

# Constitution

---

**WINDFLOW TECHNOLOGY LIMITED**

**lane neave.**

## Table of Contents

1. Definitions and Interpretation .....	1
2. Issue of Shares .....	3
3. Alteration of Shareholder's rights .....	4
4. Purchase of Own Shares .....	4
5. Calls on Shares .....	4
6. Liens on shares .....	5
7. Forfeiture of Shares .....	6
8. Transfer of Shares .....	7
9. Transmission of Shares .....	9
10. Meetings of Shareholders .....	9
11. Proxies and Corporate Representatives .....	12
12. Postal votes .....	13
13. Shareholder proposals .....	13
14. Appointment and removal of directors .....	14
15. Directors' meetings .....	15
16. Interested transactions .....	17
17. Directors' remuneration and other benefits .....	18
18. Indemnity and insurance .....	18
19. Distributions .....	18
20. Financial assistance on acquisition of shares .....	19
21. Dispute Resolution .....	19
22. Accounts .....	20
23. Change of Name .....	20
24. Method of contracting .....	20
25. Liquidation .....	21
26. Notices .....	21
27. Removal from the Register .....	21
28. Governing Law and Jurisdiction .....	22

DATE

2018

## 1. Definitions and Interpretation

---

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

**Act** means the Companies Act 1993;

**Alternate Director** means a person appointed by a Director in accordance with clause 14.7 to act in the place of that Director;

**Board** in relation to the Company means those Directors who number not less than the required quorum acting together as a board of directors;

**Class** means a class of Shares having attached to them identical rights, privileges, limitations and conditions;

**Company** means Windflow Technology Limited;

**Constitution** means this constitution of the Company and all amendments made to it from time to time;

**Director** means a person appointed as a director of the Company in accordance with this Constitution;

**Distribution** has the meaning set out in section 2(1) of the Act;

**Dividend** has the meaning set out in section 2(1) of the Act;

**Minimum Holding** means:

- (a) in relation to Shares, a holding of 1,000 units;
- (b) in relation to rights to Shares, the number that would, upon exercise, convert to 1,000 units;
- (c) in relation to any other securities, a holding with \$2,000.00 face value.

**Personal Representative** means in relation to:

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

**Representative** means a person appointed as a proxy or corporate representative under either of clauses 11.3 and 11.6 or a Personal Representative;

**Share** means a share issued, or to be issued, by the Company;

**Shareholder** means a person whose name is entered in the share register of the Company as the holder for the time being of one or more Shares;

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

**Subsidiary** means a subsidiary within the meaning of section 5(1) of the Act and an entity treated as a subsidiary within the meaning of section 19 of the Financial Reporting Act 2013; and

**Working Day** means a day, other than a Saturday or a Sunday, on which banks are open for general business in Christchurch, New Zealand.

Where a word or expression contained in this Constitution is not defined above it shall bear the same meaning as in the Act at the date on which this Constitution becomes binding on the Company.

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

- 1.2.1 headings are for ease of reference only and will not be deemed to form any part of the context or affect the interpretation of this Constitution;
- 1.2.2 expressions defined in the main body of this Constitution bear the defined meanings in the whole of this Constitution;
- 1.2.3 the singular includes the plural and vice versa;
- 1.2.4 the decision of any person made in relation to this Constitution, or the exercise of any discretion by any person, requires that person to act reasonably;
- 1.2.5 a reference to a *person* is deemed to include:
  - (a) individuals, companies, corporations, bodies corporate, firms, partnerships, joint ventures, incorporated and unincorporated associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities; in each case whether or not having separate legal personality;
  - (b) the person's lawful executors, administrators, successors, and permitted substitutes (including persons taking by novation) and assigns; and
  - (c) the person's employees, agents and contractors and subcontractors;
- 1.2.6 a *clause* is a reference to a clause of this Constitution unless specifically stated otherwise;
- 1.2.7 references to a *statute* are to a New Zealand statute and include all regulations, orders, bylaws, codes and notices made under or pursuant to such a statute and include references to all amendments to that statute whether by subsequent statute or statute passed in substitution for the statute;
- 1.2.8 reference to a *month* or a *year* is to a calendar month or a calendar year respectively;
- 1.2.9 if a period of time is specified from a given day, or from the day of an act or event, the period of time is to be calculated exclusive of that day;

- 1.2.10 any reference to time and date is to a time and date in Christchurch, New Zealand unless a contrary intention is expressed;
  - 1.2.11 if an event must occur on a stipulated day which is not a Working Day then the stipulated day will be taken to be the next Working Day;
  - 1.2.12 another grammatical form of a defined word or expression has a corresponding meaning; and
  - 1.2.13 the meaning of general words is not limited by specific examples introduced by the words including, for example or similar expressions.
- 1.3 **Conflict between the Act and this Constitution:** The provision, word or expression in this Constitution prevails if there is any conflict between either:
- 1.3.1 a provision in this Constitution and a provision in the Act that is expressly permitted to be altered by the Constitution; or
  - 1.3.2 a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution.

