

**CONSTITUTION OF
PAR THREE GP LIMITED**

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CONSTITUTION OF PAR THREE GP LIMITED

PURSUANT TO THE COMPANIES ACT 1993

PART I

PRELIMINARY

1. DEFINITIONS

- 1.1 In this Constitution unless the context otherwise requires the following words and expressions have the meanings given to them in this clause:

"Act" means the Companies Act 1993.

"Alternate Director" means a Director appointed pursuant to clause 15.7(a) (*Alternate Directors*).

"Amalgamation" means the completed act of the Company and one or more other companies amalgamating pursuant to Part 13 of the Act and continuing as one company which may be one of the amalgamating companies or may be a new company.

"Annual Meeting" means a meeting of Shareholders held pursuant to clause 13.1 (*Annual Meeting*).

"Balance Date" means 31 March, or any other date that the Directors adopt as the Company's balance date {S2 of the Act and S41 Financial Reporting Act 2013}.

"Board" means the Directors numbering not less than the required quorum acting as the board of Directors of the Company, and where the Company has only one Director, that Director {S127 of the Act}.

"Call" means a resolution of the Board pursuant to clause 8.1 (*Board may make calls*) requiring Shareholders to pay all or part of the unpaid amount of the issue price of any Shares and where the context requires means the obligation of a Shareholder to meet the amount due pursuant to such a resolution.

"Class" and "Class of Shares" means a class of Shares having attached to them identical rights, privileges, limitations and conditions {S116 of the Act}

"Chairperson" means the chairperson of the Board elected pursuant to clause 19.1 (*Chairperson*) or the person appointed pursuant to clause 19.1.

"Company" means **PAR THREE GP LIMITED**.

"Constitution" means this constitution of the Company and all amendments made to it from time to time.

"Director" means a person appointed and continuing in office for the time being, in accordance with the Constitution and the Act, as a director of the Company.

"Distribution" means:

- (a) the direct or indirect transfer of money or property other than the Company's own

Shares, by the Company to or for the benefit of a Shareholder; or

- (b) the incurring of a debt by the Company to or for the benefit of a Shareholder

in relation to Shares held by that Shareholder, and whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means {Defined in S2(1) of the Act}.

"Dividend" means a Distribution by the Company other than a Distribution to which S59 (acquisition of company's own Shares) or S76 (financial assistance in acquisition of company's Shares) of the Act applies. {S53 of the Act}

"Financial Product" has the same meaning as in section 7 of the FMCA.

"FMCA" means the Financial Markets Conduct Act 2013.

"General Meeting" means any meeting of Shareholders, other than an Interest Group meeting.

"Interest Group", in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical;
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) (subject to the proviso below) who comprise the holders of one or more Classes of Shares;

provided that one or more Interest Groups may exist in relation to any action or proposal; and if:

- (d) action is taken in relation to some holders of Shares in a Class and not others; or
- (e) a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares of that Class,

holders of Shares in the same Class may fall into 2 or more Interest Groups {S116 of the Act}.

"Interests Register" means a register kept by the Company at its registered office pursuant to S189(1)(c) of the Act.

"LP" means PAR THREE HOLDINGS LIMITED PARTNERSHIP being a Limited Partnership registered under the Limited Partnerships Act 2008.

"Major Transaction" means:

- (a) the acquisition of, or an agreement to acquire by the Company whether contingent or not, assets the value of which are more than half the value of the Company's assets before acquisition, or;
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Company the value of which are more than

half the value of the Company's assets before disposition, or

- (c) a transaction which has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the assets of the Company before the transaction;
- (d) but does not include any transaction entered into by a receiver appointed pursuant to a security over any assets of the Company: {S129(2) and (3) of the Act}.

"Managing Director" means an employee of the Company with the responsibility for the management of the Company (together with any other employee) who is appointed to the Board pursuant to clause 21 (*Managing Directors*).

"Month" means calendar month.

"Ordinary Resolution" means a resolution of Shareholders approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question. {S105(2) of the Act}

"Ordinary Share" means a Share which confers on the holder:

- (a) the right to vote at meetings of Shareholders and on a poll to cast one vote for each Share held; and
- (b) subject to the rights of any other Class of Shares, the right to an equal Share in Dividends and other Distributions made by the Company; and
- (c) the right to an equal Share in the Distribution of the surplus assets of the Company on its liquidation. {S36(1) of the Act}

"Partners" means the limited partners in the LP.

"Register" means the Share register required to be kept pursuant to clause 5 (*Share Register*) and in accordance with section 87 of the Act.

"Registrar" means the Registrar of Companies appointed pursuant to section 357(1) of the Act.

"Share" means a Share issued by the Company.

"Shareholder" means a person:

- (a) whose name is entered in the Register as the owner of one or more Shares;
- (b) until such time as his, her or its name is entered in the Register, a person named as a Shareholder in the application for registration of the Constitution of the Company at the time of the incorporation of the Company; and
- (c) until the person's name is entered in the Register, a person who is entitled to have that person's name entered in the Register under a registered Amalgamation proposal as a Shareholder in an amalgamated company. {S96 of the Act}

"Solvency Test" means an examination to be applied to the financial state of the Company which will be satisfied if:

- (a) the Company is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the Company's assets is greater than the value of its liabilities, including contingent liabilities,

and in respect of which regard has been had to the matters referred to in section 4(2) and 4(4) of the Act. For the purpose of this definition, in applying the Solvency Test "assets", "debts" and "liabilities" have the meaning given to them in section 52(4) or 108(5) (as applicable) of 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 or by any other person who by this Constitution is entitled to call meetings of Shareholders. {S121 of the Act}

"Special Resolution" means a resolution of Shareholders approved by a majority of 75 percent of the votes of those Shareholders entitled to vote and voting on the question.

"Working Day" means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (c) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and
- (d) if the first day of January in any year falls on a Friday, the following Monday; and
- (e) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday. {S2(1) of the Act}

"writing" means all modes of representing or reproducing words, figures or symbols in a visible form including reproduction by facsimile machine.

- 1.2 Words importing the singular, include the plural, and words importing the masculine include the feminine and vice versa.
- 1.3 A reference to a person includes any natural person, firm, company or other legal entity.
- 1.4 Subject to the above, expressions contained in this Constitution bear the same meaning as in the Act at the date on which this Constitution becomes binding on the Company.
- 1.5 A reference to a clause means a clause of this Constitution.
- 1.6 The clause headings and footnotes are included for the purposes of convenience and do not affect the construction of this Constitution.
- 1.7 Where section 107 of the Act permits the company to do certain things with the written agreement or concurrence of all entitled persons, no provision of this Constitution shall be construed as limiting the

right to proceed in accordance with section 107 of the Act.

PART II

CAPITAL, SHARES AND DIVIDENDS

2. ISSUE OF SHARES

2.1 ISSUE OF NEW SHARES

- (a) Subject to the terms of issue of any existing Shares, approval by Special Resolution of the Shareholders, and clauses 2.2 to 2.6 of this Constitution, the Board may issue Shares (and rights or options to acquire Shares) of any Class (including redeemable Shares) at any time, to any person in any number the Board thinks fit.
- (b) Within ten (10) Working Days of approval being given under sub-clause (a), the Board must ensure that notice of that approval and the prescribed form is delivered to the Registrar for registration.
- (c) The new Shares are subject to the same provisions with reference to payments of Calls, liens, transfer, transmission, forfeiture and otherwise as Shares in the original Share capital.
- (d) If all entitled persons have agreed or concur in writing, Shares may be issued otherwise than in accordance with clauses 2.2 to 2.6 of this Constitution in accordance with section 107(2) of the Act.
- (e) Any Shares issued under clauses 2.1(a) or 2.1(d) may rank as to voting or Distribution rights, or both, equally with or prior to any existing Shares, and any such issue will not be treated as an action affecting the rights attached to existing Shares.

