject to the suspension to a third party.

4.4 Lifting of suspension of right to distributions

When the total distributions withheld and applied under clause 4.2 equal the total amount owing under the call, including amounts owing under clause 3.4, the suspension of the right to distributions will be lifted and all rights to be paid distributions on the Shares will resume.

4.5 Liens

- a. The Company has a first and paramount lien on every Share registered in the name of a Shareholder (whether solely or jointly with others) for:
 - i. all unpaid calls, instalments or other amounts, and any interest payable on those amounts, relating to the specific Shares;
 - ii. any amounts the Company may be called upon to pay under any legislation in respect of the specific Shares, whether or not the due date for payment thereof has passed; and
 - iii. sales expenses owing to the Company in respect of those Shares.
- b. The lien extends to all Dividends or other distributions from time to time declared in respect of the relevant Shares.

4.6 Sale on exercise of lien

The Company may sell, in such manner as the Board thinks fit, any Shares on which the Company has a lien. No sale may be made:

- a. unless a sum in respect of which the lien exists is due and payable; and
- b. until the expiration of 14 days after a notice, which requires payment of the amount owing in respect of which the lien exists, has been given to the registered Shareholder at the time or the person entitled to that Share by reason of the registered Shareholder's death or bankruptcy.

4.7 Application of proceeds of sale

The net proceeds of the sale of any Shares sold for the purpose of enforcing a lien must be applied in or towards satisfaction of any unpaid calls, instalments or any other money payable by the Shareholder in respect of which the lien existed. The residue, if any, must be paid to the former Shareholder, or to the executors, administrators or assigns of that former Shareholder.

4.8 Certificate that power of sale has arisen

A certificate signed by a Director stating that the power of sale provided in clause 4.6 has arisen and is exercisable by the Company under this Constitution will be conclusive evidence of the facts stated in the certificate.

4.9 Giving effect to sale

In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under clause 4.6 the Board may authorise any person to execute a transfer of the Shares to the purchaser. The Board may, at any time before the sale or disposal, cancel the sale or disposal. The purchaser will be registered as the Shareholder of the Shares which are transferred, and will not be bound to see to the application of the purchase money. The purchaser's title to the Shares will not be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only and against the Company exclusively.

4.10 Consequences of sale

A person whose Shares have been sold in accordance with this clause 4 shall cease to be a Shareholder in respect of those Shares and shall surrender the share certificate (if any) for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of sale in respect of the Shares together with amounts owing under clause 3.4 until the Company receives payment in full of all money payable in respect of those Shares.

5. DISTRIBUTIONS TO SHAREHOLDERS

5.1 The Board may authorise distributions

The Board may authorise a distribution by the Company to Shareholders in accordance with the Act.

5.2 Dividends on Shares not fully paid up to be paid pro rata

- a. All Dividends on Shares not fully paid up must be authorised and paid in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares. This provision does not apply where Shares have been issued with special rights as to Dividends.
- b. No amount paid or credited as paid on a Share in advance of calls is to be treated for these purposes as paid on the Share. All Dividends are to be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the Dividend is paid, but if any Share is issued on terms providing that it ranks for Dividends as from a particular date that Share ranks for Dividends accordingly.

5.3 Payment by automatic payment cheque or warrant

- a. Any Dividend, interest, or other money payable in cash in respect of Shares may be paid by automatic payment to any bank nominated in writing by the Shareholder or by cheque sent through the post to the registered address of the holder, or in the case of joint holders, to the registered address of that one of the joint holders who is first named in the Share Register or to such person and to such address as the holder or joint holders may in writing direct.
- b. Every such cheque must be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any Dividends, bonuses, or other money payable in respect of Shares held by them as joint holders.

5.4 No interest

No Dividend bears interest against the Company.

5.5 Unclaimed Dividends

- a. All Dividends 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

distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust. All Dividends unclaimed for five years after having been declared may be forfeited by the Board for the benefit of the Company.

- b. The Board may, however, annul any such forfeiture and agree to pay a claimant who produces, to the Board's satisfaction, evidence of entitlement to the amount due to such claimant.

6. COMPANY PURCHASING OWN SHARES

6.1 Acquisition of Company's own Shares

The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders in accordance with the Act and the Listing Rules. The Board may make an offer to acquire Shares from such Shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act and the Listing Rules.

