



10046471570

**ADOPTION, ALTERATION
OR REVOCATION
OF CONSTITUTION**

(Section 32 (3))

Form 6

*Please note that the information in this form must be either
typewritten or printed. It must not be handwritten.*

Company Name

SMITHS CITY GROUP LIMITED

Company Number

121923

The abovenamed company has -
(Place a tick ✓ in the appropriate box)

☒

adopted a constitution

☐

altered its constitution

☐

revoked its constitution

The company revoked its existing constitution and adopted a new constitution on

0	6
---	---

Day

0	9
---	---

Month

0	4
---	---

Year

PAID
08 SEP 2004

A copy of the constitution as adopted is attached to this notice.

Signature of Authorised Person:

Date

6-9-4

Name of Authorised Person

GERALD HAWORTH WILLIS

Presented by

Duncan Cotterill

Acco

Postal Address

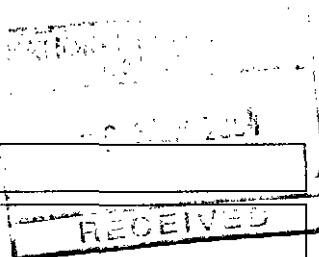
P.O. BOX 5
CHRISTCHURCH
NEW ZEALAND

Telephone

(03) 379-2430

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CONSTITUTION

OF

SMITHS CITY GROUP LIMITED

I, Craig David Boyce, hereby
certify that this Constitution will be the
Constitution of Smiths City Group Limited

Dated this 14th day of July 2004


_____(CD Boyce)

Duncan Cotterill

SOLICITORS

Auckland, Christchurch, Nelson

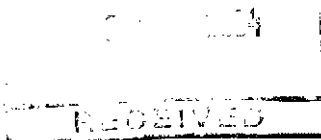


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PART A - INTRODUCTION

Definitions

1.1 In this Constitution, unless the context otherwise requires:

1.1.1 “**Act**” means the Companies Act 1993;

1.1.2 “**Audit Committee**” means a committee of the Board formed in accordance with clause 15;

1.1.3 “**Board**” means the Board of Directors of the Company;

1.1.4 “**Call**” means a resolution of the Board under clause 20.1 requiring Shareholders to pay all or part of the unpaid amount of the issue price of any Securities and, where the context requires, means the obligation of a Shareholder to meet the amount due pursuant to such a resolution;

1.1.5 “**Company**” means Smiths City Group Limited;

1.1.6 “**Director**” means any person occupying the position of director of the Company, by whatever name called;

1.1.7 “**Disqualifying Relationship**” means any direct or indirect interest or relationship that could reasonably influence, in a material way, the Director’s decisions in relation to the Company.

Without limiting the above definition, a Director shall be deemed to have a Disqualifying Relationship in the following circumstances:

(a) the Director is a Substantial Security Holder of the Company or an Associated Person of a Substantial Security Holder (other than solely as a consequence of being a Director of the Company); or

(b) where:

- (i) the Director has a relationship (other than in his or her capacity as a Director of the Company) with the Company or a Substantial Security Holder of the Company; or
- (ii) an Associated Person of the Director has a relationship with the Company or a Substantial Security Holder of the Company; and
- (iii) by virtue of the relationship in (b)(i) or (b)(ii) that Director or any Associated Person of that Director is likely to derive, in the current financial year of the Company, a substantial portion of his, her or its annual revenue during such financial year;

1.1.8 **“Independent Director”** means a Director who is not an executive of the Company and who has no Disqualifying Relationship;

1.1.9 **“Listed”** means, in relation to the Company, the period during which the Company is subject to a listing agreement with NZX, whereby the Company agrees to comply with the NZSX Listing Rules and NZX agrees to administer the Company’s listing on NZX;

1.1.10 **“Minimum Holding”** means a parcel or number of Securities as set out in Appendix 2 of the NZSX Listing Rules;

1.1.11 **“NZSX Listing Rules”** means the listing rules of the main board of the NZX as amended from time to time;

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

1.1.13 **“Ordinary Resolution”** means a resolution passed by a simple majority of Votes of holders of Securities of the Company which carry Votes, entitled to vote and voting;

1.1.14 **"Share"** means a share in the Company;

1.1.15 **"Shareholder"** means a holder of Shares;

1.1.16 **"Shareholders' Funds"** means the amount disclosed as equity (whether described as equity, shareholders funds, or otherwise) by the most recent published financial statements of the Company or, if the Company has Subsidiaries, the most recent published group financial statements of the Company and its Subsidiaries, provided that if at any time at which shareholders' funds of the Company is required to be determined:

(a) the Company has not published financial statements; or

(b) since the date of the most recent published statements there has been a material decline in the equity of the Company or, if the Company has Subsidiaries, of the consolidated equity of the Company and its Subsidiaries;

then shareholders' funds of the Company at that time shall be determined by reference to the position which would be disclosed if financial statements were prepared at that time;

1.1.17 **"Special Resolution"** means a resolution approved by a majority of 75% of Votes of the holders of Securities of the Company which carry Votes, entitled to vote and voting;

1.1.18 **"Substantial Security Holder"** has the meaning given to that term in Section 2 of the Securities Markets Act 1988; and

1.1.19 **"Written or in writing"** in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

Interpretation

2.1 Terms used in this Constitution which have defined meanings in the Act and/or the Securities Act 1978 shall have the same meanings in this Constitution unless

the context requires otherwise. Terms defined in the NZSX Listing Rules shall, where used in this Constitution, have the same meaning as is given to those terms in the NZSX Listing Rules. Where a term is defined in both the Act and the NZSX Listing Rules, or the Securities Act 1978 and the NZSX Listing Rules, that term shall have the same meaning as given to the term in the NZSX Listing Rules unless this Constitution expressly provides otherwise.