2.2 ENTITLEMENT TO NEW SHARES

- (a) In accordance with section 45 of the Act (pre-emptive rights) Shares issued or proposed to be issued that rank or would rank as to voting or Distribution rights or both equally with or prior to Shares already issued by the Company must be offered for acquisition to the holders of the Shares already issued in a manner and on terms that would if accepted, maintain the existing voting or Distribution rights, or both, of those holders.
- (b) The offer must be made by notice specifying the number of Shares to which the Shareholder is entitled and limiting the time within which the offer if not accepted is deemed to be declined.
- (c) It may be a term of any such offer that each Shareholder accepting the offer must demonstrate to the reasonable satisfaction of the Board that the offer does not require disclosure to such Shareholder under Part 3 of the FMCA, or Schedule 8 of the Financial Markets Conduct Regulations 2014, or any replacement legislation or regulations. For the avoidance of doubt, any offer which includes such a term will satisfy the pre-

emptive requirements of this clause 2.2 (and section 45 of the Act) notwithstanding that some Shareholders may not be eligible to accept such offer.

- (d) The offer must remain open for a reasonable time.
- (e) After the expiration of that time or if the Shareholder has declined the offer, the Board must offer those Shares to the other then existing Shareholders on a pro rata basis, subject to clause 2.2(c).
- (f) Nothing contained in this clause prevents the Board from issuing (either as fully paid up or partly paid up) any Shares in payment or in part payment for the purchase of any assets or in satisfaction or in part satisfaction of any obligation in to which the Company has entered or agreed to enter.
- (g) The pre-emptive rights applying to the issue of new Shares may be modified, replaced or supplemented pursuant to the terms of any agreement entered into between the Shareholders.

2.3 CONSIDERATION FOR ISSUE OF SHARES

- (a) Subject to sub-clause (b) below (bonus issues to Shareholders) before the Board issues Shares (other than Shares issued upon incorporation) it must:
 - (i) decide the consideration for which the Shares will be issued and the terms on which they will be issued;
 - (ii) if the Shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue;
 - (iii) resolve that, in its opinion, the consideration for the Shares and their terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
 - (iv) if the Shares are to be issued other than for cash resolve that, in its opinion, the present cash value of that consideration is not less than the amount by which the Shares would be credited as paid up. {S47 of the Act}
- (b) Sub-clause (a) above does not apply to:
 - (i) the issue of Shares that are fully paid up from the reserves of the Company to all Shareholders of the same Class in proportion to the number of Shares held by each such Shareholder; nor
 - (ii) the consolidation or subdivision of Shares or any Class of Shares. {S48 of the Act}
- (c) The consideration for which Shares are issued or for the payment of Shares already issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other Financial Products of the Company. {S46 of the Act}

2.4 DIRECTORS' CERTIFICATE ON CONSIDERATION FOR ISSUE

- (a) The Directors who vote in favour of a resolution required under clause 2.3(a) to issue Shares must sign a certificate:
- (i) stating the consideration for, and the terms of, the issue;
 - (ii) describing the consideration in sufficient detail to identify it;
 - (iii) where a present cash value has been determined in accordance with clause 2.3(a)(iv), stating that value and the basis for assessing it;
 - (iv) stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
 - (v) if the Shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value is not less than the amount by which the Shares would be credited as paid up. {S47(2) of the Act}
- (b) The Board must deliver a copy of the Directors' certificate given in respect of the consideration for the issue of Shares to the Registrar within 10 Working Days after the certificate is given.

2.5 PAYMENT ON SHARES ALREADY ISSUED

- (a) Before Shares that have already been issued are credited as fully or partly paid up other than for cash, the Board must:
- (i) determine the reasonable present cash value of the consideration; and
 - (ii) resolve that, in its opinion, the present cash value of the consideration is:
 - A fair and reasonable to the Company and all existing Shareholders; and
 - B not less than the amount to be credited in respect of the Shares. {S47(3) of the Act}

2.6 DIRECTORS CERTIFICATE ON PAYMENT OF SHARES ALREADY ISSUED

- (a) The Directors voting in favour of a resolution under clause 2.5(a)(ii) regarding the consideration payable in paying up in part or in full Shares previously issued must sign a certificate:
- (i) describing the consideration in sufficient detail to identify it; and
 - (ii) stating:
 - A the present cash value of the consideration and the basis for assessing it;
 - B that the present cash value of the consideration is fair and reasonable to the Company and to all existing Shareholders; and

- C that the present cash value of the consideration is not less than the amount to be credited in respect of the Shares. {S47(4) of the Act}

- (b) The Board must deliver a copy of a certificate that complies with sub-clause (a) above to the Registrar within 10 Working Days after it is given.

2.7 DEEMED PAYMENT OTHER THAN FOR CASH

For the purposes of clauses 2.3 and 2.5, Shares that are or are to be credited as paid up whether wholly or partly as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services. {S47(6) of the Act}

2.8 AMOUNT OWING ON ISSUE OF SHARES

Where money or other consideration is due to the Company on Shares in accordance with their terms of issue such an amount does not comprise a Call and no notice is required to be given to the Shareholder or other person liable under the terms of issue in order for the Company to enforce payment of the amount.

2.9 BONUS SHARES

The Board may authorise the allotment to Shareholders of Shares issued as fully or partly paid up from the assets of the Company. {S48 of the Act}

2.10 COMPANY PAYING UP PARTLY PAID SHARES

Subject to the Distribution meeting the Solvency Test and subject to clause 2.5 the Board may authorise the payment from the assets of the Company of any amount unpaid on Shares already issued by the Company.

2.11 STAPLED SECURITY STRUCTURE

Notwithstanding any other provision of this Constitution, the Shareholders acknowledge that the capital structure of the Company as at the date of adoption of this Constitution reflects the units held by the Shareholders (in their capacity as limited partners) in the LP ("Units"). The Shareholders agree that the capital structure of the Company shall at all times reflect the Units held by the Shareholders (in their capacity as limited partners) in the LP.

If at any time there is a change in the Units held by a Shareholder (in its capacity as limited partner) in the LP or a new limited partner is admitted to the LP, each Shareholder shall do all things necessary to ensure that the capital structure of the Company is amended accordingly (including by transferring or issuing the number of Shares equal to the percentage of the Units transferred or issued)

3. PURCHASE OF OWN SHARES

3.1 PURCHASE BY COMPANY OF ITS SHARES

The Company may, in accordance with and subject to sections 58 to 66, 107 and 110 to 112C of the Act, purchase or otherwise acquire its Shares.

3.2 CANCELLATION OF SHARES

Shares acquired by the Company pursuant to clause 3.1 will be deemed to be cancelled immediately on acquisition by the Company but any Shares so cancelled may be reissued by the Company. {S66 of the Act}

4. TRANSFER OF SHARES

4.1 ENTRY IN REGISTER

Subject to this clause 4 and the terms on which Shares are issued. Shares may be transferred by entry of the name of the transferee on the Register. {S84 of the Act}

4.2 SIGNED TRANSFER

For the purpose of transferring Shares a form of transfer signed by the present holder of the Shares or the holder's personal representative must be delivered to the Company or to the agent of the Company who maintains the Register. {Section 84(2) of the Act}

4.3 FORM OF TRANSFER

- (a) The form of transfer may be in any usual or common form, or any other form approved by the Board.
- (b) The form of transfer must be signed by the transferee if registration as holder of the Shares would impose a liability to the Company on the transferee. {S84(3) of the Act}

4.4 BOARD'S RIGHT TO REFUSE REGISTRATION OF TRANSFER

- (a) The Board may, within 30 Working Days of receipt of a form of transfer, refuse or delay the registration of the transfer if:
 - (i) the holder of the Shares has failed to pay an amount due to the Company in respect of those Shares; or
 - (ii) the Board considers that to effect the transfer would result in a breach of the law; or
 - (iii) the Board considers that it is not in the best interests of the Company to register the transfer, including, if the transfer would result in:
 - A the Company becoming a "code company" as defined in the Takeovers Code Approval Order 2000 (as amended from time to time), or having more than 45 share parcels;
 - B Shares held by "overseas persons" (as defined in the Overseas Investment Act 2005, as amended from time to time) equalling 15 per cent or more of the total Shares of the Company; or
 - C any increase in the percentage of Shares held by overseas persons (as defined above), if immediately prior to such transfer overseas persons hold 15 per cent or more

of the total Shares of the Company,

- (iv) the transfer would result in a breach of, or entitle any person to terminate, any contract entered into between the holder of the Shares and the Company, including any agreement between the shareholders; or

- (v) clause 6.3 (*Production of share certificate*) has not been complied with or the form of transfer has not been properly executed or does not comply with clause 4.3 (*Form of transfer*).