6.2 Treasury stock

Shares acquired by the Company under clause 6.1 may be held by the Company in accordance with the Listing Rules and sections 67A – 67C of the Act.

6.3 Redemption of Shares

The Company may issue redeemable Shares. If the Company issues redeemable Shares, the Company may redeem those Shares held by one or more Shareholders in accordance with their terms of issue, subject to the restrictions of the Listing Rules and the Act.

7. TRANSFER OF SHARES

7.1 Share Register

The Company will maintain a Share Register that records the Shares issued by the Company and states any restrictions or limitations on their transfer and where any document that contains the restrictions or limitations may be inspected. The Share Register may be divided in to two or more registers kept in different places. The Company must not enter any notice of a trust on the Share Register, or any other register of Equity Securities, whether the trust is express, implied or constructive.

7.2 Transfer of Shares

Subject to any restrictions contained in this Constitution, a Shareholder may transfer any of the Shareholder's Shares:

- a. in any manner authorised by or pursuant to the FMCA; or
- b. by an instrument of transfer which complies with this Constitution; or
- c. by any approved system of transfer by electronic means which operates in relation to trading in Securities on any other stock exchange on which the Company's Shares are traded and, in so participating, it shall comply with the requirements of NZX or of the relevant Share transfer system. The Board will not be obliged to enquire as to the due execution of any transfer effected by reason of such system; or

- d. in accordance with any other system of transfer approved by legislation.

7.3 Method of transfer

A share which is disposed of in a transaction which complies with the requirements of a system of transfer referred to in clause 7.2(a) or 7.2(c) may be transferred in accordance with the requirements of that system. Where an instrument of transfer would have complied with the provisions of the FMCA 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 Company's share registrar.

7.4 Forms of transfer

An instrument of transfer to which the provisions of clause 7.3 are not applicable shall comply with the following provisions:

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

7.5 Registration of transfer

The transferor of a Share shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the transfer. Every instrument of transfer shall be delivered to the Company's share registrar, together with such evidence as the Board or the Company's share registrar may reasonably require to show the right of the transferor to make the transfer.

7.6 No restriction on transfer

Subject to the provisions of the Act, and to clause 7.7, the Company shall not:

- a. impose any restriction on the right of Shareholder to transfer any Shares; or
- b. upon the registration of a properly completed transfer of Shares of the Company.

7.7 Sale of Minimum Holding

- a. The Board may give not less than three months' prior notice in writing to a Shareholder who holds Shares which are less than a Minimum Holding, of the Board's intention to sell such Shares.
- b. The notice pursuant to paragraph a. shall advise the Shareholder of the Board's intention to proceed with the sale of the said Shares unless the Shareholder acquires further Shares so that the total of the Shares held by the Shareholder is not less than a Minimum Holding.
- c. At the expiry of the three month notice period referred to in paragraph a., the Board may arrange for the sale of the Shareholder's Shares in accordance

with the Listing Rules and the notice referred to in paragraph a. (through NZX or in some other manner approved by NZX) if there has not been presented to the Company for registration a transfer of Shares to the Shareholder which, together with the Shares already held by the Shareholder, will be equal to or more than a Minimum Holding.

- d. If the Board sells the Shares comprised in the notice, then the Board may appoint a Director to execute a transfer of the Shares and to receive the consideration from the transferee on behalf of the Shareholder. 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.
- e. The Company may deduct the reasonable expenses of sale of the Shares from the proceeds of sale and shall thereafter pay the net proceeds of sale to the Shareholder.
- f. The transferee of any Shares sold pursuant to this clause 7.7 shall not be bound to see the application of the purchase moneys and the transferee's title to the Shares shall not be affected by any irregularity or invalidity of the sale.

7.8 Directors' right to refuse registration

The Board may refuse or delay the registration of a transfer of Shares:

- a. if the Company has a lien over the Shares; or
- b. if the 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 Shares of less than a Minimum Holding; or
- c. with the approval of NZX, if the transfer is for Shares of a Class that is not Quoted; or
- d. the transfer is not accompanied by the share certificate (if any) for the Shares to which it relates or other evidence as the Board or the Company's Share Register may reasonably require to show the entitlement of the transferor to make the transfer,

provided that the Board resolves to exercise its powers under this clause 7.8 within 30 Working Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board.

7.9 Transfer of Securities other than Shares

This clause 7 shall apply to transfers of Securities of the Company other than Shares with any necessary modifications.