## 2. Issue of Shares

---

- 2.1 **Board to Issue Shares:** Subject to clauses 2.2 and 2.3, and any special rights previously conferred on the holders of any existing Shares or Class of Shares, the Board may issue Shares at any time to any person and in any number it thinks fit.
- 2.2 **Pre-emptive Rights:** Subject to clause 2.3 and in accordance with section 45(3) of the Act, in exercising its powers under clause 2.1, the Board may issue Shares that rank as to voting or Distribution rights, or both, equally with or in priority to any existing Shares already issued by the Company if those Shares are first offered to the holders of existing Shares in a manner and on terms that would, if accepted, maintain relative voting and Distribution rights of those holders.
- 2.3 **Share Issues within 20% limit:** The Board may issue Shares otherwise than in accordance with clause 2.2, if the total number of Shares issued during the period of 12 months up to and including the date of issue will not exceed 20% of the total number of Shares of that Class on issue at the commencement of that period.
- 2.4 **Terms on which the Board may Issue Shares:** In exercising its powers under clause 2.1 and any special rights attached to any Shares for the time being issued, the Shares shall be under the control of the Board which may classify, issue, or otherwise dispose of Shares to such persons on such terms and conditions (including as to manner, consideration, timing and payment) as the Board thinks fit.
- 2.5 **Preference Shares:** Without limiting clauses 2.1 and 2.4, the Board may from time to time issue Shares which:
  - 2.5.1 are at the option of the Company or the holder of the Share, or on a fixed date, liable to be redeemed; and/or
  - 2.5.2 are at the option of the Company or the holder of the Share, convertible into other Shares,
 on such terms permissible under the Act.

## 2.6 Options:

- 2.6.1 Without limiting clauses 2.1 and 2.4, the Board may from time to time grant options to subscribe for Shares or convertible securities of the Company on such terms and conditions as to payment, transfer, exercise or otherwise, as shall be determined by the Board at the time such options are granted.
- 2.6.2 The Company shall maintain a register of holders of such options and subject to the terms of issue, every person whose name is entered in such register shall be entitled to a certificate specifying the options held by that person and stating on the reverse the conditions attaching to such options. The provisions of this Constitution applying in relation to Shares shall otherwise apply, with any necessary modification, to such register and to option certificates.
- 2.6.3 Notwithstanding any term of an option, no option shall confer on its holder a right to vote at any meeting of the Company, but this clause 2.6.3 shall not apply to a meeting of holders of options in their capacities as such.

- 2.7 **Convertible Securities:** Without limiting clauses 2.1 and 2.4, the Board may from time to time issue convertible securities upon such terms and conditions as the Board thinks fit including, at its discretion, the right for the holders of the convertible securities to participate in such manner and to such extent as the Board may determine, in any issue of Shares, debt securities, options, convertible securities or securities of any other Company offered to such holders of such Class or Classes of Shares or made in pursuance of any Distribution by the Company.

## 3. Alteration of Shareholder's rights

---

- 3.1 **Special Resolution required:** Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution, the Act, or the terms on which the Shares were issued, must be approved by a Special Resolution of each interest group.
- 3.2 **Meetings of interest groups:** The provisions of this Constitution relating to meetings of Shareholders will apply to separate meetings of the Shareholders in each interest group.
- 3.3 **Issue of further Shares:** The issue, in accordance with clauses 2.1 and 2.3, of further Shares ranking equally with, or in priority to, existing Shares whether as to voting rights, Distribution or otherwise, shall be permitted and not deemed to be an action affecting the rights attaching to the existing Shares of that Class.

## 4. Purchase of Own Shares

---

- 4.1 **Purchase by Company of its Shares:** The Company may, in accordance with and subject to sections 58 to 66, 107 and 110 to 112 of the Act, purchase or otherwise acquire its Shares.
- 4.2 **Cancellation of Shares:** Shares acquired by the Company pursuant to clause 4.1 will be deemed to be cancelled immediately on acquisition by the Company (except to the extent they comprise Treasury Stock in terms of sections 67A-67C of the Act) but any Shares so cancelled may be reissued by the Company.

## 5. Calls on Shares

---

- 5.1 **Board's power:** The Board, or any person authorised by the Board, may, by notice in writing to a Shareholder or Shareholders, make calls in respect of all moneys unpaid on Shares and which are not, by the terms applicable to the Shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.

- 5.2 **Liability to pay:** Each relevant Shareholder is liable (jointly and severally in the case of joint Shareholders) to pay, in accordance with the relevant notice, every call, and will remain liable to do so even if the relevant Shares are subsequently transferred.
- 5.3 **Prior holders not liable for calls:** Where a Share renders its holder liable for calls, or otherwise imposes a liability on its holder, that liability attaches to the holder of the Share for the time being, and not to a prior holder of the Share, whether or not the liability became enforceable before the Share was registered in the name of the current holder.
- 5.4 **Differential calls:** The Board may, at the time of issue of any Shares, differentiate between the holders as to the amount of calls to be paid and the time of payment.
- 5.5 **Instalments:** The Board may determine that a call is payable by instalments.
- 5.6 **Time call is made:** A call is deemed to have been made at the time the resolution of the Board authorising the call was passed.
- 5.7 **Interest on overdue amounts:** A call not paid by a Shareholder on or before the due date for payment bears interest from the due date to the date of actual receipt by the Company at the rate fixed in the notice of call or the terms applicable to the relevant Shares or, if there is no such rate, such rate as the Board in its discretion may determine. The Board, in its discretion, may cancel the obligation of a Shareholder to pay interest wholly or in part notwithstanding that a demand for interest has been made.
- 5.8 **Unpaid instalments:** Any amount payable on issue of a Share or on any fixed date or as an instalment of a call, is deemed to be a call and if not paid, this clause 5 and clauses 6 and 7 will apply as if that sum had become payable by the making of a call.
- 5.9 **Calls in advance:** The Board may, in its discretion, receive any moneys uncalled and unpaid upon any Shares in advance of their due date, and may pay interest on the amount received at such rate (if any) and on such terms as the Board determines.
- 5.10 **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 as to the matters set out below will be conclusive evidence of the indebtedness of the Shareholder to the Company in respect of the call:
- 5.10.1 the name of the Shareholder is entered in the Share register as the holder (or one of the holders) of the relevant Shares;
- 5.10.2 the resolution making the call is recorded in the records of the Company; and
- 5.10.3 notice of the call was sent to the Shareholder.