- (b) A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so and must be sent to the transferor and transferee within 5 Working Days of the date of the resolution. {S84 of the Act}

4.5 REGISTRATION OF TRANSFER

Subject to clause 4.3 (*Form of transfer*), on receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the Register as holder of the Shares, unless the Board has resolved to refuse or delay the transfer of the Shares in accordance with clause 4.4 (*Board's right to refuse registration of transfer*).

5. SHARE REGISTER

5.1 MAINTAIN REGISTER

- (a) The Company must maintain a Register which records all Shares issued by the Company and which states:
 - (i) whether under this Constitution or the terms of issue of any Shares there are any restrictions or limitations on their transfer, and
 - (ii) where any document that contains the restrictions or limitations may be inspected. {S87(1) of the Act}
- (b) The Company may appoint an agent to maintain the Register. {S87(3) of the Act}

5.2 CONTENTS OF REGISTER

The Register must state, with respect to each Class of Shares:

- (a) the names, alphabetically arranged, and the last known address of each person who is, and each person who has within the last 10 years been, a Shareholder;
- (b) the number of Shares of each Class of Shares held by each Shareholder within the last 10 years; and
- (c) the date of any:
 - (i) issue of Shares to;
 - (ii) repurchase or redemption of Shares from; or
 - (iii) transfer of Shares by or to,
 each Shareholder within the last 10 years, and in relation to the transfer, the name of the

person to or from whom the Shares were transferred. {S87(2) of the Act}

5.3 DIRECTORS' DUTY TO SUPERVISE REGISTER

It is the duty of each Director to take reasonable steps to ensure that the Register is properly kept and that Share transfers are promptly entered on it in accordance with clause 4.5 (*Registration of transfer*). {S90 of the Act}

5.4 REGISTER PRIMA FACIE EVIDENCE

Subject to section 91 of the Act (power of Court to rectify register), the entry of the name of a person in the Register as holder of a Share is prima facie evidence that the legal title to the Share is vested in that person. {S89 of the Act}

5.5 REGISTER EVIDENCE OF RIGHTS

The Company may treat the registered holder of a Share as the only person entitled to:

- (a) exercise the right to vote attaching to the Share;
- (b) receive notices in respect of the Share; and
- (c) receive a Distribution in respect of the Share; and
- (d) exercise the other rights and powers attaching to the Share. {S89(2) of the Act}

5.6 TRUST NOT TO BE REGISTERED OR RECOGNISED

- (a) No notice of trust, whether express, implied, or constructive may be entered on the Register. {S92 of the Act}
- (b) Except as required by law, no person will be recognised by the Company as holding any Share upon trust or holding any interest in a Share whether equitable, contingent, future or partial except the absolute legal right to the entirety of the Share vested in the registered holder.
- (c) A personal representative of a deceased holder of Shares is entitled to be entered in the Register as the holder of such Shares as a personal representative.
- (d) The registration of a trustee, executor or administrator as a personal representative of a former Shareholder does not constitute notice of a trust. {S93 of the Act}

6. SHARE CERTIFICATES

6.1 APPLICATION FOR SHARE CERTIFICATE

A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares.

6.2 ISSUE OF SHARE CERTIFICATE

- (a) On receipt of an application for a Share certificate under clause 6.1, the Company must within 20 Working Days after receiving the application send to the Shareholder a certificate stating the name of the Company the Class and number of Shares to which the certificate related.

- (b) If the application relates to some but not all of the applicant's Shares the Company must separate the Shares shown in the Register as owned by the applicant into separate parcels; one parcel being the Shares to which the Share certificate relates, and the other parcel being any remaining Shares. {S95 of the Act}

6.3 TRANSFER TO BE ACCOMPANIED BY CERTIFICATE

Notwithstanding clause 4 and section 84 of the Act (transfer of Shares), where a Share certificate has been issued, a transfer of the Shares to which it relates must not be registered by the Company, unless the form of transfer is accompanied by the Share certificate relating to the Share, or by evidence as to its loss or destruction, and, if required, an indemnity in a form required by the Board. {S95(5) of the Act}

6.4 SURRENDERED SHARE CERTIFICATE

Where Shares to which a Share certificate relates are transferred, and the Share certificate has been sent to the Company to enable registration of the transfer, the Share certificate will be cancelled and no further Share certificate issued except at the request of the transferee.

7. TRANSMISSION OF SHARES

7.1 RECOGNITION OF INTEREST IN SHARES

In the case of the death of a Shareholder, the survivor, where the deceased was a joint holder, and the legal personal representative of the deceased, where the deceased was a sole holder, will be the only persons recognised by the Company as having any title to the deceased's interest in the Shares. Nothing contained in this clause 7.1 will release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by the deceased with other persons.

7.2 RECOGNITION OF ASSIGNEE

Notwithstanding clause 5.6 (*Trust not to be registered or recognised*) the assignee of the property of a bankrupt Shareholder is entitled to be registered as the holder of the Shares held by the bankrupt.

8. CALL ON SHARES

8.1 BOARD MAY MAKE CALLS

Subject to the terms of issue of any Shares the Board may resolve to require the holders of unpaid or partly paid Shares to pay all or part of the amount unpaid on the Shares. The terms of the resolution of the Board will constitute the terms of the obligation to pay the Call including payment by instalments. The Call may be revoked or postponed at any time by the Board.

8.2 NOTICE OF CALLS

- (a) Subject to the terms of issue of any Class of Shares and to clause 8.4 (*Agreement to differentiate Calls*) unless all the holders of a Class of Shares subject to a Call unanimously agree, a Call or the postponement or revocation of a Call will apply to all the holders of Shares of the Class equally.
- (b) Notice of the Call must be given to the holder of the Shares at the time of the Call or to a

subsequent holder. Failure to give notice to a Shareholder will not invalidate a Call but it will not be payable by that Shareholder until the notice has been served on the Shareholder.

- (c) Notice of a Call sent by post to a Shareholder to the address recorded in the Register as the address of the Shareholder will be deemed to have been received by the Shareholder the day following the date of the posting of the notice to the Shareholder.

8.3 LIABILITY FOR CALLS

- (a) The joint holders of Shares are jointly and severally liable to pay all Calls in respect of the Shares.
- (b) If a Call is not paid before or on the day appointed for payment the person from whom the sum is due will be liable to pay interest on the sum, from the day appointed for payment to the time of actual payment at such rate as the Board determines either at the time of the Call or subsequently.
- (c) The liability for a Call which has become due and payable attaches to the holder of the Shares for the time being recorded in the Register and not a prior holder of the Shares notwithstanding that at the date of the Call, or the date the Call fell due for payment another person was the holder of the Shares or that the notice of the Call was served on the then Shareholder and not the current holder of the Shares. {S100 of the Act}
- (d) Following the registration in the Register of a change of ownership of Shares in respect of which a Call has been made a notice of the Call is not required to be served on the new holder of the Shares.