8. SHAREHOLDERS' RIGHTS AND OBLIGATIONS

8.1 Meetings of Shareholders

The provisions of the First Schedule to this Constitution shall govern proceedings at meetings of Shareholders.

8.2 Meetings of Interest Groups

- a. The provisions of the First Schedule to this Constitution relating to the proceedings at meetings of Shareholders shall also govern proceedings at meetings of any Interest Group required to be held by the Act, the Listing Rules, or this Constitution, with all necessary consequential modifications, except that the quorum shall be the members of the Interest Group holding 5% or more of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the Interest Group in question.
- b. If the Board so elects, one meeting may be held by holders constituting more than one Interest Group, so long as voting at that meeting is by way of poll, and proper arrangements are made to distinguish between the Votes of members of each Interest Group. Any holder of Securities in the Interest Group, present in person or by Representative, may demand a poll.

8.3 Inspection of records:

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

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

9. POWERS AND DUTIES OF THE BOARD

9.1 Management by the Board

The business and affairs of the Company shall be managed by or under the direction or supervision of the Board which shall have all the powers necessary for managing and for directing and for supervising the management of the business and affairs of the Company, except to the extent the Act or this Constitution provides otherwise.

9.2 Power to delegate

Subject to the provisions of the Act, the Board may delegate any of its powers to a committee of Directors, a Director or Employee of the Company, or any other person.

10. APPOINTMENT, ROTATION AND REMOVAL OF DIRECTORS

10.1 Number and residence

The composition of the Board shall include the following:

- a. the minimum number of Directors (other than Alternate Directors) is three and, subject to this limitation, the number of Directors to hold office shall be fixed from time to time by the Board. The maximum number of Directors (other than Alternate Directors) may be determined from time to time by the Board, and unless so determined, is eight;
- b. at least two Directors shall be ordinarily resident in New Zealand; and
- c. while the Company is Listed, it shall have not less than the minimum number of Independent Directors prescribed in the Listing Rules. The Company and Board shall comply with the Listing Rules applicable to the appointment and identification of Independent Directors.

10.2 Vacancies and reduction of numbers

Directors may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below the number fixed by clause 10.1 as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of Shareholders, but for no other purpose.

10.3 Nominations as Directors

- a. No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Shareholders unless that person has been nominated by a Shareholder entitled to attend and Vote at the meeting.
- b. Subject to any restrictions contained in the Act, this Constitution and the Listing Rules, there shall be no restriction on the persons who may be nominated as Directors nor shall there be any pre-condition to the nomination of a Director other than that the nomination complies with this clause 10.

10.4 Individual voting

Subject to clause 10.1 and the Listing Rules, a Director may be appointed by Ordinary Resolution. No resolution to appoint or elect a Director (including a resolution to re-elect any Director appointed under clause 10.5) shall be put to the Shareholders unless:

- a. the resolution is for the appointment of one Director; or
- b. the resolution is a single resolution for the appointment of two or more Directors and a separate resolution that it be so voted on has first been passed without a Vote being cast against it,

but nothing in this clause 10.4 shall prevent the election of two or more Directors by ballot or poll.

10.5 Board may appoint Directors

The Board may at any time appoint a person to be a Director either as an additional Director or to fill a casual vacancy.

10.6 Board appointee to Retire

Any person who is appointed a Director by the Board shall retire from office at the next annual meeting of the Company, but shall be eligible for re-election at that meeting.

10.7 Rotation

Subject to clauses 10.8 and 10.11, at least one-third of the Directors or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected. As between persons who became Directors on the same day, those to retire shall unless agreed otherwise, be determined by lot. Notwithstanding anything else in clause 10, no Director (except the exempted Executive Director referred to in this clause 10) shall hold office for a period of longer than five years without retiring and offering himself or herself for re-election.

10.8 Exceptions to rotation

The following Directors shall be exempt from the obligation to retire pursuant to clause 10.7:

- a. Directors appointed by the Board who are subject to re-election pursuant to clause 10.6; and
- b. one Executive Director nominated by the Board (if any).

The Directors referred to in paragraph a. shall be excluded from the number of Directors upon which the calculation for the purposes of clause 10.7 is based. Any Director referred to in paragraph b. shall be included in that number.