## 6. Liens on shares

---

- 6.1 **First and paramount lien:** The Company will have a first and paramount lien in respect of each Share for all money either:
- 6.1.1 presently payable on that Share;
- 6.1.2 payable at a future date on that Share; or
- 6.1.3 presently payable by the holder to the Company on any other account.
- 6.2 **Extent of lien:** The lien of the Company, if any, on a Share will extend to all Dividends, Distributions or bonuses declared in respect of the Share and upon the proceeds of sale of the Share. Any Dividends or Distributions may be either:

- 6.2.1 applied in reduction or satisfaction of any amount presently payable to the Company in respect of which the lien exists; or
- 6.2.2 held in suspense by the Company to the extent of any amount payable at a future date on a Share in respect of which the lien exists.
- 6.3 **Power of sale:** The Board, on behalf of the Company, may sell, as if the sale constituted an issue of new Shares, any Share on which the Company has a lien if:
  - 6.3.1 an amount is presently payable in respect of the Share or to the Company on any other account; and
  - 6.3.2 the Company demands the amount in writing, and payment is not made within 10 Working Days after the date the demand is made.
- 6.4 **Authorisation:** To give effect to a sale a Director, on behalf of the Company, may execute a transfer of the Share to, or at the direction of, the purchaser.
- 6.5 **Application of purchase money:** The purchaser will not be bound to see to the application of the purchase money paid for the Shares sold under clause 6.3.
- 6.6 **Absolute title of purchaser:** The title of the purchaser to any Shares sold under clause 6.3 will not be affected by any irregularity or invalidity affecting the sale or the payment of the proceeds.
- 6.7 **Proceeds of sale:** The Company must apply the proceeds received from the sale of any Shares sold under clause 6.3 to the amount that is presently payable to the Company when the proceeds are received. Any remaining balance will then be paid to the Shareholder whose Shares were sold under clause 6.3.
- 6.8 **Lien under terms of issue of Shares:** The lien provided for in clauses 6.1 and 6.2 is in addition to any lien that the Company may have under the terms of issue of the Shares, which will apply according to its terms.

## 7. Forfeiture of Shares

---

- 7.1 **Notice:** If a call on a Share is not paid when due, the Board may give 10 Working Days' notice to the Shareholder requiring payment of the call, together with interest on the amount of the call. The notice must specify the place of payment and state that if the notice is not complied with the relevant Share will be liable to be forfeited by the Shareholder.
- 7.2 **Forfeiture:** If the notice in clause 7.1 is not complied with the Share may, before payment stated in the notice has been made, be forfeited by resolution of the Board. Such forfeiture will include all Distributions authorised in respect of the forfeited Shares and not actually paid or made before the forfeiture.
- 7.3 **Entry of forfeiture:** When any Share is so forfeited:
  - 7.3.1 Notice of the resolution will be given to the Shareholder in whose name it stood immediately prior to the forfeiture;
  - 7.3.2 Any entry of the forfeiture, along with the date, will be made in the register;
  - 7.3.3 The share certificate of any such Shares will immediately be cancelled by the Company and the Shareholder in whose name the Shares stood immediately prior to the cancellation will return the share certificate to the Company within 14 days of receiving notice of the resolution in clause 7.3.1; and



- 7.3.4 As soon as it is sold or disposed of, an entry of the date and manner of the sale or disposition, shall be made in the register.
- 7.4 **Sale of forfeited Shares:** A forfeited Share may be sold or otherwise disposed of as if it constituted an issue of new Shares. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board in its discretion may, at any time before the sale or disposal, cancel the forfeiture.
- 7.5 **Application of sale proceeds:** The net proceeds of sale of any forfeited Share will be applied in the same manner as set out in clause 6.7.
- 7.6 **Absolute title of purchaser:** On receipt of full payment by the Company, the purchaser of a forfeited Share will receive full and clear title to any forfeited Share they have purchased, and title will not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Share.
- 7.7 **Consequence of forfeiture:** A person whose Shares have been forfeited will cease to be a Shareholder in respect of those Shares and will surrender the Share certificate (if any) for cancellation but will remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon (if any). The Shareholder's liability shall cease if and when the Company receives payment in full of all such money in respect of the Shares whereupon the Board may exercise the right to cancel the forfeiture pursuant to the rights in clause 7.4.
- 7.8 **Evidence of forfeiture:** A certificate by a Director and countersigned by an authorised person that the power of sale has arisen and is exercisable by the Company under this Constitution or that a Share has been forfeited on a specified date will be conclusive evidence of the facts stated in that certificate.
- 7.9 **Fixed time payments:** The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

## 8. Transfer of Shares

---

- 8.1 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder may transfer any Share by an instrument of transfer that complies with this Constitution.
- 8.2 **Transferor to remain holder until registration:** The transferor of a Share will remain the holder of the Share until the name of the transferee is entered in the Share register of the Company.
- 8.3 **Form of transfer:** Every instrument of transfer of Shares must comply with all of the following:
- 8.3.1 the form of the instrument of transfer must be a usual or common form or any other form approved by the Board;
  - 8.3.2 the instrument of transfer must be signed or executed by or on behalf of the transferor; and
  - 8.3.3 where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed by, or on behalf of, the transferee.
- 8.4 **Delivery to Company:** An instrument transferring Shares must be delivered to the Company, or to the Company's agent who maintains the Share register of the Company, together with the Share certificate (if any) relating to the Shares to be transferred. If there is no Share certificate for those Shares, or if the Share certificate has been lost, destroyed or damaged, the transferee must provide such evidence as the Board or the agent reasonably requires to

prove the title of the transferor to the Shares, or the right of the transferor to transfer the Shares.