8.4 AGREEMENT TO DIFFERENTIATE CALLS

The Board may, on the issue of Shares, by agreement with the Shareholders concerned, differentiate between the holders of the same Class as to the amount to be paid on the Shares and the times of payment.

9. SUSPENSION OF RIGHT TO DIVIDENDS, FORFEITURE AND LIEN

9.1 NOTICE OF SUSPENSION OF RIGHT TO DIVIDENDS

If a Shareholder fails to pay any Call or instalment of a Call on the day appointed for payment, 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 Dividends or other Distributions payable to the Shareholder until so much of the Call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment have been paid to the Company in full.

9.2 APPLICATION OF SUSPENDED DIVIDENDS

All Dividends and other 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 9.3(b).

9.3 LIFTING OF SUSPENSION OF RIGHT TO DIVIDENDS

- (a) When the total Dividends and Distributions withheld and applied under clause 9.2 equal the total amount owing under the Call the suspension of the right to Dividends and Distribution will be lifted, and all rights to be paid Dividends and Distributions on the Shares will resume.
- (b) The amount owing under the Call for the purpose of clauses 9.2 and 9.3 may include any interest which may have accrued and all expenses which may have been incurred by the Company by reason of non-payment by the Shareholder under the Call.

9.4 FORFEITURE

- (a) If a Shareholder fails to pay any Call or instalment of a Call on the day appointed for payment, the Board may at any time after that date serve notice on such Shareholder requiring payment of the amount unpaid together with any interest which may have accrued.
- (b) The notice must specify a date not earlier than 10 Working Days after the date of service of the notice on or before which the payment is to be made. The notice must also state that, if payment is not made by the specified date, the Shares in respect of which the Call or instalment of a Call is due will be liable to be forfeited.
- (c) If payment is not made by the date specified in the notice, any Share in respect of which the notice has been given may be forfeited, at any time before the required payment has been made, by a resolution of the Board to that effect. Such forfeiture will include all Dividends declared in respect of the forfeited Share and not paid before the forfeiture.
- (d) A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit, and may be cancelled at any time before a sale or disposition on such terms as the Board thinks fit. The net proceeds of the sale of any forfeited Shares (including any Dividends forfeited) is to be applied in or towards satisfaction of any unpaid Calls, instalments or any other money in respect of which the lien existed and the residue, if any, paid to the former holder of the Shares.
- (e) The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share, but remains liable to the Company for all money payable in respect of the forfeited Share.
- (f) A certificate signed by a Director stating that a Share in the Company has been duly forfeited on the date stated will be conclusive evidence of the facts stated in the certificate.
- (g) For giving effect to any sale of any forfeited Shares, the Board may authorise a person to transfer the Shares sold to the purchaser. The purchaser will be registered as the holder of the Shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the Shares be affected by an 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. If the certificate for the Shares is not delivered up to the Company the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered up.

9.5 LIEN

- (a) The Company has a first and paramount lien upon every Share registered in the name of the Shareholder (whether solely or jointly with others) and upon the proceeds of sale of those Shares for all money (whether presently payable or not) payable in respect of Shares held by the Shareholder and for all other money presently payable by the Shareholder to the Company on any account whatever and also for such amounts (if any) as the Company may be called upon to pay under any statute or regulation in respect of Shares of a deceased or other Shareholder, whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.
- (b) The lien extends to all Dividends from time to time declared in respect of the Shares.

9.6 SALE ON EXERCISE OF LIEN

- (a) The Company may sell in such manner as the Board thinks fit any Shares on which the Company has a lien but no sale may be made unless a sum in respect of which the lien exists is due and payable nor until the expiration of 10 Working Days after a notice in writing, stating and demanding payment of the amount due and payable in respect of which the lien exists has been given to the registered holder for the time being of the Share or the person entitled to that Share by reason of the registered holder's death or bankruptcy.
- (b) The net proceeds of the sale of any Shares sold for the purpose of enforcing a lien is to be applied in or towards satisfaction of any unpaid Calls, instalments or any other money in respect of which the lien existed and the residue, if any, paid to the former holder of the Shares.
- (c) A certificate signed by a Director stating that the power of sale provided in this clause 9 has arisen, and is exercisable by the Company under this Constitution, will be conclusive evidence of the facts stated in the certificate.
- (d) For giving effect to any sale enforcing a lien in purported exercise of the powers given in this Constitution, the Board may authorise some person to transfer the Shares sold to the purchaser. The purchaser will be registered as the holder of the Shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the Shares be affected by an 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. If the certificate for the Shares is not delivered up to the Company the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered up.

10. DISTRIBUTIONS

10.1 SOLVENCY TEST

- (a) Subject to clause 10.2 the Board may, if it is satisfied on reasonable grounds that the Company will, immediately after the Distribution, satisfy the Solvency Test, authorise a Distribution by the Company to Shareholders of any amount and to any Shareholder as it thinks fit.
- (b) The Directors who vote in favour of a Distribution must sign a certificate stating that in their opinion the Company will, immediately after the Distribution, satisfy the Solvency Test and stating the grounds for that opinion. {S4 and 52 of the Act}

10.2 DIVIDENDS PAYABLE PARI PASSU

- (a) Subject to clause 10.2(b) the Board may not authorise a Dividend:
 - (i) in respect of some but not all the Shares in a Class; or
 - (ii) that is of a greater value per Share in respect of some Shares of a Class than in respect of other Shares of that Class,

unless the amount of the Dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the holder of the Shares under this Constitution or under the terms of issue of the Shares. {S53 of the Act}

- (b) A Shareholder may, by notice in writing signed by or on behalf of the Shareholder, and given to the Company, waive his or her entitlement to receive a Dividend. {S53(3) of the Act}
- (c) If all the Shareholders of the same Class concur in writing in respect of each proposed Dividend the Company may pay a Dividend which is distributed other than in accordance with clause 10.2(a). {S107(1) of the Act}

10.3 BONUS SHARES IN LIEU OF DIVIDEND

The Board may issue Shares to any Shareholders who have agreed to accept the issue of Shares wholly or partly in lieu of a proposed Dividend or proposed future Dividends if:

- (a) the right to receive Shares wholly or partly in lieu of the proposed Dividend or proposed future Dividends has been offered to all Shareholders of the same Class on the same terms; and
- (b) if all Shareholders elected to receive the Shares in lieu of the proposed Dividend, relative voting or Distribution rights, or both, would be maintained; and
- (c) the Shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
- (d) the Shares issued to each Shareholder are issued on the same terms and subject to the same rights as the Shares issued to all Shareholders in that Class who agree to receive the Shares; and

- (e) the provisions of section 47 of the Act are complied with by the Board.

{S54 of the Act}

10.4 DISCOUNTS TO SHAREHOLDERS

- (a) The Board may pursuant to a discount scheme offer Shareholders discounts by the Company in respect of some or all of goods sold or services provided by the Company.
- (b) Subject to clause 10.4(d) the discount scheme must be one where the Board has previously resolved that the proposed discounts are:
 - (i) fair and reasonable to the Company and all Shareholders, and
 - (ii) will be available to all Shareholders or all Shareholders of the same Class on the same terms.
- (c) The discount scheme may not be approved or continued by the Board unless the Board is satisfied on reasonable grounds that the Company will satisfy, or is satisfying, the Solvency Test.
- (d) If all Shareholders of the Class of Shares to which a proposed discount scheme would apply agree in writing, the scheme may be put into effect notwithstanding it does not comply with clause 10.4(b). {S55 and 107(1) of the Act}

10.5 FINANCIAL ASSISTANCE ON ACQUISITION OF SHARES

The Company may, subject to and in accordance with sections 76 to 81, 107(1)(e) and 108 of the Act, give financial assistance to a person for the purpose of, or in connection with, the purchase of Shares issued, or to be issued by the Company, or by its holding company, whether directly or indirectly. {S76 of the Act}

PART III

SHAREHOLDERS' RIGHTS AND OBLIGATIONS

11. STATEMENT OF SHAREHOLDER RIGHTS

11.1 ISSUE OF STATEMENT OF RIGHTS TO SHAREHOLDER

The Company must issue to a Shareholder, on request, a statement that sets out:

- (a) the Class of Shares held by the Shareholder, the total number of Shares of that Class issued by the Company, and the number of Shares of that Class held by the Shareholder;
- (b) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the Shares held by the Shareholder; and
- (c) the relationship of the Shares held by the Shareholder to other Classes of Shares.