10.9 Removal of Directors

A Director may be removed from office by Ordinary Resolution passed at a meeting called for that purpose or for purposes that include the removal of the Director. The notice of meeting must state that the purpose or a purpose of the meeting is the removal of the Director.

10.10 Director ceasing to hold office

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

- a. resigns in accordance with the Act; or
- b. is removed from office in accordance with the Act or this Constitution; or
- c. becomes disqualified from being a Director pursuant to the Act; or
- d. dies; or
- e. acts in a manner which is contrary to any statutory provision or obligation, or contrary to any policy of the Board, and the Board resolves that the office be vacated; or

- f. is absent for more than three consecutive meetings of the Board, without the Board's permission and the Board resolves that the office be vacated; or
- g. retires from office, and is not re-elected, under this clause 10.

10.11 Retirement of Directors

Any non-Executive Director who has served on the Board for longer than nine years shall automatically cease to hold office at the conclusion or adjournment of the annual meeting next following the Director attaining that period of service and shall be subject to annual re-election. Any such Director shall be taken into account in determining the number of Directors to retire by rotation at the annual meeting but shall not be counted as one of the Directors retiring by rotation at that meeting.

10.12 Existing Directors

The persons holding office as Directors of the Company on adoption of this Constitution continue in office and are deemed to have been appointed in accordance with this Constitution. Similarly, the chairperson of the Board on the adoption of this Constitution continues in office and is deemed to have been appointed as chairperson in accordance with this Constitution.

10.13 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 or any adjournment of that 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 or any adjournment of that 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 or after any adjournment of the meeting, whichever is earlier.

10.14 Audit Committee

While the Company is Listed, the Company must appoint an Audit Committee in accordance with the Listing Rules. The Audit Committee shall have responsibilities which include those specified in the Listing Rules.

11. EXECUTIVE DIRECTOR

11.1 Board may appoint Executive Director

The Board may from time to time appoint one or more of its members to the office of an Executive Director (by whatever name called) for such period not exceeding five years. An Executive Director may be re-appointed at any time within three months before the expiry of a term of appointment for a further period not exceeding five years, and may be re-appointed for a further term of five years in the same manner. Every Executive Director shall be liable to be dismissed or removed by the Board.

The Board may enter into an agreement on behalf of the Company with any person who is, or is about to become, an Executive Director, with regard to the terms and conditions of that person's employment. The remedy of any person appointed as Executive Director for any breach of the agreement shall be in damages only, and that person shall have no right to claim to continue in office contrary to the will of the Board. Any Executive Director shall immediately cease to be an Executive Director if he or she ceases to hold office as a Director for any cause.

11.2 One Executive Director not to retire by rotation

One Executive Director designated by the Board shall not be subject to retirement by rotation at the annual meeting of the Company. Subject to the provisions of any contract between the Executive Director and the Company, the Executive Director shall be subject to the same provisions as to resignation and removal as the other Directors of the Company.

11.3 Remuneration of Executive Director

The remuneration of an Executive Director shall from time to time be fixed by the Board and notwithstanding clause 13.1 may be by way of fixed salary or may be linked in some way to the performance of the Company by participation in its profits or by either or both those modes.

11.4 Board may confer powers on Executive Director

The Board may from time to time entrust to, and confer upon, any Executive Director such of the powers exercisable under this Constitution and the Act by the Board, as it thinks fit, and may confer such powers for such time and upon such terms and conditions and with such restrictions as it thinks fit. The Board may revoke, withdraw, alter or vary all or any of the powers conferred upon the Executive Director.

12. ALTERNATE DIRECTORS

12.1 Appointment

- a. Any Director may at any time appoint any person, not being an existing Director, who is approved by a majority of the Board, as an Alternate Director of the Company, by written notice signed by the appointing Director. No Director shall appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.
- b. An Alternate Director shall not be entitled to receive any remuneration from the Company, other than such proportion (if any) of the remuneration otherwise payable to his or her appointing Director as such appointing Director may by notice in writing to the Company from time to time direct.

12.2 Notices

An Alternate Director shall be entitled to:

- a. (subject to such person giving to the Company an address within New Zealand at which notices may be served upon such person) receive notices of all meetings of the Board, if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unable to attend meetings;

- b. attend and vote as a Director at any such meeting at which the Director appointing the Alternate Director is not personally present; and
- c. perform all the functions, and exercise all the powers, of the appointing Director in the appointing Director's absence.