- 8.5 **Registration of transfer:** On receipt of a form of transfer in accordance with clause 8.4, the Company must as soon as practicable enter the name of the transferee on the Share register as the holder of the Shares, unless:

8.5.1 the Board resolves within 30 Working Days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;

8.5.2 notice of the resolution, including those reasons, is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board; and

8.5.3 the refusal or delay in the registration is permitted by clause 8.6.

- 8.6 **Power of Board to refuse or delay registration:** The Board may refuse or delay the registration of a transfer of Shares for any of the reasons set out below:

8.6.1 the Company has a lien on the Shares;

8.6.2 the Shares are not fully paid up;

8.6.3 the form of transfer in respect of the Shares relates to more than one Class of Shares or refers to Shares of a different Class;

8.6.4 the form of transfer is not accompanied by the Share certificate to which it relates (if a certificate has been issued) or such other evidence as the Directors may reasonably require demonstrating the right of the transferor to make the transfer; or

8.6.5 the Board, at its sole and absolute discretion, considers that it would not be in the best interests of the Company to register the transfer of the Shares.

- 8.7 **Transfer of Securities other than Shares:** This clause 8 shall apply to transfers of securities of the Company other than Shares with any necessary modifications.

- 8.8 **Sale of Minimum Holdings:**

8.8.1 The Company may sell the Shares held by a Shareholder of less than the Minimum Holding.

8.8.2 The Company shall give notice to such Shareholder of its intention to exercise its powers under this clause. If the Shareholder to whom notice has been given has not, within three months after that notice, lodged with the Company for registration transfer of Shares which, together with Shares already registered in the Shareholder's name, will result in at least a Minimum Holding, the Company may arrange the sale of such Shares as are registered in the Shareholder's name.

8.8.3 For the purposes of this clause, Shareholders are deemed to have appointed the Company as their attorney for the sale of those Shares and to do all acts and execute all documents relating to the sale and transfer of the Shares.

8.8.4 The net proceeds of sale (after deducting reasonable sale expenses) will be held on trust by the Company for and paid to the Shareholder on surrender of all share certificates (if any) for the Shares to be sold.

8.8.5 Any money held by the Company and remaining unclaimed for three years shall become the property of the Company provided that where a claimant produces

evidence of entitlement, the Company shall pay such amount to the claimant subject to the Company satisfying the solvency test.

## 9. Transmission of Shares

---

- 9.1 **Transmission on death of Shareholder:** If a Shareholder dies, the survivor (if the deceased was a joint Shareholder) or the Shareholder's Personal Representative, will be the only person recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder. Nothing in this clause will 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.
- 9.2 **Rights of Personal Representatives:** A Shareholder's Personal Representative is entitled to do any or all of the following:
- 9.2.1 exercise all rights (including without limitation the rights to receive Distributions, to receive notices of and attend meetings and to vote in person or by Representative), and be subject to all limitations, that attach to the Shares held by that Shareholder; and
  - 9.2.2 be registered as the holder of those Shares but this registration will not affect any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative as the holder of the Shares.
- 9.3 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives they will, for the purposes of this Constitution, be deemed to be joint holders of the Share.
- 9.4 **Change of trustees:** Shares in the Company registered in the name of the Personal Representative of a deceased Shareholder may be transferred to a new Personal Representative upon any change of Personal Representative of the deceased Shareholder.

## 10. Meetings of Shareholders

---

- 10.1 **Annual meeting:** An annual meeting of Shareholders is to be held:
- 10.1.1 once in each calendar year, and
  - 10.1.2 not later than six months after the balance date of the Company; and
  - 10.1.3 not later than 15 months after the previous annual meeting.
- 10.2 **Special meeting:** A special meeting of Shareholders entitled to vote on an issue:
- 10.2.1 may be called at any time by the Board; and
  - 10.2.2 must be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.
- 10.3 **Resolution in lieu of meeting:** A resolution in writing signed in accordance with section 122 of the Act is as valid as if it had been passed at a meeting of Shareholders.
- 10.4 **Chairperson to chair meetings:** If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, he or she must chair the meeting.

## 10.5 **Chairperson not present:**

10.5.1 If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes of the time appointed for the meeting or is unwilling or considers it inappropriate to act (either in relation to the entire meeting or in relation to any particular business to be considered at the meeting), the Directors present may elect one of their number to be chairperson of the meeting (or for that part of the meeting which relates to the particular business).

10.5.2 If at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes of the time appointed for the meeting, the Shareholders present may choose one of their number to be chairperson of the meeting.

10.6 **Notice of meeting:** The Company must give written notice of the time and place of a meeting of Shareholders to every Shareholder entitled to receive notice of the meeting and to every Director and any auditor of the Company not less than 10 Working Days before the meeting.

10.7 **Content of notice:** The notice must state all of the following:

10.7.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgement in relation to it; and

10.7.2 the text of any Special Resolution to be submitted to the meeting.

10.8 **Waiver of 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.

10.9 **Accidental omission to give notice:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.

10.10 **Adjourned meeting of Shareholders:** If a meeting of Shareholders is adjourned for less than 30 Working 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 being adjourned.

10.11 **Entitlement to notice of meeting:** The Shareholders who are entitled to receive notice of a meeting of Shareholders are:

10.11.1 if the Board fixes a date for that purpose, those Shareholders whose names are registered in the Share register on that date; or

10.11.2 if the Board does not fix a date for that purpose, those Shareholders whose names are registered in the Share register at the close of business on the Working Day immediately preceding the day on which the notice is given.