- 2.2 Unless otherwise indicated references to Section numbers are to Sections of the Act.
- 2.3 Headings are for guidance only and shall not affect the interpretation of this Constitution.
- 2.4 Clauses in this Constitution which expressly refer to a Section in the Act shall not prevent any other clause in this Constitution from affecting or relating to that Section.
- 2.5 The schedules form part of this Constitution.
- 2.6 References to any legislation or provision of any legislation are deemed to be references to that legislation or provision as amended, substituted or re-enacted and unless the context requires otherwise include any statutory instruments issued under that legislation or provision.
- 2.7 The singular includes the plural and vice versa, and words importing one gender include the other genders.

The NZSX Listing Rules

- 3.1 **Compliance with the NZSX Listing Rules:** So long as the Company is Listed, the Company shall comply with the NZSX Listing Rules provided that, if the NZX has made a Ruling in relation to the Company authorising any act or omission which in the absence of such Ruling would be in contravention of the NZSX Listing Rules or this Constitution, that act or omission shall, unless a contrary intention appears in this Constitution, be deemed to be authorised by the NZSX Listing Rules and by this Constitution.

- 3.2 **Transactions not Affected** Any failure to comply with the NZSX Listing Rules or clauses 9.2 to 9.6, 16 and 17 of this Constitution shall not itself affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by or affecting the Company, except that a party to a transaction or contract who knew of the failure to comply with the NZSX Listing Rules or those provisions of this Constitution at the time of entering into the transaction or contract shall not be entitled to enforce that transaction or contract provided however that this clause does not affect the rights of any holder of Securities of the Company against the Company, or the Directors of the Company, arising from the failure to comply with the NZSX Listing Rules or those provisions of this Constitution.
- 3.3 **NZSX Listing Rules to Prevail:** Nothing in this Constitution will prohibit or restrict any action which is or may be expressly permitted by the NZSX Listing Rules or the NZX to be taken by the Company, the Board, each Director or the holders of Securities of the Company. In the event of any inconsistency between the NZSX Listing Rules and this Constitution, the NZSX Listing Rules shall prevail.

PART B - SPECIAL POWERS OF COMPANY

Acquisition of Own Shares

- 4.1 **Company may acquire its own Shares:** Subject to this Constitution, the Company may purchase or otherwise acquire Shares issued by it, and may also hold its own Shares, in accordance with the Act, this Constitution and the NZSX Listing Rules.

Share Repurchases, Redemptions, and Financial Assistance

- 5.1 **Prohibition on Acquisition of Equity Securities:** Subject to clause 5.2, the Company shall not acquire Equity Securities of the Company unless the acquisition is:
- 5.1.1 effected by offers made by the Company through the NZX's order matching market, or through the order matching market of a Recognised Stock Exchange; or
 - 5.1.2 effected in compliance with Section 60(1)(a) (read together with Section 60(2)); or
 - 5.1.3 an acquisition of the nature referred to in Section 61(7); or
 - 5.1.4 approved in accordance with clause 5.7; or
 - 5.1.5 required by a Shareholder pursuant to Sections 110 or 118; or
 - 5.1.6 effected in compliance with Section 60(1)(b)(ii) (read together with Section 61) and:
 - 5.1.6.1 is made only from any person who is not a Director, Associated Person of a Director or Employee; and
 - 5.1.6.2 the total number of Equity Securities of the same Class acquired, together with all other Equity Securities of the same Class as those Equity Securities that are to be acquired,

pursuant to this clause 5.1.6 during the shorter of the period of 12 months preceding the date of the acquisition and the period from the date on which the Company was the first Listed to the date of the acquisition will not exceed 15% of the total number of Equity Securities of that Class on issue at the commencement of that period,

PROVIDED THAT for the purposes of this clause 5.1.6, Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert, **PROVIDED ALSO THAT** where the Conversion ratio of those Securities is fixed by reference to the market price of the underlying Securities, the market price for the purposes of this clause 5.1.6 shall be the average end of day market price over the 20 Business Days before the earlier of the day the acquisition is entered into or announced to the market.

5.2 Prior Notice of Acquisition or Sale: Before the Company acquires Equity Securities of the Company, other than an acquisition from a holder who holds less than a Minimum Holding, the Company shall give at least 3 Business Days' notice to the NZX. That notice shall:

5.2.1 specify a period of time not exceeding 12 months from the date of the notice within which the Company will acquire Equity Securities; and

5.2.2 specify the Class and maximum number of Equity Securities to be acquired in that period,

PROVIDED THAT the Company may at any time by 3 Business Days' notice to NZX vary any notice so given and may cancel such notice at any time. The requirements of this clause 5.2 are in addition to the obligations imposed on the Company in respect of the acquisition of its own shares under the Act.

5.3 Prohibition on Redemption: The Company must not redeem Equity Securities of the Company, other than a redemption from a holder who holds less than a Minimum Holding, unless:

- 5.3.1 those Equity Securities were issued before 1 September 1994 and the Company is bound or entitled to redeem those Equity Securities pursuant to the terms of issue; or
- 5.3.2 those Equity Securities were issued in compliance with clause 7.1.1 or clause 7.4 and the Company is bound or entitled to redeem those Equity Securities pursuant to the terms of their issue; or
- 5.3.3 those Equity Securities are redeemed in compliance with Section 69(1)(a); or
- 5.3.4 those Equity Securities are Debt Securities which may be Converted into Shares and, before that Conversion, they are redeemed in cash; or
- 5.3.5 the redemption of those Equity Securities is approved in accordance with clause 5.7; or
- 5.3.6 the redemption of those Equity Securities is otherwise permitted by the NZSX Listing Rules.

5.4 **Prohibition on Financial Assistance:** The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Company unless the giving of that assistance:

- 5.4.1 is in accordance with the Act and complies with clause 5.5; or
- 5.4.2 is approved in accordance with clause 5.7; or
- 5.4.3 is otherwise permitted by the NZSX Listing Rules.