12.3 Cessation of appointment

An Alternate Director shall cease to be an Alternate Director if:

- a. the Director appointing the Alternate Director ceases for any reason to be a Director, otherwise than by retiring and being re-elected at the same meeting; or
- b. by the Director revoking the appointment of the Alternate Director; or
- c. 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
- d. the appointment of an Alternate Director is revoked by a majority of the Board.

12.4 Rights and powers of Alternate Director

- a. Unless otherwise provided by the terms of appointment, and subject to clause 12.1 an Alternate Director shall have the same rights, powers and privileges (excluding the right to be elected as chairperson and excluding the power to appoint an Alternate Director) and shall discharge all the duties of, and be subject to the same provisions as, the Director in whose place the Alternate Director acts.
- b. An Alternate Director for the Executive Director may not act as Executive Director.
- c. An Alternate Director may be paid expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties, and shall be entitled to be indemnified by the Company, to the same extent, with any necessary modifications, as if he or she were a Director.

13. DIRECTORS' REMUNERATION

13.1 Authorisation

The Board may, subject to the Listing Rules, exercise the power conferred by section 161 of the Act to authorise remuneration and other benefits to and for Directors.

13.2 Expenses

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

13.3 Special remuneration

Without limiting clause 13.1, the Board may authorise special remuneration to any Director who is or has been engaged by the Company or a Subsidiary to carry out any work or perform any services which is not in the capacity of a Director of the Company or a Subsidiary.

13.4 Other offices with Company held by Director

- a. Any Director may act by himself or herself or by the Director's firm in a professional capacity for the Company, and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor to the Company.
- b. A Director may hold any other office or place of profit in the Company (other than the office of auditor) in conjunction with the Director's office for such period and on such terms (as to remuneration and otherwise) as the Board may determine.
- c. Other than as provided in the Act or the Listing Rules, a Director is not disqualified by virtue of his or her office from entering into any transaction with the Company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a Director and not in a fiduciary relationship with the Company.

14. PROCEEDINGS OF THE BOARD

14.1 Second Schedule

- a. The provisions of the Second Schedule to this Constitution govern the proceedings of the Board. The Third Schedule to the Act shall not apply to the Company except to the extent that those provisions are included in this Constitution.
- b. The provisions of this Constitution relating to meetings and proceedings of the Board also apply to meetings and proceedings of any committee of Directors, except to the extent that the Board determines otherwise.

15. INDEMNITY AND INSURANCE

15.1 Indemnity of Directors and employees

The Company is authorised to indemnify every Director or employee of the Company or a related company for any costs incurred by him or her in any proceeding:

- a. that relates to liability for any act or omission in his or her capacity as a Director or employee; and
- b. in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

15.2 Type of liability

The Company is authorised to indemnify every Director or employee of the Company or a related company in respect of:

- a. 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; or
- b. costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under paragraph a.,

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.

15.3 Insurance of Directors and employees

The Company may, with the prior approval of the Board, effect insurance for a Director or for an employee of the Company or a related company in respect of:

- a. liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or
- b. costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability under paragraph a.; or
- c. costs incurred by that Director or employee in defending any criminal proceedings that have been brought against that person in relation to any act or omission in his or her capacity as a Director or employee, and in which he or she is acquitted.

The Directors who vote in favour of authorising the effecting of insurance under this clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

15.4 Interests register

The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related company, are forthwith entered in the interests register.

15.5 Construction

For the purposes of this clause 15, words given extended meanings by section 162(9) of the Act have those extended meanings.

16. NOTICES

16.1 Service

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

16.2 Service of notices outside New Zealand

If a Security holder has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand or an electronic address, then notices for that Security holder shall be posted to such physical address or sent

electronically to such electronic address, and shall be deemed to have been received by that Security holder 24 hours after the time of posting.

16.3 Service on joint holders

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 Share Register in respect of the Share.

16.4 Service on Representatives

A notice may be given by the Company to the person or persons entitled to a Share in consequence of the death, bankruptcy or incapacity of a Shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address, if any, supplied for the purpose by the person or persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

17. LIQUIDATION

17.1 Distribution of surplus assets

- a. Subject to the terms of issue of any Shares and to clause 17.2, upon the liquidation of the Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of liquidation will be distributed among the Shareholders in proportion to their shareholding.
- b. The holders of Shares not fully paid up must receive only a proportionate share of their entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares either under this Constitution or pursuant to the terms of issue of the Shares.