10.12 **Methods of holding meeting:** A meeting of Shareholders may be held where the Shareholders or their Representatives present, who together constitute a quorum, are assembled together at the place, date and time appointed for the meeting. A Shareholder or Representative will be deemed to be present at the meeting (and will be counted as present for the purposes of establishing a quorum) if the Shareholder or Representative can hear and be heard by all other attending Shareholders or Representatives throughout the meeting, whether or not that Shareholder or Representative is present in person.

10.13 **No business if no quorum:** No business may be transacted at a meeting of Shareholders if a quorum is not present.

10.14 **Quorum:** A quorum for a meeting of Shareholders is present if:

10.14.1 five Shareholders or their Representatives are present; and

10.14.2 the Shareholders or their Representatives who are present and able to exercise votes in respect of 25% of the Shares on issue.

For the purpose of clause 10.14.1, if two or more Shareholders are present who hold their Shares in their joint names then such joint Shareholders shall be counted as one Shareholder.

10.15 **Procedure if no quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:

10.15.1 in the case of a meeting called by the Board on the written request of Shareholders pursuant to section 121(b) of the Act, the meeting is dissolved; or

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

10.16 **Types of voting:** In the case of a meeting of Shareholders assembled together in accordance with clause 10.12, unless a poll is demanded, voting will be by whichever of the following methods is determined by the chairperson of the meeting:

10.16.1 voting by voice; or

10.16.2 voting by show of hands.

10.17 **Method of voting:** In the case of Shareholders deemed to be present by means of audio, or audio and visual communication, unless a poll is demanded, voting at the meeting shall be by those Shareholders signifying individually by voice their vote or their wish to abstain from voting.

10.18 **Result of vote:** 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 10.19.

10.19 **Shareholders may demand poll:** At a meeting of Shareholders a poll may be demanded by any of the following:

10.19.1 no fewer than five Shareholders having the right to vote at the meeting;

10.19.2 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;

10.19.3 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

10.19.4 the chairperson of the meeting.

10.20 **Timing of demand for poll:** A poll may be demanded either before or after the vote is taken on a resolution. A demand for a poll may be withdrawn. A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of a poll.

- 10.21 **Counting of votes in 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.
- 10.22 **No casting vote:** The chairperson of a meeting of Shareholders will not have a casting vote.
- 10.23 **Rights of proxy:** For the purposes of clauses 10.19 to 10.22, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in a demand for a poll. A demand by a person as proxy for a Shareholder has the same effect as if the demand had been made by the Shareholder who appointed the proxy.
- 10.24 **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 vote(s) of the other joint holder(s).
- 10.25 **Loss of voting rights if calls unpaid:** If a sum due to the Company in respect of a Share has not been paid, the vote attaching to that Share must not be exercised at a meeting of Shareholders other than a meeting of an interest group.
- 10.26 **Minutes to be taken:** The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders. Each Shareholder has the right to inspect/request a copy of the minutes of any meeting of Shareholders.
- 10.27 **Signed minutes prima facie evidence:** Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.
- 10.28 **Meeting of Interest Groups:** The provisions governing the calling and holding of meetings of Interest Groups shall be the provisions set out in this Constitution relating to meetings with all necessary modifications including the modification that the quorum for any such meeting shall be the number of Shareholders or Representatives able to exercise votes on 10% of the Shares of the Interest Group.
- 10.29 **Other proceedings:** Except as provided in this Constitution, a meeting of Shareholders may regulate its own procedure.

## 11. Proxies and Corporate Representatives

---

- 11.1 **Shareholder may appoint proxy:** A Shareholder may exercise the right to vote either by being present at a meeting (as described in clause 10.12) or by appointing a proxy.
- 11.2 **Proxy entitled to attend and be heard:** A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder. If the Shareholder and the Shareholder's proxy are both present at a meeting, the Shareholder may not speak or vote at that meeting.
- 11.3 **Proxy must be appointed in writing:** 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 not exceeding 12 months.
- 11.4 **Appointment may be ineffective:** No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or at any other address as is specified for that purpose in the notice convening the meeting, at least 48 hours before the start of the meeting.
- 11.5 **Proxy vote valid:** Unless written notice of the event has been received by the Company prior to the meeting, a vote given by proxy will be valid even if any of the following occurs:
- 11.5.1 the principal has died or has become mentally disordered;

11.5.2 the proxy, or the authority under which the proxy was given, has been revoked; or

11.5.3 there has been a transfer of the beneficial ownership of the Share in respect of which the proxy was given.

- 11.6 **Corporations may act by corporate representatives:** A Shareholder that is a body corporate may appoint a corporate representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. All the provisions of this Constitution that apply to a proxy will apply to the corporate representative.

## 12. Postal votes

---

- 12.1 **No postal votes:** A Shareholder may not exercise the right to vote at a meeting by casting a postal vote under clause 7 of the First Schedule to the Act.

