

Constitution

of

Tenon Limited

This document is the Constitution of Tenon Limited as adopted by the Company by Special Resolution passed at the Annual Meeting of Shareholders held on the 22nd day of December 2004 and amended on the 16th of February 2005 by Court order granted by the High Court pursuant to Part XV of the Companies Act 1993 on the 2nd of February 2005.

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Constitution of Tenon Limited

1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

Act means the Companies Act 1993;

Board means Directors, who number not less than the required quorum, acting together 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 Tenon Limited;

Constitution means this constitution, as altered from time to time;

Director means a person occupying the position of a director of the Company by whatever name called;

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;

Listed has the meaning given in the Listing Rules;

Listing Rules means the Listing Rules of NZX in force from time to time;

Minimum Holding has the meaning given in the Listing Rules;

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

NZX Discipline has the meaning given in the Listing Rules;

Ordinary Resolution means a resolution passed by a simple majority of the votes of Shareholders entitled to vote and voting on the resolution;

Personal Representative means:

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

Representative of a Shareholder means a person appointed as a proxy or representative for that Shareholder under clause 17 or a Personal Representative of that Shareholder;

Ruling has the meaning given in the Listing Rules;

Security means a Security, as defined in the Listing Rules, which has been issued, or is to be issued, by the Company, as the case may require;

Share means a share which has been issued, or is to be issued, by the Company, as the case may require;

Shareholder or "**holder**" means a person whose name is entered in the Share Register or any other register as the holder for the time being of, in the case of a "**Shareholder**", one or more Shares, or, in the case of a "**holder**", one or more Securities;

Share Register means the share register of the Company;

Share Registrar means an agent appointed by the Company to maintain the Share Register;

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

Subsidiary means:

- (a) a subsidiary within the meaning of section 5 of the Act (read together with sections 6 to 8 of the Act); and
- (b) an entity treated as a subsidiary within the meaning of Financial Reporting Standard Number 37 issued by the New Zealand Institute of Chartered Accountants or within the meaning of any financial reporting standard approved in terms of the Financial Reporting Act 1993.

1.2 Construction

In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) a reference to a Listing Rule includes that Listing Rule as from time to time amended or substituted;
- (e) the singular includes the plural and vice versa and one gender includes the other genders;
- (f) the words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (g) the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (h) words or expressions defined in the Act or the Listing Rules have the same meaning in this Constitution except as otherwise expressly provided in this Constitution; and

- (i) references to the rights attached to a Share or Security include the rights, privileges, limitations and conditions attached to the Share or Security by the Act or this Constitution.

1.3 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.

2. The Companies Act and the Listing Rules

2.1 Companies Act

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 by this Constitution.

2.2 Incorporation of Listing Rules

While the Company is Listed, those provisions of the Listing Rules which are required by the Listing Rules to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification.

2.3 Listing Rules Prevail

- (a) Nothing in this Constitution will prohibit or restrict any action which is or may be expressly permitted by the Listing Rules or NZX to be taken by the Company, the Board, each Director, the Shareholders or the holders of any other Securities.
- (b) While the Company is Listed, if there is any provision in this Constitution that is inconsistent with the Listing Rules relevant to the Company, the Listing Rules prevail.

2.4 Compliance with Listing Rules

Subject to:

- (a) the terms of any Ruling from time to time given by NZX; and
- (b) the requirements of the Act and any other applicable legislative or regulatory requirement,

the Company shall, for so long as it is Listed, comply with the Listing Rules.

2.5 NZX rulings

If NZX has granted a Ruling in relation to the Company authorising any act or omission which, in the absence of the Ruling, would be in contravention of the Listing Rules or this Constitution, that act or omission will be deemed to be authorised by the Listing Rules and this Constitution.

2.6 Effect of failure to comply

Failure to comply with the Listing Rules shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules shall not be

entitled to enforce that transaction or contract. This provision does not affect the rights of any holder of Securities against the Company or the Directors arising from failure to comply with the Listing Rules.