17.2 Distribution in specie

- a. Upon a liquidation of the Company, the liquidator, with the sanction of an Ordinary Resolution and any other sanction required by law, may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any property to be so divided and may determine how the division is to be carried out as between the Shareholders or different Classes of Shareholders.
- b. The liquidator may, with the same sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit, but so that no Shareholder will be compelled to accept any shares or other securities in relation to which there is any liability.

18. REMOVAL FROM THE NEW ZEALAND REGISTER

18.1 Directors may apply for removal

In the event that:

- a. the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
- b. the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation,

the Board may, in the prescribed form, request the Registrar to remove the Company from the New Zealand register.

19. METHOD OF CONTRACTING

19.1 Manner of execution

A contract or other enforceable obligation may be entered into by the Company as follows:

- a. 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:
 - i. two or more Directors; or
 - ii. any Director or other person or class of persons authorised by the Board, whose signature or signatures must be witnessed; or
 - iii. one or more attorneys appointed by the Company in accordance with this Constitution;
- b. an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- c. an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

19.2 Company may appoint attorneys

The Company may, by an instrument in writing executed in accordance with clause 19.1, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with the instrument binds the Company.

**SCHEDULE 1
PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

1. CHAIRPERSON

1.1 Chairperson to be Chairperson of the Board

Subject to clause 1.2 of this Schedule, if the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, he or she must chair the meeting.

1.2 Election of Chairperson

If no chairperson of the Board has been elected, or if at any meeting of Shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting, the Directors present may elect one of their number to be chairperson of the meeting. If at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes of the time appointed for holding the meeting, the Shareholders present must choose one of their number to be chairperson of the meeting.

1.3 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of Shareholders.

2. NOTICE OF MEETINGS

2.1 Notice in writing

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 an auditor of the Company not less than 10 Working Days before the meeting.

2.2 Contents of notice

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; and
- b. state the text of any Special Resolution to be submitted to the meeting; and

in the case of Special Resolutions required by section 106(1)(a) or (b) of the Act, the right of a Shareholder under section 110 of the Act. The notice of meeting must contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed by the notice of meeting.

2.3 Irregularities in notice

An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and Vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

2.4 Adjournment

The chairperson may, and if so directed by the meeting must, adjourn the meeting from time to time and from place to place, but no business can be transacted at any 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 as in the case of an original meeting. Except as so provided, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

2.5 Accidental omission to give notice

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

2.6 Power to dissolve meetings

- a. The chairperson may adjourn or dissolve the meeting if in his or her opinion the meeting has become so unruly, disorderly or inordinately protracted that the business of the meeting cannot be conducted in a proper and orderly manner. The chairperson can exercise this power in her or her sole discretion without the consent of the meeting and without giving reasons.
- b. If any meeting is dissolved by the chairperson pursuant to clause 2.6a. of this Schedule and the unfinished business of the meeting relates to any resolution not voted upon by the meeting concerning the appointment of the auditor, then in that case, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditor.

3. METHODS OF HOLDING MEETINGS

3.1 Method of holding meetings

A meeting of Shareholders may be held either:

- a. by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- b. if determined by the Board, assembled together at the date and time appointed for the meeting and at one or more venues at which, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

4. QUORUM

4.1 Necessity for quorum

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

4.2 Numbers for quorum

A quorum for a meeting of Shareholders is present if three or more of the persons having the right to Vote at the meeting, being Shareholders or their proxies,

attorneys or Representatives (in the case of a body corporate), are present in person or by proxy.

4.3 No quorum

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

- a. in the case of a meeting called under section 121(b) of the Act, the meeting is dissolved; or
- b. in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint, and, subject to this Constitution, if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.

5. VOTING

5.1 Voting method

In the case of a meeting of Shareholders held under clause 3.1 of this Schedule, 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:

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

5.2 Voting method - audio, audio/visual

In the case of a meeting of Shareholders held under clause 3.1(b) of this Schedule, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice or by such other method as the chairperson may decide.

5.3 Evidence that resolution carried

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 5.4 of this Schedule.