5.5 **Permitted Financial Assistance:** The Company may give financial assistance of the nature referred to in clause 5.4 if:

- 5.5.1 the financial assistance is not given in whole or in part to any Director of the Company, Associated Person of a Director, or an Employee of the Company, and the amount of the financial assistance, together with

the amount of all other financial assistance given under this clause 5.5.1 by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance, and the period from the date on which the Company was first Listed to the date of giving of the financial assistance, does not exceed 5% of the Shareholders' Funds; or

5.5.2 the financial assistance is given to Employees of the Company and:

5.5.2.1 the amount of the financial assistance, together with the amount of all other financial assistance given under this clause 5.5.2 by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance, and the period from the date on which the Company was first Listed to the date of giving of the financial assistance, does not exceed 2% of the Shareholders' Funds; and

5.5.2.2 the amount of the financial assistance, together with the amount of all other financial assistance given under this clause 5.5.2 during the shorter of the period of five years preceding the date of giving of the financial assistance, and the period from the date on which the Company was first Listed to the date of giving of the financial assistance, does not exceed 5% of the Shareholders' Funds; or

5.5.2.3 the financial assistance is not given to any Director of the Company or Associated Person of a Director; or

5.5.3 the financial assistance is offered or given so that all holders of Equity Securities of the Company are treated, or given the opportunity to be treated, on the same basis.

5.6 **Exception:** For the purposes of clause 5.5.2.3 financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest,

shall be deemed not to be financial assistance given to a Director or Associated Person of a Director.

- 5.7 **Acquisition, Redemption or Assistance with Approval of Holders:** The Company may acquire Equity Securities under clause 5.1.4 or redeem Equity Securities under clause 5.3.4, or give financial assistance under clause 5.4.2, if the precise terms and conditions of the specific proposal (the "Proposal") to acquire or redeem those Equity Securities, or of the giving of that financial assistance, have been approved by separate resolutions (passed by a simple majority of Votes in accordance with clause 9.2) of members of each separate group of each Class of Equity Securities of the Company whose rights or entitlements are materially affected in a similar way by the Proposal. Any such acquisition shall be completed within 12 months, and redemption or financial assistance completed or given within six months, after the passing of the relevant resolutions.

Indemnity and Insurance

- 6.1 **Types of proceedings that may be indemnified against:** The Board shall 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:
- 6.1.1 that relates to liability for any act or omission in his or her capacity as a Director or employee; and
 - 6.1.2 in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- 6.2 **Types of liability that may be indemnified against:** The Board shall cause the Company to indemnify a Director or an employee of the Company or a Related Company in respect of:
- 6.2.1 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
 - 6.2.2 costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under clause 6.2.1 above,

not being

6.2.3 criminal liability; or

6.2.4 in the case of a Director, liability for the breach of Section 131; or

6.2.5 in the case of an employee, liability for breach of any fiduciary duty owed to the Company or Related Company.

6.3 **Insurance of Directors and employees:** The Board may, subject to Section 162, cause the Company to effect insurance for Directors and employees of the Company or a Related Company in respect of:

6.3.1 liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or

6.3.2 costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or

6.3.3 costs incurred by a Director or employee in defending any criminal proceedings 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 in which he or she is acquitted.

6.4 **Directors to sign certificate:** *The Directors who vote in favour of authorising the effecting of insurance under clause 6.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.*

6.5 **Entry in the Interests Register:** The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or Related Company are immediately entered in the Interests Register.

6.6 **Definitions:** For the purpose of this clause 6, "Director" includes a former Director and "employee" includes a former employee.

PART C - SHARES: ISSUE, SUBDIVISION, TRANSFER AND VOTING

Issue of Shares

- 7.1 **Prohibition on Issue:** The Company shall not issue any Equity Securities (including issue on Conversion of any other Security) unless:
- 7.1.1 the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved (subject to clause 7.3) by separate resolutions (passed by a simple majority of Votes in accordance with clause 9.2) of holders of each Class of Quoted Equity Securities of the Company whose rights or entitlements could be affected by the issue, and the issue is completed within the time specified in clause 7.2; or
 - 7.1.2 the issue is made in accordance with any of clauses 7.4 to 7.8.
- 7.2 **Time Limit:** An issue authorised by resolutions passed pursuant to clause 7.1.1 shall be completed:
- 7.2.1 if that issue is made solely to Employees, within 36 months after the passing of those resolutions; or
 - 7.2.2 in all other circumstances, within 12 months after the passing of those resolutions.
- 7.3 **Exception:** A resolution pursuant to clause 7.1.1 of the holders of a Class of Securities shall not be required if:
- 7.3.1 the terms of issue of those Securities expressly reserved the right to make the issue of new Equity Securities in question, and specified at least the maximum number, and Class, of new Equity Securities which could be issued, and the time within which they could be issued; or
 - 7.3.2 those Securities were issued before 1 September 1994 on terms that the holders of those Securities would not be entitled to vote on a resolution of the nature referred to in clause 7.1.1 above; or

7.3.3 those Securities were issued on terms that the holders of those Securities would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in clause 7.1.1 and the issue is approved by a resolution (passed by a simple majority of Votes in accordance with clause 9.2) of holders of all the relevant Classes voting together.

7.4 **Pro rata and \$5,000 offers:** The Company may issue Equity Securities if:

7.4.1 those Equity Securities are offered to holders of existing Equity Securities of the Company on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to Votes and to Distribution Rights, and that offer is Renounceable; or

7.4.2 those Equity Securities are issued to holders of existing Equity Securities of the Company as fully paid Securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to Votes and to Distribution Rights; or

7.4.3 those Equity Securities are offered to holders of existing Equity Securities of the Company for a consideration not exceeding \$5,000 per existing Equity Security holder and the number of Equity Securities to be issued is not greater than 30% of the number of fully paid Equity Securities already on issue.