3. Rights attaching to Shares

3.1 Existing Shares

Each Share in the Company existing at the date of adoption of this Constitution confers on the holder, in addition to the rights set out elsewhere in this Constitution and in the Act (except where such rights are negated, altered or added to by this Constitution), the following rights:

- (a) voting rights as set out in clause 16.4;
- (b) subject to the rights of Shareholders or holders of other Equity Securities which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board; and
- (c) subject to the rights of Shareholders or holders of other Equity Securities which confer special rights as to surplus assets, the right to an equal share in the distribution of surplus assets of the Company.

3.2 New Shares

Subject to clause 4, further Shares or other Equity Securities in the Company (including different Classes of Equity Securities) may be issued which:

- (a) rank equally with, or in priority to, existing Equity Securities in the Company; or
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
- (c) confer preferential rights to distributions of capital or income; or
- (d) confer special, limited or conditional voting rights; or
- (e) do not confer voting rights; or
- (f) are redeemable, in the case of Shares, in accordance with section 68 of the Act; or
- (g) are convertible; or
- (h) have any one or more of the rights or limitations set out in paragraphs (a) to (g).

3.3 Alteration of Rights

The issue by the Company of any further Shares or Equity Securities which rank equally with, or in priority to, any existing Shares or Equity Securities, whether as to voting rights or distributions, shall:

- (a) be permitted (subject to clause 4); and
- (b) not be deemed to be action affecting the rights attached to those existing Shares or Equity Securities.

4. Issue of new Equity Securities

4.1 Issue of new Equity Securities

Subject to the rights attached to any Equity Securities, the Board may authorise the issue by the Company of Shares or other Equity Securities at any time, 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 sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Equity Securities by the Company.

4.2 Consolidation and subdivision of Equity Securities

Subject to any applicable provisions of the Listing Rules, the Board may:

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

4.3 Bonus issues

Subject to any applicable provisions of the Listing Rules, 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 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 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 held by the Shareholders referred to in paragraph (a)(i),

or partly in one way and partly in the other.

5. Buybacks and redemptions of Equity Securities and financial assistance

5.1 Powers

The Company may:

- (a) purchase or otherwise acquire Shares issued by it from one or more Shareholders;
- (b) purchase or otherwise acquire other Equity Securities from one or more holders;
- (c) hold any Shares or other Equity Securities so purchased or acquired; and
- (d) redeem any redeemable Shares or other Equity Securities held by one or more holders,

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

5.2 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 the giving of that assistance is in accordance with the provisions, and subject to the restrictions, of the Act and the Listing Rules.

6. Untraced holders

6.1 Entitlement to Sell

The Board will be entitled to transfer to a trust (the “**Trust**”) set up for that purpose the Equity Securities of any person where three or more dividends paid in respect of the Equity Securities in question have remained unclaimed for at least one year after having been authorised and 14 days’ prior notice of the intention to transfer the Equity Securities to the Trust has been given.

6.2 Further Securities

If any further Equity Securities have been issued in respect of the Equity Securities referred to in clause 6.1, the Board may also transfer the further Equity Securities to the Trust notwithstanding that the requirement that three dividends remain unclaimed for at least one year after having been authorised may not have been satisfied with respect to such further Equity Securities.

6.3 Sale by Trust

If at the end of a three-year period commencing on the date of transfer of the Equity Securities to the Trust, and after 14 days’ prior notice of the intention to sell has been given, no person has claimed ownership of the Equity Securities, the Board may arrange for the sale of those Equity Securities through NZX or in some other manner approved by NZX.