5.4 Who may demand poll

At a meeting of Shareholders, a poll may be demanded by:

- a. not less than five Shareholders having the right to Vote at the meeting; or
- b. a Shareholder or Shareholders representing not less than 10 percent of the total voting rights of all Shareholders having the right to Vote at the meeting; or
- c. a Shareholder or Shareholders holding Shares that confer a right to Vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all Shares that confer that right; or

d. the chairperson.

5.5 When poll may be demanded

A poll may be demanded either before or after the vote is taken on a resolution.

5.6 Counting of Votes

If a poll is taken, Votes must be counted according to the Votes attached to the Shares of each Shareholder present in person or by proxy and voting.

5.7 Equality of Votes

In the case of an equality of Votes, whether voting is by voice or show of hands or poll, the chairperson of the meeting is entitled to a second or casting Vote.

5.8 Proxy holder may demand poll

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

5.9 Withdrawal of demand

The demand for a poll may be withdrawn.

5.10 Poll to be taken as chairperson directs

Except as provided in clause 5.13 of this Schedule, if a poll is duly demanded it must be taken in such manner as the chairperson directs, and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. In the case of any dispute as to the admission or rejection of a Vote, the chairperson shall determine the same and such determination made in good faith shall be conclusive.

5.11 Poll on election of chairperson

A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question may be taken at such time and place as the chairperson of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

5.12 Scrutineers

If a poll is taken, the scrutineers shall be appointed by the chairperson.

5.13 Declaration of result

The chairperson shall be entitled to declare the result of a poll upon the receipt of a certificate from the scrutineers setting out the maximum number of Votes which could be cast at the meeting and that sufficient Votes to determine the result of the resolution have been counted. The scrutineers' certificate may set out the maximum number of Votes which could be cast at the meeting if all persons entitled to attend and Vote at the meeting did so, or it may set out the maximum number of Votes

which could be cast at the meeting if all persons at the meeting who are entitled to Vote did Vote.

5.14 Voting entitlement

Subject to any rights or restrictions in this Constitution or for the time being attached to any Class of Shares:

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

5.15 Electronic voting

The Board may permit, in relation to a particular meeting or generally:

- a. the appointment of proxies or Representatives to be made by electronic means;
- b. postal Votes to be cast by electronic means; and
- c. to the extent permitted by law, Votes to be cast on resolutions at meetings of Shareholders (or of other groups) by electronic means.

The procedures in relation to such electronic appointment or electronic voting shall be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic appointment of proxies or Representatives or electronic voting in accordance with this clause 5.14, such electronic appointments may be made or electronic Votes cast notwithstanding any other provision of this Constitution.

6. PROXIES

6.1 Right to Vote by proxy

A Shareholder may exercise the right to Vote either by being present in person or by proxy.

6.2 Right of proxy to attend

A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder. A proxy need not be a Shareholder of the Company.

6.3 Appointment of proxy

A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

6.4 Proxy form to be sent with Notice of Meeting

A proxy form must be sent with each notice calling a meeting of the Company which complies with the requirements of the Listing Rules.

6.5 Validity of Vote

A Vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or revocation of the authority under which the proxy was executed, or the transfer of any Share in respect of which the proxy is given, if no notice in writing of such death, insanity, revocation or transfer has been received by the Company before the start of the meeting or adjourned meeting at which the proxy is used.

6.6 Deposit of Proxy

The instrument appointing a proxy and a power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority must be deposited at the registered office of the Company or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to Vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. If it is not, the instrument of proxy is invalid.

7. POSTAL VOTES

Unless the Board determines otherwise, a Shareholder may not exercise the right to Vote at a meeting by casting a postal Vote, whether on a show of hands, voice, Vote or on a poll. 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 together with any other procedures determined by the Board.

8. MINUTES

8.1 Minutes must be kept

The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

8.2 Evidence

Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

9. SHAREHOLDER PROPOSALS

9.1 Notice of matter for discussion or resolution

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

9.2 Notice of Shareholder proposal at Company's expense

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

9.3 Notice of Shareholder proposal at Shareholder's expense

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

9.4 Notice of late Shareholder proposal to be given if practicable

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

9.5 Proposing Shareholder's written statement

If the Directors intend that Shareholders may Vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

9.6 Limits on obligation to include statement, proposal or resolution

The Board is not required to include in or with the notice given by the Board any part of a statement, proposal or resolution prepared by a Shareholder which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious.