11.2 COMPANY NOT OBLIGED TO ISSUE STATEMENT

The Company is not obliged to provide a Shareholder with a statement, pursuant to clause 11.1, if:

- (a) a statement has been provided within the previous 6 Months;
- (b) the Shareholder has not acquired or disposed of Shares since the previous statement was provided;
- (c) the rights attached to the Shares have not been altered since the previous statement was provided; and
- (d) there are no special circumstances which would make it unreasonable for the Company to refuse the request.

11.3 STATEMENT NOT EVIDENCE

A statement issued pursuant to clause 11.1 must state in a prominent place that it is not evidence of title to the Shares or of the matters set out in. {S83 of the Act}

12. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

12.1 POWERS RESERVED TO SHAREHOLDERS

- (a) Powers reserved to Shareholders by the Act or by this Constitution may be exercised:
 - (i) at an Annual Meeting or a Special Meeting; or
 - (ii) by a resolution in lieu of a meeting pursuant to clause 13.3 (*Resolution in lieu of meeting*).
- (b) Unless otherwise specified in the Act or this Constitution, a power reserved to Shareholders may be exercised by an Ordinary Resolution. {S104 and 105 of the Act}

12.2 SPECIAL RESOLUTIONS

When Shareholders exercise a power to approve any of the following that power may only be exercised by a Special Resolution:

- (a) an alteration to or revocation of this Constitution or the adoption of a new Constitution;
- (b) a Major Transaction;
- (c) an Amalgamation;
- (d) the liquidation of the Company.

Any decision made by Special Resolution pursuant to this clause may be rescinded only by a Special Resolution, provided that a resolution to put the Company into liquidation cannot be rescinded. {S106 of the Act}

12.3 MANAGEMENT REVIEW BY SHAREHOLDERS

- (a) A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders.

- (b) A meeting of Shareholders may pass a resolution relating to the management of the Company.
- (c) Notwithstanding section 128 of the Act (management of company by board) or any other clause of this Constitution, a resolution relating to the management of the Company and passed at a meeting of Shareholders, in accordance with clause 12.3(b), is not binding on the Board.

12.4 DISSENTING SHAREHOLDER MAY REQUIRE COMPANY TO PURCHASE SHARES

- (a) Where:
 - (i) a Shareholder is entitled to vote on the exercise of one or more of the powers set out in:
 - A clause 12.2(a) (alteration to constitution) and the proposed alteration imposes or removes a restriction on the activities of the Company; or
 - B clause 12.2(b) or (c) (Major Transaction or an Amalgamation); and
 - (ii) the Shareholders resolve to exercise the power; and
 - (iii) the Shareholder casts all the votes attached to Shares registered in the Shareholder's name and having the same beneficial owner against the exercise of the power; or
 - (iv) the resolution to exercise the power was passed under section 122 of the Act and the Shareholder did not sign the resolution,

that Shareholder is entitled to require the Company to purchase those Shares in accordance with section 111 of the Act. {S110 of the Act}

- (b) Within 20 Working Days of receiving a notice from a Shareholder given under clause 12.4(a) the Board must:
 - (i) agree to buy the Shares of the Shareholder giving the notice; or
 - (ii) arrange for some other person to buy the Shares; or
 - (iii) apply to the Court under section 114 or section 115 of the Act; or
 - (iv) arrange, before taking the action concerned, for the Special Resolution entitling the Shareholder to give the notice to be rescinded by a Special Resolution, or decide in the appropriate manner not to take the action concerned; and
 - (v) give written notice to the Shareholder of the Board's decision under this clause.
- (c) Where the Board agrees, pursuant to clause 12.4(b)(i) to purchase the Shares it must comply with section 112 of the Act. {S111 and 112 of the Act}

12.5 SHAREHOLDER PROPOSALS

- (a) 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 the Shareholders at which the Shareholder is entitled to vote.
- (b) 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 a proposed resolution to Shareholders entitled to receive notice of the meeting.
- (c) If the notice is received by the Board not less than 5 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.
- (d) If the notice is received by the Board less than 5 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.
- (e) 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 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.
- (f) The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous, or vexatious.
- (g) 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. {Clause 9 of the First Schedule to the Act}

13. MEETINGS OF SHAREHOLDERS

13.1 ANNUAL MEETING

- (a) The Board must, in accordance with section 120 of the Act (annual meetings of Shareholders), call an Annual Meeting of Shareholders to be held:
 - (i) once in each calendar year (other than in the year of its incorporation);
 - (ii) not later than 6 Months after the Balance Date of the Company; and

- (iii) not later than 15 Months after the previous Annual Meeting, or in respect of its first Annual Meeting not later than 18 Months after its date of incorporation.
- (b) The Company must hold the Annual Meeting on the date on which it is called to be held.
- (c) However, it is not necessary for the Board to call, or for the Company to hold, an annual meeting of Shareholders if—
 - (i) there is nothing required to be done at that meeting; and
 - (ii) the Board has resolved that it is in the interests of the Company to rely on this subsection (having regard to whether there is any particular issue that the Shareholders should be given an opportunity to discuss, comment on, or ask questions about).

{S120 of the Act}

13.2 SPECIAL MEETINGS

A Special Meeting of Shareholders entitled to vote on an issue:

- (a) may be called at any time by the Board; and
- (b) must be called by the Board on the written request of Shareholders holding not less than 5 percent of the votes entitled to be cast on the issue. {S121 of the Act}

13.3 RESOLUTION IN LIEU OF MEETING

- (a) Subject to clause 13.3(b) a resolution in writing signed by not less than 75 per cent of the Shareholders (or where it is greater, the percentage required for the passing of a Special Resolution) who would be entitled to vote on that resolution at a meeting of Shareholders who together hold not less than 75 per cent (or where it is greater, the percentage required for the passing of a Special Resolution) of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.
- (b) A resolution pursuant to sections 207I(3) or 207J(3) of the Act to opt out of compliance with certain provisions of the Act may be passed as provided in clause 13.3(a), provided that the resolution must be signed by the Shareholders who together hold not less than 95% of the votes entitled to be cast on the resolution.
- (c) Within 5 Working Days of a resolution being passed under clause 13.3(a) or 13.3(b) the Company must send a copy of the resolution to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed. {S122 of the Act}

13.4 CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- (a) If the Directors have elected a Chairperson and that Chairperson is present at a meeting of Shareholders he or she must chair the meeting

- (b) If no Chairperson has been elected or if, at any meeting of Shareholders, the Chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting. {Clause 1 of the First Schedule to the Act}

13.5 SHAREHOLDERS ENTITLED TO NOTICE OF MEETING

- (a) The Shareholders entitled to receive notice of a meeting of Shareholders are the Shareholders of the relevant Class:
 - (i) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice, those Shareholders whose names are registered in the Register on that date; or
 - (ii) if the Board does not fix a date for the purpose of establishing an entitlement to receive the notice of meeting, those Shareholders whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.
- (b) A date fixed by the Board under clause 13.5(a)(i) must not precede by more than 30 Working Days nor less than 10 Working Days the date on which the meeting is to be held. {S125(3) and (4) of the Act}