6.4 Sale Procedures

To give effect to any transfers or sales under clauses 6.1 to 6.3, the Board may authorise some person to execute an instrument of transfer of the Equity Securities sold to, or in accordance with the directions of, the transferee and an instrument of transfer executed by that person will be as effective as if it had been executed by the holder of, or person entitled by transmission to, the Equity Securities. The transferee will not be bound to see to the application of the purchase monies nor will title to the Equity Securities be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

6.5 Proceeds

Upon any sale of the Equity Securities by the Trust, the net proceeds of sale (after deduction of reasonable sale expenses) will belong to the Company. The Board will, nevertheless, agree to pay the net proceeds of sale to a claimant who produces satisfactory evidence of entitlement but the Board will have no requirement to account for any money earned on the net proceeds, which may be employed in the business of the Company or invested in such investments as determined by the Board.

7. Calls

7.1 Power to make calls

Subject to the terms of issue, the Board may make such calls as it thinks fit upon the holders of Securities in respect of all or any of the moneys unpaid on their Securities. At least 21 days' notice of each call must be given, specifying the time and place for payment. Each holder of Securities shall pay the amount of every call so made at the times and places appointed by the Board. The Board may determine that a call is payable by instalments.

7.2 When a call is made

Unless otherwise specified, a call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.

7.3 Liability to pay

Each relevant shareholder shall be liable (jointly and severally in the case of joint shareholders) to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant shares.

7.4 Interest on unpaid calls

If a call remains unpaid after it has become due and payable, the person from whom the sum is due shall pay interest on the unpaid sum at such rate as the Board may determine. Interest shall accrue from the date it became due until it is paid. The Board may waive payment of that interest wholly or in part.

7.5 Instalments to be treated as calls

Any sum payable in respect of a Security on allotment or at any fixed date shall be deemed to be a call. If it is not paid, the provisions of this Constitution shall apply as if that sum had become due and payable by virtue of a call.

7.6 Difference in calls

The Board may, at the time of issue of any Securities, differentiate between the holders of Securities received on that issue from holders of Securities received on other issues as to the amount of calls to be paid and the time of payment.

7.7 Calls in advance

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

7.8 Evidence

In any proceedings for the recovery of moneys due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:

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

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

8. Lien on Securities

8.1 Lien on unpaid and partly paid Securities

The Company shall have a first and paramount lien on every Security which is not a fully paid Security (and any dividends or other distributions in respect of that Security) for:

- (a) all unpaid calls, instalments or other amounts, and any interest payable on those amounts, relating to that Security; and
- (b) any amounts the Company may be called upon to pay under any legislation in respect of that Security.

8.2 Power of sale

If any amount due in respect of a Security on which the Company has a lien is unpaid for more than 14 days after notice in writing demanding payment has been given to the holder or the person entitled to receive notices in respect of that Security:

- (a) the Company may sell the Security on such terms as the Board determines; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Security to, or at the direction of, the purchaser.

8.3 Absolute title of purchaser

The title of a purchaser of any Securities sold pursuant to clause 8.2 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

8.4 Application of sale proceeds

The net proceeds of sale of any Security sold pursuant to clause 8.2, after deducting expenses of sale, shall be applied in or towards satisfaction of any unpaid calls, instalments, premiums or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the Security at the date of sale.

9. Forfeiture of Securities

9.1 Notice

If a call on a Security is not paid when due, the Board may give 14 days' notice to the holder of the Security requiring payment of the call, together with interest on the amount of the call. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Security will be liable to be forfeited.

9.2 Forfeiture

If a notice given under clause 9.1 is not complied with, the Security may, before payment of the overdue amount has been made, be forfeited by resolution of the Board. Such forfeiture will include all dividends and any other distributions declared in respect of that Security and not paid or satisfied before forfeiture.

9.3 Sale of forfeited Securities

A forfeited Security may be sold or otherwise disposed of on such terms and in such manner as the Board determines. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

9.4 Application of sale proceeds

The net proceeds of sale of any forfeited Security shall be applied in the same manner as set out in clause 8.4.

9.5 Absolute title of purchaser

The title of a purchaser of a forfeited Security shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Security.