Notwithstanding clauses 7.4.1, 7.4.2 and 7.4.3 above, the Company shall be entitled:

7.4.4 to issue any Equity Securities in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Directors consider equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such Equity Securities are not materially more favourable to the persons to whom they are issued than the terms of the original offer;

- 7.4.5 to offer and issue Equity Securities to the holders of existing Securities in accordance with specific rights attached to those existing Securities to participate in issues of Equity Securities, notwithstanding that the effect may be that existing proportionate rights to Votes and Distribution Rights are not maintained;
- 7.4.6 to authorise a disproportionate offer to the extent necessary to round up holdings of Equity Securities to a Minimum Holding, or to avoid the creation of holdings which are not Minimum Holdings; and
- 7.4.7 to not offer or issue Equity Securities to holders of existing Equity Securities the terms of which expressly exclude the right to participate in the relevant offer or issue.

In this clause 7.4, "Distribution Right" means a right of the nature referred to in paragraph (a) or paragraph (b) of the definition of "Equity Security" in NZSX Listing Rule 1.1.2.

7.5 Issues within 15% limit: The Company may issue Equity Securities if:

- 7.5.1 the issue is not made in whole or in part to any Director or Associated Person of a Director, or Employee; and
- 7.5.2 the total number of Equity Securities issued, and all other Equity Securities of the same Class issued pursuant to this clause 7.5 during the shorter of the period of 12 months preceding the date of the issue and the period from the date on which the Company was first Listed to the date of the issue, will not exceed the aggregate of:
 - 7.5.2.1 15% of the total number of Equity Securities of that Class on issue at the commencement of that period; and
 - 7.5.2.2 15% of the number of the Equity Securities of that Class issued during that period pursuant to any of clauses 7.1.1, 7.4, 7.6 and 7.8; and

7.5.2.3 any Equity Securities of that Class issued pursuant to this clause 7.5 during that period, the issue of which has been ratified by an Ordinary Resolution of the Company, and less

7.5.2.4 15% of the number of Equity Securities of that Class which have been acquired or redeemed by the Company during that period (other than Equity Securities held as Treasury Stock),

PROVIDED THAT for the purposes of this clause 7.5, Securities which will or may Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert, provided also that where the conversion ratio of those Securities is fixed by reference to the market price of the underlying Equity Securities, the market price, unless otherwise specified in the terms of the issue, shall be the average end of day market price over the 20 Business Days before the earlier of the day the issue is made or announced to the market.

7.6 Employee Share Issues: The Company may issue Equity Securities if:

7.6.1 the issue is made to Employees of the Company;

7.6.2 the issue is of a Class of Securities already on issue;

7.6.3 the total number of Securities issued, and all other Equity Securities of the same Class issued to Employees of the Company pursuant to this clause 7.6 during the shorter of the period of 12 months preceding the date of issue and the period from the date on which the Company was first Listed to the date of issue, does not exceed 3% of the aggregate of:

7.6.3.1 the total number of Equity Securities of that Class on issue at the commencement of that period; and

7.6.3.2 the total number of Equity Securities of that Class issued during that period pursuant to any of clauses 7.1.1, 7.4, 7.5 and 7.8; and

7.6.4 the total number of Securities issued, and all other Equity Securities of the same Class issued to Employees of the Company pursuant to this clause 7.6 during the shorter of, the period of five years preceding the date of the issue and the period from the date on which the Company was first Listed to the date of issue, does not exceed 7% of the total number of Equity Securities of that Class on issue immediately preceding the date of the issue.

For the purposes of this clause 7.6:

7.6.5 Securities which will, or may, Convert to other Equity Securities shall be deemed to be the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert;

7.6.6 where the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, the market price, unless otherwise specified in the terms of the issue, shall be the average end of day market price over the 20 Business Days before the earlier of the day the issue is made or announced to the market;

7.6.7 Directors and Associated Persons of Directors shall not participate in any such issue unless the scheme for such participation and the precise levels of entitlement for each such person have been previously approved by an Ordinary Resolution of the Company;

7.6.8 an issue to a Director, or an Associated Person of a Director, solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be an issue to a Director or Associated Person of a Director, or an issue in which Directors or Associated Persons participate; and

7.6.9 "Employee" in relation to the Company includes any employee or officer of the Company or any of its Subsidiaries, a labour only contractor, consultant or consultant company who or which contracts with the Company or any of its Subsidiaries, any trustee or trustees on

behalf of any of the above employees or officers and any trustee or trustees of, or in respect of, any pension, superannuation or like fund established for the benefit of any of the above employees or officers.

7.7 **Repricing:** Except as provided in the NZSX Listing Rules 8.1.7 and 8.1.9, the Company may not reprice or amend the terms of any Securities issued with shareholders' approval to or for the benefit of Employees or Directors under clauses 7.1 to 7.8, in their capacity as such, without either the approval of NZX or a further Ordinary Resolution of the shareholders resolving to approve the repricing or amendment. For the purposes of this clause 7.7, "Employee" shall have the same meaning as set out in clause 7.6.9 above.

7.8 **Other Issues:** The Company may issue Equity Securities if:

7.8.1 the issue is made as consideration in an offer made by the Company in accordance with:

7.8.1.1 any takeover code approved under Section 28 of the Takeovers Act 1993; or

7.8.1.2 any takeover law regime of a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of NZX is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in clause 7.8.1.1.

and that offer is made to all holders (other than the Company and its Related Companies) of Equity Securities in any company or other entity listed on the NZSX or a Recognised Stock Exchange, which is not a company or other entity that is an Associated Person of the Company or of any Director of the Company; or

7.8.2 the issue is made upon Conversion of:

7.8.2.1 an Equity Security; or

7.8.2.2 any other Security, which on issue was approved in the manner set out in clause 7.1.1, as if clause 7.1.1 applied to that Security,

from time to time issued by the Company if the terms of issue of those Securities provided for Conversion to the kind of Securities issued; or

7.8.3 the issue is made to an existing holder of Equity Securities of the Company in order to bring that holder's holding up to a Minimum Holding; or

7.8.4 the issue is made pursuant to an arrangement, amalgamation or compromise effected pursuant to Part XIII or Part XV of the Act; or

7.8.5 the issue is made pursuant to a plan for the issue of Securities in lieu of dividends or as part of a dividend re-investment plan that entitles an existing Security holder to subscribe for Securities by applying all or any specified part of any dividend declared by the Company and payable to that person, and which issue or dividend reinvestment plan would maintain the existing proportionate right of each existing holder relative to other holders of Equity Securities to Votes and Distribution Rights, if the offer were accepted by all such holders.