## 13. Shareholder proposals

---

- 13.1 **Notice to the Board:** 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.
- 13.2 **Notice to the Board at the Company's expense:** If the notice is received by the Board not less than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 13.3 **Notice to the Board at the proposing Shareholder's expense:** If the notice is received by the Board not less than five Working Days and not more than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 13.4 **Late notice:** If the notice is received by the Board less than five Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 13.5 **Written statement to be included:** If the Directors intend that Shareholders may vote on the proposal by Representative or by postal vote, they must give the proposing Shareholder the right to include with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.
- 13.6 **Written statements not to be included:** The Board is not required to include with the notice given by the Board any of the following:
- 13.6.1 any part of a statement prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; and
- 13.6.2 any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).
- 13.7 **Costs:** Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing

Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

## 14. Appointment and removal of directors

---

- 14.1 **Minimum number of Directors:** The minimum number of Directors is two.
- 14.2 **Directors:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed under this Constitution.
- 14.3 **Appointment:** Other than those Directors holding office by virtue of clause 14.2 or pursuant to the provisions of the Act or of this Constitution:
- 14.3.1 all Directors of the Company must be appointed by an ordinary resolution of Shareholders;
- 14.3.2 Shareholders of the Company may vote on a resolution to appoint a Director of the Company only if the resolution is for the appointment of one Director and a separate resolution is moved in respect of each Director proposed to be appointed; and
- 14.3.3 nothing in clause 14.3.2 prevents the election of two or more Directors by ballot or poll.
- 14.4 **Removal:** A Director of the Company may be removed from office by an ordinary resolution passed at a meeting called for the purpose of, or for purposes that include the removal of the Director.
- 14.5 **Vacation of office:** A Director vacates office if any of the following occurs:
- 14.5.1 the Director resigns by notice in writing to the Company. The notice is to be effective when it is received by the Company or at a later time specified in the notice;
- 14.5.2 the Director absents himself or herself from the meetings of Directors for a period of six months or does not attend at least one-half of the meetings of Directors held in any year, without special leave of absence from the other Directors;
- 14.5.3 the Director is removed from office in accordance with clause 14.4;
- 14.5.4 the Director becomes disqualified from being a Director pursuant to section 151 of the Act; or
- 14.5.5 the Director dies.
- 14.6 **Appointment of Directors by the Board:** Where a Director vacates office, the continuing Directors may appoint any other qualified person to hold office as a Director in that Director's place until the next annual meeting.
- 14.7 **Director may appoint or remove an Alternate Director:** Subject to clause 14.8, each Director may at any time appoint any person who is not already a Director to be the Director's Alternate Director either for a specified period or generally during the absence from time to time of such Director, and in like manner to remove any such Alternate Director. No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.
- 14.8 **Appointment and Removal of Alternate Director:** A Director may only appoint an Alternate Director with the consent of the majority of his or her co-Directors. That appointment can be revoked at any time by the Director who appointed the Alternate Director or by a majority of his or her co-Directors. Any appointment or removal under this clause shall be effected by written notice to the Company.



- 14.9 **One Director:** The Director who appointed the Alternate Director and his or her Alternate Director will be counted as one Director for the purposes of clauses 14.1 and 15.6.
- 14.10 **Rights of Alternate Director:** Unless otherwise provided by the terms of the appointment, the Alternate Director will be entitled to:
- 14.10.1 receive notices of all meetings of the Board and any minutes or documents sent to Directors;
  - 14.10.2 attend and vote at any such meetings of Directors but shall not vote at a meeting unless the Director who appointed the Alternate Director is not personally present; and
  - 14.10.3 in the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director but excluding the power to appoint an Alternate Director.
- 14.11 **Alternate Director must discharge duties and obligations of Director:** An Alternate Director must discharge all the duties and obligations of the Director in whose place he or she acts.
- 14.12 **Termination of appointment as Alternate Director:** An Alternate Director will cease to be an Alternate Director if:
- 14.12.1 the Director who appointed the Alternate Director ceases to be a Director;
  - 14.12.2 the Director who appointed the Alternate Director or the majority of his or her co-Directors revokes the appointment; or
  - 14.12.3 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.
- 14.13 **Remuneration and expenses of Alternate Director:** Each Alternate Director's:
- 14.13.1 remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
  - 14.13.2 expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

## 15. Directors' meetings

---

- 15.1 **Third Schedule to the Act not to apply:** The Third Schedule to the Act relating to the proceedings of a board does not apply to the Company except to the extent that a provision is included in this Constitution.
- 15.2 **Procedure:** The Directors may meet together for the despatch of business, adjourn or otherwise regulate their meetings and proceedings as, subject to this Constitution, they may think fit.
- 15.3 **Notice of Meeting:** A Director may convene a meeting of the Board by giving notice. Notice of every meeting stating the date, time and place of the meeting must be given to all Directors in New Zealand. Notice need not be in writing.
- 15.4 **Waiver of notice requirements:** An irregularity in the notice of a meeting or a failure to give notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all Directors agree to the waiver.
- 15.5 **Methods of holding meetings:** A meeting of the Board may be held:

- 15.5.1 by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 15.5.2 by means of audio, or audio and visual, communications by which all Directors participating and constituting a quorum can simultaneously hear and be heard by each other during the meeting.
- 15.6 **Quorum:** A quorum for a meeting of the Board, other than an adjourned meeting, is a majority of the Directors, or if only two Directors have been appointed, all of the Directors.
- 15.7 **Vacancies and reduction in numbers:** If, due to a vacancy, the number of Directors is reduced below the number fixed by this Constitution as the minimum number of Directors, the continuing Director may act for the purpose of increasing the number of Directors to that number but for no other purpose.
- 15.8 **No business if quorum not present:** Subject to clause 15.7, no business may be transacted at a meeting of the Board if a quorum is not present.
- 15.9 **Chairperson:** The Directors may elect one of their number as chairperson of the Board to hold office:
- 15.9.1 for a stated period;
- 15.9.2 until he or she dies or resigns; or
- 15.9.3 until the Directors elect a chairperson in his or her place.
- 15.10 **Chairperson not present:** If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 10 minutes after the time appointed for the meeting, the Directors present may choose one of their number to be chairperson of the meeting.
- 15.11 **Voting by Directors:** Every Director has one vote. An Alternate Director may not vote at a meeting if the person for whom he or she is an Alternate Director also attends.
- 15.12 **No casting vote:** The chairperson of a meeting shall not have a casting vote.
- 15.13 **Majority of votes needed to pass a resolution:** A resolution of the Board is passed if a majority of the votes cast on the resolution are in favour of it.
- 15.14 **Vote presumed in certain circumstances:** A Director present at a meeting of the Board will be presumed to have voted in favour of a resolution of the Board unless he or she either:
- 15.14.1 expressly abstains from voting; or
- 15.14.2 dissents from or votes against the resolution.
- 15.15 **Minutes to be taken:** The Board must ensure that minutes are taken of all proceedings at meetings of the Board. Each Director has the right to inspect/request a copy of the minutes of any meeting of the Board.
- 15.16 **Written resolution:** A resolution in writing, signed or assented to in written form by all of the Directors (including Alternate Directors when the person for whom he or she is appointed is unable to act), is as valid as if it had been passed at a meeting of the Board duly convened and held.
- 15.17 **Written resolution may consist of several documents:** A resolution pursuant to clause 15.16 may consist of several documents (including email or other similar means of communication) in like form each signed or assented to by one or more Directors.