9.6 Consequences of forfeiture

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

9.7 Notice to holder

On the forfeiture of any Securities, the Board shall cause a note of the forfeiture and the date thereof to be entered into the Share Register and give notice of such forfeiture and the date thereof to the person in whose name the Securities stood immediately prior to the forfeiture. Upon the disposal of any forfeited Security the Board shall cause a note of the manner and date of disposition to be similarly entered.

9.8 Evidence of forfeiture

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

10. Transfer of Shares

10.1 Transferor to remain holder until registration

The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the Share Register.

10.2 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 section 7 of the Securities Transfer Act 1991 which is applicable to the Company; or
- (b) under any other share transfer system that operates in relation to the trading of shares on any stock exchange outside New Zealand on which the Shares are listed and which is applicable to the Company; or

- (c) by an instrument of transfer complying with clause 10.4.

Subject to clause 10.5, the Board may register any instrument of transfer of Shares presented for registration in accordance with this clause 10.2 or clause 10.4 and will not be obliged to enquire as to the due execution of any such instrument of transfer.

10.3 **Transfer executed outside New Zealand**

A Share which is transferred in a transaction which complies with the requirements of a system of transfer referred to in clauses 10.2(a) or 10.2(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor 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.

10.4 **Forms of transfers**

An instrument of transfer of Shares to which the provisions of clauses 10.2 and 10.3 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 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.

10.5 **Power to refuse to register**

The Board may decline to register any transfer of Shares where:

- (a) the Company has a lien on any of the Shares;
- (b) the transfer is not accompanied by such evidence as the Board or the Share Registrar may reasonably require to show the entitlement of the transferor to make the transfer; or
- (c) registration, together with the registration of any further transfer then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than a Minimum Holding in any Class,

provided that the Board resolves to exercise its powers under this clause 10.5 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.

10.6 **Sale of less than Minimum Holding**

The Board may at any time give notice to any Shareholder holding less than a Minimum Holding of Shares of any Class that if, at the expiration of three months after the date the notice is given, the Shareholder still holds Shares which are less than a Minimum Holding, the Board may exercise the power of sale of those Shares set out in this clause 10.6. If that power of sale becomes exercisable:

- (a) the Board may arrange for the sale of those Shares through NZX or in some other manner approved by NZX;
- (b) 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;

- (c) the Company shall account to the Shareholder for the net proceeds of sale of the Shares (after deduction of reasonable sale expenses), which shall be held on trust for the Shareholder by the Company and paid to the Shareholder on surrender of any certificates for the Shares sold; and
- (d) the title of a purchaser of any Shares sold pursuant to this clause 10.6 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

10.7 Registration of transfers

Every instrument of transfer shall be delivered to the Company's Share Registrar, together with such evidence as the Board or the Share Registrar may reasonably require to show the right of the transferor to make the transfer.

10.8 Participation in Share Transfer System

The Company may participate in any share transfer system approved under the Securities Transfer Act 1991 and implemented by NZX or in any share transfer system which operates in relation to trading in securities on any other stock exchange on which Securities are traded and, in so participating, it shall comply with the requirements of NZX or of the relevant share transfer system. The Board may register any transfer of Securities presented for registration in accordance with the requirements of any such system and will not be obliged to enquire as to the due execution of any transfer effected by reason of such system.

10.9 Power to divide Share Register

The Share Register may be divided into two or more registers kept in different places or into two or more sub-registers.

10.10 Transfer of securities other than Shares

This section 10 shall apply to transfers of Securities other than Shares with any necessary modifications.

11. Transmission of Shares

11.1 Transmission on death of Shareholder

If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or otherwise 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 11.1 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.

11.2 Rights of Personal Representatives

A Shareholder's Personal Representative:

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

- (b) is entitled to 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 paragraph (b).

11.3 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.

12. Meetings of Shareholders

12.1 Act applies

The provisions of the First Schedule of the Act govern proceedings at meetings of Shareholders except to the extent that they are negated or modified by this Constitution.