7.9 **Types of Equity Securities:** Subject to the Act, (in particular Section 117 (which relates to alteration of shareholders' rights)) this Constitution and the NZSX Listing Rules, any Equity Security in the Company may be issued with such preferred, deferred, or other special rights or such restrictions (whether in regard to Dividends, voting, return of capital or otherwise) as the Board may from time determine, and in particular, Equity Securities in the Company may:

7.9.1 be issued as Equity Securities that are redeemable:

7.9.1.1 at the option of the Company where the option is exercised in relation to all holders of the same class of Equity Securities of the Company and in a manner that will leave unaffected relative voting rights; or

7.9.1.2 at the option of the Company where the option is exercised in relation to one or more holders of Equity Securities of the Company and all holders of Equity Securities have consented in writing and the procedure set out in Section 71 (which relates to special redemption of shares) is complied with; or

7.9.1.3 at the option of the holder of the Equity Securities; or

7.9.1.4 on a date specified in the terms of issue of the Equity Securities;

for a consideration that is:

a. specified; or

b. to be calculated in accordance with a formula; or

c. required to be fixed by a suitably qualified person who is not associated with or interested in the Company; or

7.9.2 confer preferential rights to distributions of capital or income; or

7.9.3 confer special, limited, or conditional voting rights; or

7.9.4 not confer voting rights.

7.10 **Convertible Securities:** Subject to the Act, this Constitution and the NZSX Listing Rules, the Board may issue Convertible Securities with such rights or such restrictions (including as to transfer in conjunction with Securities) as the Board may from time to time determine.

7.11 **Treasury Stock:** The transfer by the Company of Treasury Stock of the Company shall for the purposes of this clause 7 be deemed to constitute the issue of Equity Securities.

7.12 **Entitlements to Third Party Securities:** Entitlements conferred by the holding of Equity Securities of the Company to Securities of a third party (whether or not that third party is an Issuer), shall not be created or conferred other than in compliance with this clause 7, as if such Securities comprised an issue of Equity Securities of the Company.

7.13 **Pre-emptive Rights on Issue:** Section 45 shall not apply to the Company.

7.14 **Alteration of Rights of Holders of Securities:**

7.14.1 The Company shall comply with the provisions of Sections 116 and 117. For the purposes of this clause 7.14, those Sections shall be deemed to be modified so that:

7.14.1.1 references to “shares” shall (subject to sub clause 7.14.2) be deemed to include references to all Equity Securities of the Company, and references to “shareholders” shall be read accordingly;

7.14.1.2 in respect of Equity Securities of the Company which are not shares:

a. references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and

b. references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

7.14.2 The Company shall be required by clause 7.14.1 to comply with Sections 116 and 117 but shall not be required by the modifications deemed to be made by clause 7.14.1 above to comply with those Sections in respect of actions that affect the rights attached to:

7.14.2.1 Equity Securities of the Company which are not Quoted; or

7.14.2.2 Equity Securities of the Company which are not shares if:

- a. those Equity Securities were issued before 30 April 1995; and
- b. those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the prior approval of holders of those Equity Securities, and those terms were clearly disclosed in the Offering Document (if any) pursuant to which those Equity Securities were offered.

7.14.3 *For the purposes of Section 117(3), the issue of further Equity Securities ranking equally with, or in priority to, existing Equity Securities, whether as to voting rights or Distributions, is permitted provided such issue is made in accordance with this Constitution;*

7.14.4 Clause 7.14.1 above shall not have effect of deeming Section 118 to apply to any Securities other than shares of a company registered under the Act.

7.15 **Consolidation and Subdivision of Equity Securities:** The Board may authorise:

7.15.1 the consolidation and division of Equity Securities or any Class of Equity Securities in proportion to those Equity Securities or the Equity Securities in that Class; or

7.15.2 the subdivision of Equity Securities or any Class of Equity Securities in proportion to those Equity Securities or the Equity Securities in that Class.

Transferability of Securities

8.1 **No Transfer Restrictions:** Subject to the provisions of any legislation and clause 8.2, the Company shall not impose any restriction on the right of a holder

of a Security to transfer that Security, or any restriction upon registration of a properly completed transfer of Securities.

8.2 **Permitted Transfer Restrictions:** The Company may decline to accept or register any transfer of Securities:

8.2.1 where the Company has a lien on the Securities; or

8.2.2 if such registration, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Securities of less than the Minimum Holding.

8.3 **Improper Instrument of Transfer:** A transfer of Securities in writing that has not been properly completed shall be promptly returned to the person submitting it, for completion, and (subject to clause 8.2) shall be registered when the errors or omissions have been rectified.

8.4 **Sale of Less than Minimum Holding:** The Company may at any time give notice to any person holding less than a Minimum Holding of Securities of any Class that if at the expiration of three months after the date the notice is given the holder still holds Securities which are less than a Minimum Holding, the Company may exercise the power of sale of those Securities set out in this clause 8.4.