- 15.18 **Resolution to be entered in minute book:** A copy of any such resolution must be entered in the minute book of Board proceedings.
- 15.19 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 15.20 **Other proceedings:** Except as provided in this Constitution, the Board may regulate its own procedure.

## 16. Interested transactions

---

- 16.1 **Disclosure of interests:** A Director must comply with the disclosure requirements of section 140 of the Act but failure to comply with that section does not of itself affect the validity of any contract or arrangement entered into by the Company.
- 16.2 **Personal involvement of Directors:** Despite any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a director is interested), section 161 of the Act (relating to director's remuneration and other benefits) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may either:
- 16.2.1 contract with the Company in any capacity;
  - 16.2.2 be a party to any transaction with the Company;
  - 16.2.3 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;
  - 16.2.4 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; or
  - 16.2.5 retain any remuneration, profit or benefits in relation to any of the matters referred to in clauses 16.2.1 to 16.2.4.
- 16.3 **No contract or arrangement to be avoided:** No contract or arrangement of any kind referred to in clause 16.2 may be avoided by reason only of a Director's interest.
- 16.4 **Interested Directors:** A Director who is interested in a transaction entered into, or to be entered into, by the Company may do any or all of the following as if the Director were not interested in the transaction:
- 16.4.1 vote on any matter relating to the transaction, provided that the transaction does not produce a pecuniary benefit to the Director;
  - 16.4.2 attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
  - 16.4.3 sign a document relating to the transaction on behalf of the Company; and
  - 16.4.4 do any other thing in his or her capacity as a Director in relation to the transaction.
- 16.5 **Deemed majority:** In the event that an interested Director is prevented from casting a vote in accordance with clause 16.4.1 and only two Directors have been appointed, the vote of the other Director will determine for the purposes of clause 15.13 whether the Company enters into the transaction.

## 17. Directors' remuneration and other benefits

---

- 17.1 **Authorisation of payment or other benefit:** Except as provided for in clauses 17.3 and 17.4, the Board may only exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kinds referred to in that section with the prior written approval of the Shareholders by way of ordinary resolution.
- 17.2 **Increase in Director remuneration:** No resolution which increases the amount of Director remuneration fixed pursuant to a previous resolution shall be approved at an annual meeting of the Company unless notice of the amount of increase has been given in the notice of meeting.
- 17.3 **Directors' 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.
- 17.4 **Work not in the capacity of a Director:** Director's remuneration for work not in the capacity of a Director of the Company or a Subsidiary may be approved by the Directors without Shareholder approval (including a salary paid to any managing director).

## 18. Indemnity and insurance

---

- 18.1 **Indemnity for Directors:** Every Director will 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.
- 18.2 **Indemnities and insurance:** In addition to the indemnity set out in clause 18.1 the Company may, with the prior written approval of the Board, do any of the following:
- 18.2.1 indemnify a Director or employee of the Company for any costs referred to in section 162(3) of the Act;
  - 18.2.2 indemnify a Director or employee of the Company in respect of any liability or costs referred to in section 162(4) of the Act; and
  - 18.2.3 effect insurance for a Director or employee of the Company in respect of any liability or costs referred to in section 162(5) of the Act.
- 18.3 **Definitions:** Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 18.

## 19. Distributions

---

- 19.1 **Solvency Test:**
- 19.1.1 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.
  - 19.1.2 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.
- 19.2 **Deductions:** The Board may deduct from Dividends payable to any Shareholder in respect of any Shares any of the following:
- 19.2.1 unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares;

- 19.2.2 debts, liabilities or obligations in respect of which the Company has a lien over specific Shares in respect of which the Dividend is made; and
- 19.2.3 amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.
- 19.3 **Entitlement date:** Dividends and other Distributions or payments to Shareholders will be payable to the persons who are registered as Shareholders on an entitlement date fixed by the Board.
- 19.4 **Right not transferred:** A transfer of any Share shall not pass the right to any Dividend authorised for payment where the entitlement date for payment of that Dividend has passed before the date of registration of the transfer.
- 19.5 **No interest:** No Dividend shall bear interest against the Company.
- 19.6 **Dividend by way of Distribution of assets:** Without limiting section 52 of the Act, the Directors may distribute in kind among the Shareholders by way of Dividend any of the assets of the Company and in particular any Share or Securities of other companies to which the Company is entitled subject to compliance with clause 2.1.
- 19.7 **Unclaimed Dividends:** Dividends or other monetary Distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All Dividends or other monetary Distributions unclaimed for three years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board must at any time after such forfeiture, and subject to satisfying the solvency test, annul any such forfeiture and pay the Dividend or Distribution to a claimant who produces evidence satisfactory to the Board of their entitlement.