12.2 Methods 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, 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.

12.3 Meetings of other groups

A meeting of the holders of Securities in an interest group may be called by the Board at any time, and shall be called on the written request of persons holding Securities carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the group in question. All the provisions of this Constitution relating to meetings of Shareholders apply, with all necessary modifications, to a meeting of a group of Security holders, except that:

- (a) the necessary quorum is three persons who are not Associated Persons holding, or representing the holders of, 10% or more of the total number of Securities having the right to vote at the meeting;
- (b) if the Board so elects, one meeting may be held of holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
- (c) any holder of Securities in the group, present in person or by Representative, may demand a poll.

13. Notice of meetings of Shareholders

13.1 Rights of Equity Security holders and Directors

Equity Security holders of all Classes shall be entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying votes. Each Director who is not also a Shareholder shall have the same rights.

13.2 Irregularity 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. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.

14. Chairman of meetings of Shareholders

14.1 Chairman of the Board to act

Subject to clause 14.2, if the Directors have elected a chairman of the Board, and the chairman of the Board is present at a meeting of Shareholders, that Director must chair the meeting.

14.2 Other chairman

If no chairman of the Board has been elected or if at any meeting of Shareholders the chairman of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or the chairman is unwilling or unable to act for all or part of the meeting, the Directors present, if any, may elect one of their number to be chairman of the meeting or such part of the meeting. If no Director is willing or able to act as chairman or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to be chairman.

14.3 Regulation of procedure

- (a) Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairman may regulate the proceedings at meetings of Shareholders.
- (b) Without limiting the chairman's powers under paragraph 14.3(a), the chairman has the power to:
 - (i) determine all matters relating to the proper conduct of meetings, including power to ensure that the business of the meeting is not restricted by any immaterial procedural irregularities;
 - (ii) preserve order in the conduct of those present at meetings;
 - (iii) confine discussion to relevant matters within the scope of the meeting and reasonable limits of time;
 - (iv) determine whether proposed motions, amendments and discussion items are in order;
 - (v) close the discussion and move to a vote on any matter; and
 - (vi) determine any dispute as to the admission or rejection of a vote,and make all rulings necessary to give effect to these powers.

15. Quorum for meetings of Shareholders

15.1 **Quorum required**

Subject to clause 15.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

15.2 **Size of quorum**

A quorum for a meeting of Shareholders is present if three persons having the right to vote at the meeting are present in person or by Representative.

15.3 **Lack of quorum**

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

- (a) in the case of a meeting called by the Board on the request of Shareholders 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 if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the Shareholders or their Representatives present will constitute a quorum.

16. **Voting at meetings of Shareholders**

16.1 **Meetings in one place**

In the case of a meeting of Shareholders held under clause 12.2(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairman:

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

16.2 **Audio-visual meetings**

In the case of a meeting of Shareholders held under clause 12.2(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

16.3 **Postal votes**

Shareholders may exercise their right to vote at a meeting by casting a postal vote in accordance with the procedures in relation to postal voting set out in the First Schedule of the Act, together with any other procedures determined by the Board.

16.4 **Number of votes**

Subject to the provisions of clause 16.5 and subject to any rights or restrictions attached to any Share:

- (a) where voting is by voice or a show of hands, every Shareholder present in person or by Representative has one vote;
- (b) on a poll, every Shareholder present in person, by Representative or who has submitted a postal vote 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).

16.5 Voting restrictions

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.

16.6 Validity of votes

In the case of any dispute as to the admission or rejection of a vote, the chairman will determine the same and such determination will be conclusive.

16.7 Declaration of chairman conclusive

A declaration by the chairman that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clauses 16.8 and 16.9.

16.8 Right to 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% 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% of the total amount paid up on all Shares that confer that right; or
- (d) the chairman.

For the purposes of this clause 16.8, 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.