If that power of sale becomes exercisable:

8.4.1 if the Company is Listed, the Company may arrange for the sale of those Securities through the NZX or in some other manner approved by the NZX. If the Company is not Listed then the Company may arrange for the sale of those Securities in such manner as it thinks fit;

8.4.2 the holder of the Securities shall be deemed to have authorised the Company to act on the holder's behalf and to execute all necessary documents for the purposes of that sale;

8.4.3 the net proceeds of sale of the Securities (after deduction of reasonable sale expenses and any unpaid calls or any other amounts owing to the Company in respect of the Securities) shall be held on trust for the holder of the Securities by the Company and paid to such holder on surrender of any certificates for the Securities sold or on an indemnity being given to the Company in the case of a certificate which has been lost or destroyed or if no certificate has been issued in respect of the Securities, immediately upon the Company being satisfied of the holder's entitlement to the proceeds; and

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

Any Director may act on the Company's behalf in exercising the powers of the Company under this clause 8.4.

8.5 **No trusts recognised:** Except as required by law, the Company shall be entitled to treat the registered holder of any Security as the absolute owner thereof and shall not, unless ordered by a court of competent jurisdiction, be liable or under any obligation to recognise any trust or equity or equitable or other claim to or interest in such Security on the part of any other person whether or not it shall have actual or other notice thereof and any such notice, if given, shall be absolutely inoperative against the Company for any purpose.

8.6 **Transferor is deemed to remain holder until registration of transfer:** The transferor of a Security shall be deemed to remain the holder of the Security until the name of the transferee is entered in the Register in respect thereof.

8.7 **On death of holder, survivor or executor only recognised:** In the case of the death of a holder of Equity Securities, the survivors or survivor, where the deceased was a joint holder, or the legal personal representatives of the deceased, where the deceased was a sole holder, shall be the only persons recognised by the Company as having any title to or interest in the Equity Securities of the deceased, but nothing in clauses 8.10 to 8.12 shall release the

estate of a deceased joint holder from any liability which had arisen by virtue of such joint ownership.

- 8.8 **Person becoming entitled on death or bankruptcy of holder may be registered:** Any person becoming entitled to an Equity Security as a result of the death or bankruptcy of a holder of Equity Securities shall, upon such evidence being produced as may from time to time be properly required by the Board, have the right either to be registered as a holder of Equity Securities in respect of the Equity Security or, instead of being so registered, to make such transfer of the Equity Security as the deceased or bankrupt holder could have made.
- 8.9 **Rights to Distributions of personal representative or assignee of bankrupt holder:** Where a holder of Equity Securities dies or becomes bankrupt, the personal representatives or the assignee of such holder's estate, as the case may be, shall, upon the production of such evidence as may from time to time be required by the Board be entitled to the same Distributions and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise) as the holder would have been entitled to if the holder had not died or become bankrupt. Where two or more persons are jointly entitled to any Equity Security in consequence of the death of the holder of Equity Securities they shall, for the purposes of this Constitution, be deemed to be joint holders of the Equity Security.
- 8.10 **Transfer on behalf of mentally disordered holder of Equity Securities:** Where any holder of Equity Securities becomes mentally disordered or subject to a protection of property order, that holder's manager will be entitled, upon the production of any evidence that may from time to time be required by the Board, to transfer the Equity Securities or to be registered as a holder of Equity Securities in respect of the Equity Securities and to receive the same Distributions and other advantages and to have the same rights (whether in relation to meetings of the Company, or to voting, or otherwise) as the holder of Equity Securities would have been entitled to if that holder had not become mentally disordered or subject to a protection of property order.
- 8.11 **Refusal of Transfer:** Notwithstanding the provisions of clauses 8.7 to 8.10, the Board has the same right to refuse or suspend registration of a transfer of

Equity Securities as it would have had in the case of a transfer of the Equity Securities by that holder of Equity Securities before becoming a mentally disordered or protected person, or before that holder's death or bankruptcy, as the case may be.

- 8.12 **Transfer of Securities other than Equity Securities:** The provisions of this clause 8 shall also apply to the transfer of Securities other than Equity Securities, with any necessary modifications.

Rights and Powers Attaching to Securities

- 9.1 **Shareholders' Rights:** The rights specified in Section 36(1) are hereby altered by the following provisions set out in this clause 9.
- 9.2 **Restriction:** Notwithstanding anything to the contrary in this Constitution or the NZSX Listing Rules, on any resolution of the nature listed in column 1 of the table below, no Vote shall be cast in favour of a resolution on any Securities held by a person of the nature listed in respect of that resolution in column 2 of the table below, or by any Associated Person of such a person.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolution under clauses 12.1 and 12.2 (Directors' Remuneration)	The Director intended to receive a payment
Resolution under clause 7.1 (Issue of Securities)	Subject to clause 9.3: (a) Any person to whom it is proposed to issue the new Securities referred to in the resolution; or (b) If the resolution does not specify the persons to whom it is proposed to issue Securities, any Director of the Company who is not excluded by the terms of the resolution from participation in the issue.
Resolution under clause 7.1 to approve a Rights issue of Equity Securities which is not Renounceable	Any Director of the Company and any Associated Person of the Company
Resolution under clause 7.5.2.3 (Ratification of Issue)	Any person who has been issued, or has acquired, Securities the subject of ratification by that resolution
Resolution under clause 7.6 (Issue to	Any Director intended or likely to benefit from

employees)	the issue referred to in the resolution
Resolution under clause 19.1 (Approval of issues, buybacks and redemptions affecting control)	Any person whose effective control of the Company would be materially increased
Resolution under clause 18.1 (Related party transaction)	Any person referred to in clause 18.3 who or which is a party or beneficiary (in terms of clause 18.3.1 or 18.3.2) to or of the transactions the subject of the resolution
Resolution under clause 20.9 (Reduction, cancellation, or deferral of amount unpaid on Equity Securities)	Any person who is intended to benefit from the reduction, deferral or cancellation, unless the reduction, deferral or cancellation benefits all holders of Equity Securities of the Company on the same basis