## 20. Financial assistance on acquisition of shares

---

- 20.1 **Purchase of its own shares:** In accordance with the Act, the Company may give financial assistance to any person for the purposes of, or in connection with, the purchase of any Shares issued or to be issued by the Company.

## 21. Dispute Resolution

---

- 21.1 **Dispute Resolution:** Where any difference or dispute arises between the Directors concerning:
- 21.1.1 the construction of this Constitution;
- 21.1.2 any provision to be substituted for or added to this Constitution; or
- 21.1.3 the conduct, affairs, business or interests of the Company,
- resulting in a complete or temporary deadlock in the management by the Directors of the Company, the difference or dispute shall, if the Directors unanimously agree, be resolved using the escalation procedure in clause 21.2.
- 21.2 Escalation procedure:
- 21.2.1 The Directors will firstly attempt to resolve the difference or dispute through a process of mediation carried out by a mutually agreed mediator.
- 21.2.2 If the Directors are unable to agree on the appointment of a mediator within five Working Days of the unanimous agreement referred to in clause 21.1, any Director may request the executive officer at the time of the Arbitrators' and Mediators'

Institute of New Zealand to nominate a mediator whom the Directors agree to then appoint.

21.2.3 The mediation will be held in Christchurch and will be conducted in accordance with the protocols for mediations established by the Arbitrators' and Mediators' Institute of New Zealand.

21.2.4 If the dispute or difference is not satisfactorily resolved through a process of mediation, any Director may refer the dispute or difference to arbitration in accordance with the Arbitration Act 1996.

21.3 **Court Determination:** Should the Directors be unable to unanimously agree as to the use of the escalation procedure in clause 21.2, the difference or dispute shall be immediately referred to a Court for determination.

## 22. Accounts

---

### 22.1 Books to be Kept:

22.1.1 The Board shall cause accounting records to be kept that comply with the requirements of the Act.

22.1.2 The books of account shall be kept at the office or, subject to section 195 of the Act, at such other place or places as the Board thinks fit and shall always be open to inspection by any Director.

22.1.3 Subject to the provisions of sections 215, 216, 217 and 218 of the Act, the Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company, or any of them, shall be open to the inspection of shareholders not being Directors, and no shareholder (not being a Director) shall have any right of inspecting any account or book or papers of the Company except as conferred by statute or authorised by the Board.

22.1.4 The Board shall from time to time, in accordance with the Financial Reporting Act 1993, cause financial statements to be prepared and shall send to every Shareholder the annual report and financial statements of the Company in accordance with sections 208 to 210 of the Act.

## 23. Change of Name

---

23.1 An application to change the name of the Company must be made by a Director with the prior approval of the Board.

## 24. Method of contracting

---

24.1 **Deeds:** A deed to be entered into by the Company may be signed on behalf of the Company in one of the following ways:

24.1.1 if there are two or more Directors of the Company, by two or more Directors whose signatures need not be witnessed;

24.1.2 if there is only one Director of the Company, by that Director whose signature must be witnessed;

24.1.3 if the Board has appointed two or more authorised signatories, by two authorised signatories whose signatures must be witnessed, or by one Director and one authorised signatory whose signatures must be witnessed; or

24.1.4 if the Company has appointed one or more attorneys in accordance with section 181 of the Act, by two attorneys whose signatures must be witnessed, or by one Director and one attorney whose signatures must be witnessed, or by one authorised signatory and one attorney whose signatures must be witnessed.

24.2 **Written contracts:** An obligation or contract, which is required by law to be in writing and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the Company's express or implied authority.

24.3 **Other contracts:** An obligation or contract may be entered into on behalf of the Company orally by a person acting under the Company's express or implied authority.

24.4 **Appointment of Attorney:** The Company may, by an instrument in writing executed in accordance with clause 24.1, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. Any act of an attorney in accordance with the instrument shall bind the Company.

## 25. Liquidation

---

25.1 **Distribution of surplus:** Subject to the rights of any Shareholders and to clauses 25.2 and 25.3, if the Company is liquidated, the surplus assets of the Company (if any) must be distributed among the Shareholders in proportion to their shareholding. If any Shareholder's Shares are not fully paid up, the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any Distribution of surplus assets of the Company in respect of those Shares.

25.2 **Distribution in kind:** With the approval of the Shareholders by ordinary resolution, the liquidator of the Company may divide amongst the Shareholders in kind the whole or part of the assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

25.2.1 attribute values to assets as the liquidator considers appropriate; and

25.2.2 determine how the division will be carried out as between the Shareholders or different Classes of Shareholders.

25.3 **Trusts:** With the approval of the Shareholders by ordinary resolution, the liquidator may vest the whole or any part of the surplus assets of the Company in trustees for the benefit of Shareholders. The liquidator may determine the terms of the trust.

## 26. Notices

---

26.1 **Method of service:** Any notices, reports, accounts or documents required to be sent to a Shareholder must be sent in the manner set out in section 391 of the Act. Notices to any other person must be sent in the same manner as if that person was a Shareholder.

26.2 **Joint holders:** The Company may give a notice to the joint holders of a Share in the Company by giving the notice to the joint holder named first in the Share register in respect of the Share.

## 27. Removal from the Register

---

27.1 **Request to Registrar:** If the Company:

27.1.1 has ceased to carry on business, discharged in full its liabilities to all known creditors, and distributed its surplus assets as if it were distributing those surplus assets in accordance with clause 25, or

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

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

## 28. **Governing Law and Jurisdiction**

---

- 28.1 **Governing Law:** This Constitution is to be governed by, and construed in accordance with, the Laws of New Zealand and is subject to the exclusive jurisdiction of the Courts of New Zealand.