16.9 Time of demand for poll

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

16.10 Timing of poll

The chairman may determine the time and manner in which a poll is to be taken and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

16.11 Counting of votes on poll

If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting, or exercising their right to vote by casting a postal vote.

16.12 **Scrutineers**

If a poll is taken, the scrutineers shall be the auditors of the Company for the time being unless they are unable or unwilling to act or unless the chairman directs to the contrary, in which case the scrutineers shall be appointed by the chairman.

16.13 **Declaration of result**

The chairman may declare the result of a poll upon receipt of notice from the scrutineers that sufficient votes to determine the result of the resolution have been counted.

16.14 **Chairman's casting vote**

The chairman of the meeting is not entitled to a casting vote.

16.15 **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.

17. **Proxies and corporate representatives**

17.1 **Proxies permitted**

A Shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

17.2 **Form 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.

17.3 **Lodging proxy**

No proxy is effective in relation to a meeting unless the proxy form is deposited at the Company's registered office or with the Share Registrar or at such other place specified for the purpose in the notice convening the meeting not later than 48 hours before the time for holding the meeting or adjourned meeting, or before such lesser time or in such other manner as the Board determines. Otherwise, the proxy form appointing a proxy shall not be treated as valid.

17.4 **Appointment of proxy**

Deposit of a proxy form will not preclude the person giving the proxy attending and, where that person has withdrawn his or her proxy by giving notice to that effect to the Company prior to the last date for depositing proxies in accordance with clause 17.3, voting at the meeting or any adjournment of it.

17.5 **Validity of proxy vote**

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Shares in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation or transfer has been received by the Company at its registered office before the commencement

of the meeting or adjourned meeting at which the proxy is used.

17.6 Corporate 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. A representative shall have the same rights and powers as if the representative were a proxy.

18. Minutes of Shareholder meetings

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

19. Shareholder proposals

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. The provisions of clause 9 of the First Schedule of the Act apply to any notice given pursuant to this clause.

20. Adjourned meetings and disorderly meetings

20.1 Chairman's discretion to adjourn meetings

The chairman may, in his or her sole discretion, at any time during the meeting adjourn from time to time and place to place (including either to a later time at the same meeting or to an adjourned meeting):

- (a) the meeting; or
- (b) any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion in relation to any of those matters.

In addition, if at any meeting a motion or proposal to adjourn the meeting has been defeated, the chairman has an absolute discretion whether or not to accept and put to the meeting any further motion or proposal to adjourn the meeting.

20.2 Direction to adjourn

If directed by the meeting, the chairman must adjourn the meeting.

20.3 Provisions relating to adjourned meetings

No business can be transacted at any adjourned meeting other than the business left unfinished at the original meeting. 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. Otherwise, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

20.4 Adjournment of disorderly meetings

If any meeting becomes so unruly, disorderly or inordinately protracted that, in the opinion of the chairman, the business of the meeting cannot be conducted in a proper and orderly manner, the chairman, 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.

20.5 Completion of unfinished business

If any meeting is adjourned or dissolved by the chairman pursuant to clause 20.4, then the chairman may direct that any item of business uncompleted at the meeting of which notice was given in the notice convening the meeting, and which, in his or her opinion, requires to be voted upon, be put to the vote by a poll, without further discussion, in accordance with the provisions of this Constitution.

21. Appointment and removal of Directors

21.1 Board composition

The number of Directors must not at any time be more than 9 or less than 5 and subject to these limitations the numbers of Directors to hold office shall be fixed from time to time by the Board.

21.2 Existing Directors to continue in office

The Directors in office at the date of adoption of this Constitution shall continue in office subject to the provisions of this Constitution.

21.3 Appointment and removal by Ordinary Resolution

Subject to the Listing Rules, a Director may be appointed by Ordinary Resolution. All Directors shall be subject to removal from office as director by Ordinary Resolution.