- 9.3 **Exception:** On a resolution under clause 7.1, a person to whom it is proposed to issue the new Securities referred to in that resolution is not disqualified from voting if the new Securities are to be offered on the same basis to all holders of Securities of the same Class as the Securities held by that person.
- 9.4 **Proxies or Representatives:** Clause 9.2 shall not prevent a person disqualified from Voting under that clause, who has been appointed as a proxy or Voting representative by another person who is not disqualified from Voting under that clause, from Voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.
- 9.5 **Discovery of Disqualified Persons:** The Company shall use reasonable endeavours to ascertain, no later than 5 Business Days before any meeting to consider a resolution referred to in clause 9.2, the identity of holders of Securities who are disqualified from voting on that resolution pursuant to clause 9.2, and on request shall supply a list of such holders to the NZX and any holder of Equity Securities of the Company.
- 9.6 **Deadline for Challenge:** Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of clause 9.2, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of clause 9.2. Any objection by a holder of Securities to the accuracy or completeness of any list provided pursuant to clause 9.5 shall be disregarded by the Company and the chairperson of the relevant meeting if it is

notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.

- 9.7 **Partly Paid Securities:** Where there are Securities of the same Class, some of which are fully paid and some of which are not fully paid, each Security which is not fully paid shall carry only a fraction of the Vote which would be exercisable if the Security was fully paid. That fraction must be equivalent to the proportion which the amounts paid (not credited) is of the total amount paid and payable (excluding amounts credited and amounts paid in advance of the call).

Place of Share Register

- 10.1 **Two or more:** The Company's share register may be divided into two or more registers kept in different places.

PART D - DIRECTORS

Appointment and Removal of Directors

- 11.1 **Sections 153 and 156(2):** The provisions of Sections 153 and 156(2) shall be read subject to clauses 11.2 to 11.10 inclusive.
- 11.2 **Directors' Appointments:** Any natural person who is not disqualified under the Act may be appointed as a Director by Ordinary Resolution. The Board shall also have power at any time, and from time to time, to appoint any person qualified to be a Director, to fill a casual vacancy.
- 11.3 **Board Composition:** The composition of the Board shall include the following:
 - 11.3.1 the minimum number of Directors (other than alternate Directors) shall be three, which must include the minimum number of Independent Directors as required by clause 11.4;
 - 11.3.2 unless and until otherwise determined by Ordinary Resolution, the maximum number of Directors shall be nine; and
 - 11.3.3 at least two Directors shall be ordinarily resident in New Zealand.
- 11.4 **Independence of Directors:**
 - 11.4.1 The minimum number of Independent Directors shall be two or, if there are eight or more Directors, three or one-third (rounded down to the nearest whole number of Directors) of the total number of Directors, whichever is the greater.
 - 11.4.2 The Board must identify which Directors it has determined, in its view, to be Independent Directors.
 - 11.4.3 The Board must make a determination under clause 11.4.2:

11.4.3.1 no later than 10 Business Days following the Company's annual meeting and immediately after making such determination, the Company shall release to the market the names of those Directors determined by the Board to be Independent Directors; and

11.4.3.2 no later than 10 Business Days following appointment by the Board in respect of any Director appointed by the Board and immediately after making such determination, the Company shall release to the market whether the Board has determined that such Director is an Independent Director; and

11.4.3.3 prior to publication of its annual report to enable it to comply with NZSX Listing Rule 10.5.3(j).

11.4.4 The Company shall be responsible for making the necessary arrangements to require its Directors to provide sufficient information to the Board in order for the Board to make a determination under clause 11.4.2.

11.5 **Nominations:** Nominations for Directors shall comply with the following:

11.5.1 Except as provided in clause 11.5.6, a person shall not be elected as a Director at an annual meeting of Security holders of the Company unless that person has been nominated by a Security holder entitled to attend and vote at the meeting.

11.5.2 Apart from the restrictions in the Act, there shall be no restriction on the persons who may be nominated as Directors nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this clause 11.5.

11.5.3 Nominations must be received by the Company between the date three months before the date of the meeting and the date two months before the date of the meeting (both dates inclusive).

- 11.5.4 Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the relevant notice of meeting together with, or as part of, the notice of the meeting and the Company shall specify in such notice the Board's view on whether or not the nominee would qualify as an Independent Director.
- 11.5.5 The Company shall make an announcement to the market not less than three months prior to the date of the proposed annual meeting of Shareholders advising of the opening date for Director nominations and the closing date for Director nominations.
- 11.5.6 For the avoidance of doubt, the provisions of this clause 11.5 shall not apply to any person to whom clauses 11.6 and 11.9 apply.
- 11.6 **Confirmation of Appointment by Directors:** Any person who is appointed as a Director by the Board under clause 11.2 shall retire from office at the next annual meeting of the Company, but shall be eligible for re-election at that meeting.
- 11.7 **Alternate Directors:** A Director may, with the consent of a majority of his or her co-Directors, appoint another person to be an alternate Director during his or her absence or inability to act as Director. That appointment may be revoked at any time by a majority of his or her co-Directors or by the Director who appointed the alternate. An alternate Director shall cease to be an alternate Director if his or her appointor ceases for any reason to be a Director otherwise than by retiring and being re-elected at the same meeting. A Director may not be appointed to act as alternate for another Director. No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate. A person holding office as an alternate Director shall be entitled to all notices of meetings of the Directors and any paper minutes or documents sent to Directors (subject to he or she providing the Company with an address within New Zealand to which such notices or documents may be sent) and to attend and vote at any meetings of Directors but shall not vote at that meeting except in the place of the Director for whom he or she is an alternate and he or she shall not require any share qualification and shall not be entitled to be

remunerated otherwise than out of the remuneration of the Director appointing him or her. Any appointment or revocation under this clause shall be effected by notice in writing to the Company.

11.8 Removal from Office:

11.8.1 Ordinary Resolution: All Directors shall be subject to removal from office as Director by Ordinary Resolution.

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

11.8.2.1 resigns by notice in writing to the Company; or

11.8.2.2 being an employee of the Company, ceases such employment.