9.7 Payment by Shareholder of costs

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 ACT BY REPRESENTATIVES

A body corporate which is a Shareholder may appoint a Representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

11. VOTES OF JOINT HOLDERS

Where two or more persons are registered as the holder of a Share, the Vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the Votes of the other joint holders.

12. LOSS OF VOTING RIGHTS IF CALLS UNPAID

If a sum due to the Company in respect of a Share has not been paid, that Share may not be Voted at a Shareholder's meeting other than a meeting of an Interest Group.

13. OTHER PROCEEDINGS

Except as provided in this Schedule, the chairperson of a meeting of Shareholders may regulate the proceeding at the meeting.

SCHEDULE 2 PROCEEDINGS OF THE BOARD

1. CHAIRPERSON

1.1 Election of chairperson

The Directors may elect one of their number as chairperson of the Board. A Director may not simultaneously hold the positions of Chief Executive (Executive Director) of the Company and chairperson of the Board.

1.2 Terms of office

The Director elected as chairperson holds that office until he or she dies or resigns or the Directors elect a chairperson in his or her place.

1.3 Election of chairperson for particular meetings

If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within five 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.

1.4 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of the Board.

2. NOTICE OF MEETING

2.1 Convening meetings

A Director or, if requested by a Director to do so, an Employee of the Company may convene a meeting of the Board by giving notice in accordance with this clause 2.

2.2 Period of notice

Not less than two days' notice of a meeting of the Board must be given to every Director, and the notice must include the date, time and place of the meeting and the matters to be discussed, and if the meeting is by means of audio or audio and visual communication, the manner in which the Director will be able to participate in the meeting.

2.3 Irregularity in notice

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

2.4 Means of giving notice

Notice of a meeting may be given by any means, including by telephone, facsimile or electronic means. Notice given by fast post or courier addressed to a Director at his or her last known residential address or by facsimile or electronic means after

5.00pm will be deemed to have been given on the day following the day the letter is posted or sent by courier or facsimile or electronic means.

3. METHOD OF HOLDING MEETINGS

A meeting of the Board may be held either:

- a. by a number of Directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
- b. by means of audio, or audio and visual communication by which all the Directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.

4. QUORUM

4.1 Number constituting a quorum

A quorum for a meeting of the Board is a majority of the Directors.

4.2 No business without quorum

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

4.3 Alternate Director may be included

In accordance with clause 13 of this Constitution, an Alternate Director present at a meeting may be included for the purpose of establishing a quorum.

4.4 Meeting adjourned if no quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting, 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 are a quorum.

5. VOTING

5.1 Number of votes

Every Director has one vote.

5.2 Chairperson has casting vote

The chairperson has a casting vote, except where only two Directors form a quorum and are present at the meeting.

5.3 Majority

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.

5.4 Presumption as to voting

A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of a resolution of the Board, unless he or she expressly abstains from voting or expressly dissents from, or votes against the resolution at the meeting.

5.5 Interested Director may not vote

A Director who is “interested” (as defined in section 139 of the Act) shall not in a matter:

- a. vote on a Board resolution in respect of that matter; nor
- b. be included among the Directors present at a meeting of Directors, for the purpose of a quorum, in considering that matter,

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

5.6 Alternate Director may vote

An Alternate Director may attend and Vote at meetings of the Board in accordance with and subject to clause 12 of this Constitution if the Director that has appointed the Alternate Director is absent from the meeting.

6. MINUTES

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

7. RESOLUTIONS

7.1 Written resolution

A resolution in writing, signed or assented to by letter, facsimile, or other written form by a majority of the Directors then entitled to vote on that resolution, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Each Director must be given notice of the form of the proposed resolution.

7.2 Forms of resolution

Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.

7.3 Resolution to be kept in minute book

A copy of any such resolution must be entered in the minute book of Board proceedings.

7.4 Validity of acts

All acts done by any meeting of the Board or a committee of Directors or by any person acting as a Director are valid notwithstanding:

- a. any defect in the appointment of any Director or person acting as a Director; or
- b. that they or any of them were disqualified; or
- c. any irregularity in a notice of meeting.

8. NO NOTICE TO DIRECTORS OUTSIDE NEW ZEALAND

If a Director is resident outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand and the Director has appointed an Alternate Director under the provisions of this Constitution, notice must (subject to clause 12 of this Constitution) be given to the Alternate Director.

9. OTHER PROCEEDINGS

Except as provided in this Schedule the Board may regulate its own procedure.