21.4 Appointment by Board

Subject to the Listing Rules, the Board may at any time appoint additional Directors.

21.5 Appointment of Directors to be voted on individually

No resolution to appoint or elect a Director shall be put to the holders of Securities unless the resolution is for the appointment of one Director. Nothing in this clause prevents the election of two or more Directors by ballot or poll.

21.6 Vacation of office

A Director shall cease to hold office as a Director if the Director:

- (a) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally; or
- (b) becomes disqualified from being a Director pursuant to section 151 of the Act; or
- (c) resigns from office by notice in writing to the Company; or
- (d) is removed from office pursuant to this Constitution or the Act; or
- (e) has for more than six months been absent without permission of the Board from meetings of the Board held during that period.

21.7 Timing of retirement and appointment

If:

- (a) a Director retires at a meeting of Shareholders and is not re-elected at that meeting, 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.

22. Alternate Directors

22.1 Appointment

Each Director may from time to time appoint any person who is not already a Director and who is approved by a majority of the other Directors to be the Director's alternate director (an **Alternate Director**). No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.

22.2 Form of appointment and removal

Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.

22.3 Rights of Alternate Director

Each Alternate Director will be entitled to:

- (a) receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
- (b) attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
- (c) in the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.

22.4 Remuneration and expenses

Each Alternate Director's:

- (a) remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
- (b) expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company .

22.5 Cessation of appointment

An Alternate Director will cease to be an Alternate Director:

- (a) if the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment;
- (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) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

23. Executive Director

23.1 Appointment and removal

The Board may from time to time appoint one or more Directors to be an executive Director (**Executive Director**) either for a fixed term (but not exceeding five years) or otherwise and on such other terms (including remuneration) as the Board determines. The Board may from time to time remove any such Executive Director and appoint another or others in his or her place. Any Executive 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.

23.2 Resignation

An Executive Director shall, subject to the provisions of any contract between him or her and the Company, be subject to the same provisions concerning resignation, removal and disqualification as the other Directors. If an Executive Director ceases to hold the office of Director from any cause he or she immediately ceases to be an Executive Director.

24. Proceedings of the Board

24.1 Board meetings – Act applies

The provisions of the Third Schedule of the Act govern proceedings at meetings of the Board, except to the extent that they are negated or modified by this Constitution.

24.2 Notice of meeting

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause 24.2 and clause 24.3. Each Director must be given notice of a meeting of the Board, unless the Director waives that right. Notice may be given to a Director in any of the following ways:

- (a) by telephone to the telephone number given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when the call is answered at that number (including by way of answerphone or message service); or
- (b) by delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered; or
- (c) by sending the notice by facsimile transmission to the facsimile number, or by electronic means to the address, given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when sent; or

- (d) by posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three working days after it is posted.

24.3 Contents of notice

A notice of a meeting must specify the date, time and place of the meeting and, if the meeting is to be by means of audio or audio and visual communication, the manner in which the Director will be contacted to participate at the time of the meeting.

24.4 Quorum

Unless otherwise determined by the Board, a quorum for a meeting of the Board is one-third of the Directors or the number nearest one-third of the Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

24.5 Insufficient number of Directors

The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the minimum number fixed by clause 21.1, 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.

24.6 Chairman

The Directors may elect one of their number as chairman of the Board and determine the period for which the chairman is to hold office. If no chairman is elected, or if at any meeting the chairman 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 chairman of the meeting.

24.7 Votes

Every Director has one vote. In the case of an equality of votes the chairman will not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. 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 that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.

24.8 Validity of acts

All acts done by any meeting of the Board or of 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.

24.9 Authorised signatories

In addition to the methods permitted by the Act, a contract or other enforceable obligation of the Company 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 two persons who are designated as "Authorised Signatories"

from time to time by the Board, whose signature or signatures must be witnessed (if required by law).