13.6 NOTICE OF MEETING

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

13.7 CONTENTS OF NOTICE

The notice referred to in clause 13.6 must state:

- (a) 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) the text of any Special Resolution to be submitted to the meeting; and
- (c) the text of any resolution for the purposes of section 207I or 207J of the Act to be submitted to the meeting; and
- (d) 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. {Clause 2 of the First Schedule to the Act}

13.8 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. {Clause 2(3) of the First Schedule to the Act}

13.9 METHOD OF HOLDING MEETING

A meeting of Shareholders may be held by a quorum of the Shareholders:

- (a) being assembled together at the time and place appointed for the meeting; or
- (b) participating in the meeting by means of audio, audio and visual, or electronic; or
- (c) by a combination of both methods described in paragraphs (a) and (b). {Clause 3 of the First Schedule to the Act}

13.10 ADJOURNMENTS

If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. {Clause 2 of the First Schedule to the Act}

13.11 MINUTES

- (a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Shareholders.
- (b) Minutes which have been signed correct by the Chairperson of the meeting are prima facie evidence of the proceedings. {Clause 8 of the First Schedule to the Act}

14. VOTING AT MEETINGS

14.1 QUORUM

- (a) A quorum for a meeting of Shareholders is present if those Shareholders or their proxies who are present or who have cast postal votes are between them are entitled to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- (b) No business may be transacted at a meeting of Shareholders if a quorum is not present.
- (c) If a quorum is not present within 30 minutes after the time appointed for the meeting:
 - (i) in the case of a meeting called pursuant to a requisition of Shareholders under clause 13.2(b) the meeting is dissolved;
 - (ii) 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 meeting, the Shareholders present or their proxies are a quorum. {Clause 4 of the First Schedule to the Act}

14.2 VOTING

- (a) In the case of a meeting of Shareholders held under clause 13.9(a) 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:
 - (i) voting by voice; or

- (ii) voting by show of hands.

- (b) In the case of a meeting of Shareholders held under clause 13.9(b) or (c), unless a poll is demanded, voting at the meeting shall be by any method permitted by the Chairperson of the meeting.
- (c) 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 14.2(d).
- (d) At a meeting of Shareholders a poll may be demanded by:
 - (i) the Chairperson; or
 - (ii) not less than 5 Shareholders having the right to vote at the meeting; or
 - (iii) 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
 - (iv) by 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.
- (e) A poll may be demanded either before or after the vote is taken on a resolution.
- (f) 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.
- (g) The Chairperson of a Shareholders' meeting is not entitled to a casting vote. {Clause 5 of the First Schedule to the Act}

14.3 PROXIES AND REPRESENTATIVES

- (a) A Shareholder may exercise the right to vote either by being present or by proxy.
- (b) A proxy for a Shareholder is entitled to attend and be heard and vote at a meeting of Shareholders as if the proxy were the Shareholder.
- (c) A proxy must be appointed by notice in writing signed by or, in the case of an electronic notice, sent by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.
- (d) A Shareholder may appoint more than 1 proxy for a particular meeting, provided that more than 1 proxy is not appointed to exercise the rights attached to a particular Share held by the Shareholder.
- (e) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced no later than 24 hours before the start of the meeting. {Clause 6 of the First Schedule to the Act}
- (f) 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. {Clause 10 of the First Schedule to the Act}

14.4 POSTAL VOTES

A Shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of the Act.

14.5 VOTES OF JOINT HOLDERS

Where 2 or more persons are recorded in the Register as the holder of a Share, the vote of the person named first in the Register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders. {Clause 11 of the First Schedule to the Act}

14.6 UNPAID CALLS

If a sum due to the Company in respect of a Share has not been paid, that Share may not be voted at a Shareholders' meeting other than at a meeting of an Interest Group. {Clause 12 of the First Schedule to the Act}

14.7 SHAREHOLDER PARTICIPATION BY ELECTRONIC MEANS

- (a) For the purposes of this clause 14, a Shareholder, or the Shareholder's proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if—
 - (i) the Board approves those means; and
 - (ii) the Shareholder, proxy, or representative complies with any conditions imposed by the Board in relation to the use of those means (including, for example, conditions relating to the identity of the Shareholder, proxy, or representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).
- (b) To avoid doubt, participation in a meeting includes participation in any manner specified in First Schedule of the Act or permitted by this Constitution.

PART IV

DIRECTORS

15. APPOINTMENT AND REMOVAL

15.1 NUMBER OF DIRECTORS

Subject to clause 19.11 (*Continuing Directors*) the number of Directors may not be less than 1 nor more than 10.

15.2 FIRST DIRECTORS

The first Directors are the persons named as the Directors in the application for incorporation of the Company, or if no persons are so named the first Directors are the Directors first appointed under clause 15.3. {S153 of the Act}

15.3 APPOINTMENT AND REMOVAL BY NOTICE

- (a) Subject to clauses 15.2 and 15.4 the Directors are the persons appointed from time to time as Directors by a notice in writing approved by the holders of 51% of the Ordinary Shares and who have not been removed or resigned or disqualified from office under this Constitution.
- (b) A Director may resign office by signing a written notice of resignation and delivering it to the address for service of the Company. {S157(2) of the Act}
- (c) A Director may be removed from office at any time by a notice in writing approved by the holders of 75% of the Ordinary Shares.
- (d) A notice given under clauses 15.3(a), 15.3(b) or 15.3(c) takes effect upon receipt of it at the registered office of the Company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed or approved by Shareholders giving the notice.
- (e) A Director holds office until his or her retirement, disqualification or removal in accordance with this Constitution.

15.4 APPOINTMENT AND REMOVAL OF DIRECTORS BY RESOLUTION

- (a) In addition to the appointment or removal of Directors under clauses 15.3(a), 15.3(b) and 15.3(c) a Director may be appointed or removed from office by an Ordinary Resolution.
- (b) A resolution to appoint 2 or more Directors may be voted on as one resolution without each appointment being voted individually. {S155 of the Act}
- (c) A notice of meeting at which the removal of a Director will be considered must state that the purpose of the meeting is the removal of the Director. {S156 of the Act}

15.5 DISQUALIFICATION

A person will be disqualified from holding the office of Director if he or she:

- (a) becomes disqualified from being a Director pursuant to section 151 of the Act; or
- (b) is prohibited from being a Director or promoter of or being concerned with or taking part in the management of a company under sections 382, 383, 385 or 385AA of the Act; or
- (c) is prohibited from being a Director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the FMCA or the Takeovers Act 1993; or
- (d) dies; or
- (e) becomes subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988; or

- (f) is under 18 years of age; or
- (g) is an undischarged bankrupt.

15.6 SHAREHOLDING QUALIFICATION

A Director is not required to hold Shares.

15.7 ALTERNATE DIRECTORS

- (a) Every Director may by notice given in writing to the Company, appoint any person (including any other Director) to act as an Alternate Director in the Director's place either generally or in respect of a specified meeting or meetings during the Director's absence or inability to act as a Director and at the Director's discretion by notice in writing to the Company, may remove the Director's Alternate Director. On any such appointment being made the Alternate Director may, while acting in the place of the Director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as Chairperson) of the Director appointing the Alternate Director and is subject in all respects to the same terms and provisions as that Director except as regards remuneration and except as regards the power to appoint an Alternate Director under this Constitution. For the purpose of establishing a quorum of the Board an Alternate Director is deemed to be the Director appointing him or her.
- (b) The notice of appointment of an Alternate Director should include an address for service of notice of meetings of Directors. Failure to give an address will not invalidate the appointment but notice of meetings of the Board need not be given to the Alternate Director until an address is provided to the Company.