24.10 Personal Involvement of Directors

Notwithstanding any rule of law or equity to the contrary, but subject to the Listing Rules and section 141 of the Act (relating to avoidance of transactions in which a director is interested) and section 199(2) of the Act (prohibiting a director from acting as auditor), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (e) retain any remuneration, profit or benefit in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director being interested.

24.11 Resolutions in writing

A resolution in writing, signed or assented to by all Directors 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. 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. A copy of any such resolution must be entered in or kept with the records of Board proceedings.

25. Directors' remuneration

25.1 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.

25.2 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.

25.3 Special remuneration

Without limiting clause 25.1, but subject to any applicable Listing Rules relating to transactions with related parties, 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.

26. Indemnity and insurance for Directors and Employees

26.1 Indemnity for Directors

Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

26.2 Other indemnities and insurance

In addition to the indemnity set out in clause 26.1, the Company may:

- (a) indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act;
- (b) indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; and
- (c) effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.

26.3 Interpretation

Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 26.

27. Dividends

27.1 Method of payment

Any dividend or other money payable to a holder of Securities may be paid by cheque sent through the post to the registered address of the holder or in any other manner determined by the Board and directed by the person entitled to the payment. In the case of joint holders, cheques may be sent to the registered address of the person first named on the Share Register.

27.2 Currency of payment

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

27.3 Deductions

The Board may deduct from dividends payable to any holder of Equity Securities in respect of any Equity Securities any:

- (a) unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Equity Securities; and
- (b) amounts the Company may be called upon to pay under any legislation in respect of the specific Equity Securities.

27.4 Entitlement date

Dividends and other distributions or payments to holders of Securities will be payable to the persons who are registered as holders of those Securities on an entitlement date fixed by the Board.

27.5 Unclaimed dividends

Dividends or other monetary distributions unclaimed for one or more years after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for five years or more after having been authorised may be forfeited by the Board for the benefit of the Company. The Company shall, nevertheless, annul the forfeiture and pay a claimant who produces evidence of entitlement.

27.6 Dividend election plans

Without limiting the generality of clause 4.1, the Board may implement and maintain, on such terms and conditions as it may determine, a plan for the benefit of the holders of Equity Securities whereby the holders of Equity Securities are issued Securities in lieu of a proposed dividend or invest the dividend in subscribing for or acquiring (on-market or otherwise) Securities or any other option in respect of the whole or any part of any dividend on any Equity Securities held by them as the Board may determine.

28. Notices

28.1 Method of service

All notices, reports, accounts or documents required to be sent to a holder of a Security 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 holder of a Security.

28.2 Service of notices outside New Zealand

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

28.3 Joint holders

A notice may be given by the Company to the joint holders of a Security by giving the notice to the joint holder named first in the Share Register in respect of the Security.

29. 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.

30. Liquidation

30.1 Distribution of surplus

Subject to the rights of the holders of any Equity Securities and clauses 30.2 and 30.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the holders of Equity Securities in proportion to their holdings. If any holder's Equity Securities are not fully paid up the liquidator of the Company may require those Equity Securities to be fully paid up before the holder receives any distribution of the surplus assets of the Company in respect of those Equity Securities. If the surplus assets are insufficient to repay the whole of the paid up Equity Securities, then, subject to the rights of the holders of any Equity Securities, such surplus assets will be distributed so that as nearly as possible the losses are borne by the holders of Equity Securities in proportion to their entitlements.

30.2 Distribution in kind

If the Company is liquidated, with the approval of an Ordinary Resolution, the liquidator of the Company may divide amongst the holders of Equity Securities in kind the whole or any part of the surplus assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

- (a) attribute values to assets as the liquidator considers appropriate; and
- (b) subject to the rights of the holders of any Equity Securities, determine how the division will be carried out as between the holders of Equity Securities or different Classes of Equity Securities.

30.3 Trusts

With the approval of an Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of holders of Equity Securities. The liquidator may determine the terms of the trust.