15.8 AGREEMENT PROCESS TO PREVAIL

Clauses 15.3 and 15.4 shall not apply if a separate process is provided for in an agreement between the Shareholders of the Company. Clause 15.7 shall not apply if inconsistent with a process for appointment of Alternate Directors in such an agreement.

16. INDEMNITY AND INSURANCE

16.1 INDEMNITY OF DIRECTORS AND EMPLOYEES

- (a) The Board may cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by him or her in any proceeding:
 - (i) that relates to liability for any act or omission in his or her capacity as a Director or employee; and
 - (ii) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- (b) The Board may cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:
 - (i) liability to any person other than the Company or related company for any act or omission in his or her capacity as a Director or employee; or

- (ii) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to or any liability under paragraph 16.1(b)(i),

not being a 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 (duty to act in good faith and in the best interests of the Company) or, in the case of any employee, of any fiduciary duty owed to the Company or related company. {S162(3) and (4) of the Act}

- (c) The Board must ensure that particulars of any indemnity given to any Director or employee of the Company or related company are forthwith entered in the Interests Register. {S162(7) of the Act}

16.2 INSURANCE OF DIRECTORS AND EMPLOYEES

- (a) The Board may, subject to section 162 of the Act, cause the Company to effect insurance for Directors and for employees of the Company or a related company in respect of:
 - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or
 - (ii) costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or
 - (iii) costs incurred by a Director or employee in defending any criminal proceedings:
 - A that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee; and
 - B in which he or she is acquitted.
- (b) The Directors who vote in favour of authorising the effecting of insurance under clause 16.2(a) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.
- (c) The Board must ensure that particulars of any insurance effected for any Director or employee of the Company or related company are forthwith entered in the Interests Register. {S162(7) of the Act}

16.3 DEFINITIONS

For the purpose of this clause 16 "Director" includes a former Director and "employee" includes a former employee.

17. POWERS AND DUTIES OF THE BOARD

17.1 POWERS OF THE BOARD

- (a) The business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- (b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires

those powers to be exercised by the Shareholders or any other person. {S128 of the Act}

17.2 DELEGATION BY THE BOARD

- (a) The Board may delegate to a committee of Directors, a Director, or an employee of the Company or any other person any one or more of its powers other than the powers referred to in the following sections of the Act:
 - (i) S23(1)(c) (change of company name);
 - (ii) S42 (issue of shares);
 - (iii) S44 (shareholder approval to the issue of shares);
 - (iv) S47 (consideration for the issue of shares);
 - (v) S49 (consideration for the issue of options and convertible financial products);
 - (vi) S52 (distributions);
 - (vii) S54 (issue of shares in lieu of dividends);
 - (viii) S55 (shareholder discounts);
 - (ix) S60 (offers to acquire shares);
 - (x) S61 (special offers to acquire shares);
 - (xi) S63 (stock exchange acquisitions subject to prior notice to shareholders);
 - (xii) S65 (stock exchange acquisitions not subject to prior notice to shareholders);
 - (xiii) S69 (redemption of shares at the option of a company);
 - (xiv) S71 (special redemptions of shares);
 - (xv) S76 (provision of financial assistance);
 - (xvi) S78 (special financial assistance);
 - (xvii) S80 (financial assistance not exceeding 5 percent of shareholders' funds);
 - (xviii) S84(4) (transfer of shares);
 - (xix) S187 (change of registered office);
 - (xx) S193 (change of address for service);
 - (xxi) S221 (manner of approving an amalgamation proposal);
 - (xxii) S222 (short form amalgamations). {S130 of the Act}
- (b) The Board is responsible for the exercise by any delegate of a power delegated under this clause 17.2 as if the power had been exercised by the Board, unless the Board:
 - (i) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the Directors by the Act and this Constitution; and

- (ii) has monitored by means of reasonable methods properly used, the exercise of the power by the delegate. {S130 of the Act}

17.3 MAJOR TRANSACTIONS

The Board may not procure or permit the Company to enter into a Major Transaction unless the transaction is:

- (a) approved by a Special Resolution; or
- (b) is made contingent on approval by a Special Resolution. {S129 of the Act}

17.4 KEEP ACCOUNTS

The Board must keep books of account in the manner and to the extent required by the applicable legislation.

17.5 ANNUAL RETURN

- (a) The Board must ensure that the Registrar receives each year, during the Month allocated to the Company for the purpose, an annual return in the prescribed form.
- (b) The annual return must be dated as at a day within the Month during which the return is required to be received by the Registrar. The information in it must be compiled as at that date. {S214 of the Act}

17.6 KEEP MINUTES AND RECORDS

- (a) The Board must cause minutes of all resolutions and proceedings of all meetings of the Company and of the Board to be duly entered in books to be from time to time provided for the purpose and in particular must cause to be recorded in such minutes:
 - (i) the names of the Directors present at each meeting of the Board; and
 - (ii) all resolutions of the Board and of any meeting of the Company; and
 - (iii) all appointments of officers of the Company; and
 - (iv) all bills, notes, debentures, mortgages, and charges authorised to be drawn, accepted, made, given, or executed and all instruments which, if entered into by a natural person, would, by law, be required to be by deed.
- (b) Similar minutes must be made and entered of all resolutions and proceedings of any committee. The minutes of any meeting of the Company or of the Board or of any committee (if purporting to be signed by the chairman of such meeting or of the next succeeding meeting) are receivable in all Courts and by any person authorised to take evidence as prima facie evidence of the matters stated in such minutes.

18. DIRECTORS DUTIES

18.1 TO ACT IN GOOD FAITH AND IN THE BEST INTERESTS OF THE COMPANY

- (a) A Director, when exercising powers or performing duties, must act in good faith and

in what the Director believes to be the best interests of the Company.

- (b) If the Company is a wholly-owned subsidiary a Director may, when exercising powers or performing duties as a Director, act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company.
- (c) If the Company is a subsidiary (but not a wholly-owned subsidiary) a Director may when exercising powers or performing duties as a Director with the prior agreement of the Shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company.
- (d) If the Company is incorporated to carry out a joint venture between its Shareholders the Director may, when exercising powers or performing duties as a Director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a Shareholder or Shareholders, even though it may not be in the best interests of the Company. {S131 of the Act}
- (e) Nothing in this clause 18.1 limits the power of a Director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business. {S132 of the Act}

18.2 POWERS TO BE EXERCISED FOR PROPER PURPOSE

A Director must exercise a power for a proper purpose. {S133 of the Act}

18.3 DIRECTORS TO COMPLY WITH ACT AND CONSTITUTION

A Director must not act, or agree to the Company acting, in a manner that contravenes the Act or this Constitution. {S134 of the Act}

18.4 RECKLESS TRADING

A Director must not:

- (a) agree to the business of the Company being carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors: or
- (b) cause or allow the business of the Company to be carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors. {S135 of the Act}

18.5 DUTY IN RELATION TO OBLIGATIONS

A Director must not agree to the Company incurring an obligation unless the Director believes at that time on reasonable grounds that the Company will be able to perform the obligation when it is required to do so. {S136 of the Act}

18.6 DIRECTOR'S DUTY OF CARE

A Director, when exercising powers or performing duties as a Director, must exercise the care, diligence, and skill that a reasonable Director would

exercise in the same circumstances taking into account, but without limitation, the:

- (a) nature of the Company; and
- (b) nature of the decision; and
- (c) position of the Director and the nature of the responsibilities undertaken by him or her. {S137 of the Act}

19. PROCEEDINGS OF THE BOARD

19.1 CHAIRPERSON

- (a) The Directors may elect one of their number as Chairperson of the Board.
- (b) 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.
- (c) If no Chairperson is elected, or if at a meeting of the Board the Chairperson is not present within 5 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.

19.2 NOTICE OF MEETING

- (a) 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.
- (b) 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.
- (c) 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.
- (d) Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been given on the day three days following the day the letter is posted.

19.3 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.

19.4 QUORUM

- (a) A quorum for a meeting of the Board (other than an adjourned meeting) is a majority of the Directors.
- (b) No business may be transacted at a meeting of Directors if a quorum is not present.

- (c) In accordance with clause 15.7 (*Alternate Directors*) an Alternate Director present at a meeting may be included for the purpose of establishing a quorum.
- (d) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned by two Working Days at the same time and place, or to such other place or later date and time as the Directors present may appoint. Notice of the time and place of the adjourned meeting must be given to all Directors. 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.

19.5 VOTING

- (a) Every Director has one vote.
- (b) The Chairperson does not have a casting vote.
- (c) 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.
- (d) 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 dissents from, or votes against the resolution at the meeting.
- (e) A Director may vote in respect of any transaction in which the Director is interested and if the Director does so the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.
- (f) An Alternate Director may attend and vote at meetings of the Board in accordance with and subject to clause 15.7(a) if the Director that has appointed the Alternate Director is absent from the meeting.
- (g) Notwithstanding clause 19.5(a), a Director may have more than one vote where specified in an agreement entered into between all of the Shareholders.

19.6 MINUTES

The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.

19.7 UNANIMOUS RESOLUTION

- (a) A resolution in writing, signed or assented to by all Directors then entitled to vote on the relevant resolution, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- (b) 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.
- (c) A copy of any such resolution must be entered in the minute book of Board proceedings.

19.8 AGREEMENT AND OTHER PROCEDURES

The rules governing proceedings of the Board are (to the extent permitted under the Act) subject to any contrary provisions in any agreement entered into between the Shareholders.

19.9 OTHER PROCEEDINGS

Except as provided in this clause 19 the Board may regulate its own procedure. {Clause 8 of the Third Schedule to the Act}

19.10 ALTERNATE DIRECTORS

If, to the knowledge of the Company, a Director 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 15.7(b) (*Alternate Directors*)) be given to the Alternate Director.

19.11 CONTINUING DIRECTORS

The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors but if their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors will comprise the Board only for the purpose of increasing the number of Directors to the minimum number or for summoning a General Meeting of the Company.

20. INTERESTED DIRECTORS

20.1 MEANING OF "INTERESTED"

- (a) A Director is interested in a transaction to which the Company is a party if, and only if, the Director:
 - (i) is a party to, or will or may derive a material financial benefit from, the transaction; or
 - (ii) has a material financial interest in another party to the transaction; or
 - (iii) is a Director, officer, or trustee of another party to, or person who will or may derive a material, financial benefit from, the transaction, not being a party or person that is:
 - A the Company's holding company being a holding company of which the Company is a wholly-owned subsidiary; or
 - B a wholly-owned subsidiary of the Company; or
 - C a wholly-owned subsidiary of a holding company of which the Company is also a wholly-owned subsidiary; or
 - (iv) is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or
 - (v) is otherwise directly or indirectly materially interested in the transaction.
- (b) A Director is not interested in a transaction to which the Company is a party if the

transaction comprises only the giving by the Company of security to a third party which has no connection with the Director, at the request of the third party, in respect of a debt or obligation of the Company for which the Director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security. {S139 of the Act}

20.2 NOTICE OF INTEREST TO BE GIVEN

- (a) A Director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, and, if the Company has more than one Director, disclose to the Board of the Company:
 - (i) if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
 - (ii) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- (b) For the purposes of clause 20.2(a) a general notice entered in the Interests Register or disclosed to the Board to the effect that a Director is a Shareholder, Director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction. {S140 of the Act}

20.3 AVOIDANCE OF TRANSACTIONS

- (a) A transaction entered into by the Company in which a Director is interested may be avoided by the Company within 3 Months of the transaction being disclosed to all the Shareholders (whether by means of the Company's annual report or otherwise).
- (b) A transaction cannot be avoided if the Company receives fair value under it. {S141 of the Act}

20.4 AUTHORITY TO REMUNERATE DIRECTORS

- (a) The Board may authorise:
 - (i) the payment of remuneration or the provision of other benefits by the Company to a Director for services as a Director or in any other capacity;
 - (ii) the payment by the Company to a Director or former Director of compensation for loss of office;
 - (iii) the making of loans by the Company to a Director;
 - (iv) the giving of guarantees by the Company for debts incurred by a Director; or
 - (v) the entering into of a contract to do any of the things set out in sub-clauses (i)-(iv) (inclusive) of this clause;

if the Board is satisfied that to do so is fair to the Company.

- (b) The payment of remuneration or the giving of any other benefit to a Director in accordance with a contract authorised pursuant to clause 20.4(a) need not be separately authorised by the Board.
- (c) The Board must ensure that forthwith after authorising any payment, loan, guarantee, or contract made pursuant to clause 20.4(a) particulars are entered in the Interests Register.
- (d) The Directors who vote in favour of authorising a payment, loan, guarantee or contract under clause 20.4(a) must sign a certificate stating that, in their opinion, the making of the payment or loan or the giving of the guarantee, or the entering into of the contract is fair to the Company and the reasons for that opinion. {S161 of the Act}

20.5 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 under the Company (other than the office of auditor) in conjunction with the Director's office of Director for such remuneration and otherwise) as the Board may determine.
- (c) Other than as provided in clause 20.3 a Director is not disqualified by virtue of his or her office from entering into any transaction with the Company and any such transaction will be valid and enforceable to the same extent if he or she were not a Director and not in a fiduciary relationship with the Company.

20.6 INTERESTED DIRECTOR MAY VOTE

- (a) Subject to the terms of any agreement entered into between the Shareholders, a Director who is interested in a transaction entered into, or to be entered into, by the Company, may:
 - (i) vote on a matter relating to the transaction; and
 - (ii) attend a meeting of Directors at which a matter relating to the transaction arises and be included among the Directors present at the meeting for the purpose of a quorum; and
 - (iii) sign a document relating to the transaction on behalf of the Company; and
 - (iv) do any other thing in his or her capacity as a Director in relation to the transaction –

as if the Director was not interested in the transaction. {S144 of the Act - Interested Director May Vote}

21. MANAGING DIRECTORS

21.1 APPOINTMENT AND DISMISSAL

- (a) The Board may from time to time appoint one or more of their body to the office of Managing Director or Managing Directors of the Company either for a fixed term or without any limitation as to the term.
- (b) Every Managing Director is liable to be dismissed or removed by a resolution of the Board. The Board may enter into any agreement on behalf of the Company with any person who is or is about to become a Managing Director with regard to the length and terms of the Managing Director's employment, on the basis that the remedy of any such person for any breach of the agreement will be in damages only and the Managing Director will not have a right or claim to continue in office as Managing Director contrary to the will of the Board.

21.2 TERMINATION OF EMPLOYMENT

A Managing Director is, subject to the terms of any contract, subject to the same provisions as regards resignation, removal and disqualification as the other Directors and if the Managing Director ceases to hold the office of Director for any reason the Managing Director will immediately cease to be a Managing Director.

22. METHOD OF CONTRACTING

A deed to be entered into by the Company may be signed on behalf of the Company by any of the following:

- (a) 2 or more Directors;
- (b) a Director, or other person or persons authorised to do so by the Board, whose signature or signatures must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with section 181 of the Act.

23. AGREEMENT BETWEEN SHAREHOLDERS TO PREVAIL TO EXTENT OF INCONSISTENCY

Any agreement between the Shareholders (including that agreement as amended or superseded from time to time) shall prevail over this Constitution to the extent of any conflict or inconsistency (whether or not expressly stated in this Constitution). The Shareholders and Directors of the Company shall be obliged to comply with the terms of any such agreement.

24. PURPOSE

The sole purpose of the Company is to act as the General Partner of the LP.