A person who ceases to be a Director by reason of ceasing employment may be re-appointed a Director pursuant and subject to the provisions of clause 11.2; or

11.8.2.3 is removed from office in accordance with the Act or subclause 11.8.1; or

11.8.2.4 becomes disqualified from being a Director pursuant to the Act; or

11.8.2.5 dies; or

11.8.2.6 is absent from meetings of the Board for more than 6 months without the Board's permission, and the Board resolves that the office be vacated.

11.9 Rotation: At least one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected. Directors appointed under clause 11.2, and subject to retirement under the provisions of clause 11.6, shall be exempt

from the obligation to retire as part of the rotation process and shall not be taken into account in calculating the number of Directors to retire by rotation under this clause 11.9. Similarly one Executive Director, if appointed, shall be exempt from such obligation to retire under this clause but shall be included in the number of Directors used to calculate the number of Directors required to retire by rotation under this clause.

- 11.10 **Appointment of Directors to be Voted on Individually:** No resolution to appoint or elect a Director (including a resolution to re-elect any Director under clause 11.6) shall be put to holders of Securities unless:

11.10.1 *the resolution is for the appointment of one Director; or*

11.10.2 *the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.*

Nothing in this clause 11.10 prevents the election of two or more Directors by ballot or poll.

- 11.11 **Consent:** The appointment of a Director shall not take effect until his or her written consent to act as Director is received by the Company.

- 11.12 **Shareholding Qualifications:** There shall be no shareholding qualification for a Director.

Directors' Remuneration

- 12.1 **Fixing Remuneration:** No remuneration shall be paid to a Director in his or her capacity as a Director of the Company or any Subsidiary, other than a Subsidiary which is Listed (including any remuneration paid to that Director by a Subsidiary, other than a Subsidiary which is also Listed) unless that remuneration has been authorised by an Ordinary Resolution of the Company. Each such resolution shall express Directors' remuneration as either:

12.1.1 a monetary sum per annum payable to all Directors taken together; or

12.1.2 a monetary sum per annum payable to each person from time to time holding office as a Director.

If remuneration is expressed in accordance with 12.1.1, then in the event of an increase in the total number of Directors holding office, the Directors may, without the authorisation of an Ordinary Resolution of the Company, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson) of the Company.

No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a general meeting of the Company unless notice of the amount of increase has been given in the notice of meeting. Nothing in this clause 12.1 shall affect the remuneration of executive Directors in their capacity as executives.

Subject to clause 18, Director's remuneration for work not in the capacity of a Director may be approved by the Directors without Shareholder approval.

12.2 Payments Upon Cessation of Office: The Company may make a payment to a Director or former Director, or his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if the amount of the payment, or the method of calculation of the amount of that payment is authorised by an Ordinary Resolution, **PROVIDED THAT** the Company may make a payment to a Director or former Director that was in office on or before 1 May 2004 and has continued to hold office since that date, or to his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, without an Ordinary Resolution provided that the total amount of that payment (or the base for the pension) does not exceed the total remuneration of that Director in his or her capacity as a Director in any three years chosen by the Company.

Nothing in this clause 12.2 shall affect any amount paid to an executive Director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or

any normal subsidy related thereto) made by a Director to a superannuation scheme.

12.3 Expenses and Special Remuneration: Notwithstanding clause 12.1:

12.3.1 each Director is entitled to be paid or reimbursed 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; and

12.3.2 subject to clause 18 of this Constitution (if applicable), the Board may authorise, without the approval of holders of Securities of the Company, the payment of special remuneration to any Director who is or has been engaged by the Company to carry out work or perform any services which are not in the capacity of a Director.

12.4 Director may hold another office or place of profit: Subject to the Act and the NZSX Listing Rules, a Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of Director for such period and on such terms (as to remuneration and otherwise) as the Board may determine and no Director or intending Director shall be disqualified from contracting with the Company either with regard to tenure of any such other office or place of profit or as vendor, purchaser, or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested be liable to be avoided nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of the Director holding that office or of the fiduciary relationship thereby established.

Directors' Meetings

13.1 Meetings of Directors of the Company shall be conducted in accordance with Schedule 1 attached to and forming part of this Constitution.

Delegation by Directors

14.1 Without limiting Section 130 but excluding from any such delegation any of the matters set out in the Second Schedule to the Act:

- 14.1.1 the Directors may from time to time appoint one or more of their body to the office of Managing Director for a fixed term not exceeding five years. The resolution to appoint and the terms and conditions of that appointment shall require the assent of a simple majority of the Board. The Directors may fix his or her remuneration (except his or her remuneration in his or her capacity as a Director) which may be in addition to his or her remuneration as an ordinary Director and may be either by way of salary, commission or participation in the profits of the Company (other than a commission or percentage on turnover or dividends) or by a combination of two or more of those modes;
- 14.1.2 the Managing Director while he or she continues to hold that office shall be subject to the same provisions as regards resignation, removal and disqualification as the other Directors of the Company, and if he or she ceases to hold the office of Director for any cause he or she shall ipso facto cease to be a Managing Director. For the purposes of clause 11.9 where there are two or more Managing Directors the Board shall nominate which Managing Director shall be exempt from the requirement to retire by rotation;
- 14.1.3 the Directors may entrust to and confer upon a Managing Director any of the powers exercisable by the Directors (except the power to make calls, forfeit Securities, borrow money or issue debentures) upon such terms and conditions and with such restrictions as they may think fit and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers;
- 14.1.4 the Directors may delegate any of their powers to committees consisting of such persons as they think fit and may from time to time remove such delegation;
- 14.1.5 any Managing Director appointed under this clause 14 is an Executive Director and clause 11.9 shall be construed accordingly.

Audit Committee

- 15.1 **Establishment:** The Board of the Company shall establish an Audit Committee.
- 15.2 **Composition of the Audit Committee:** The Audit Committee shall:
 - 15.2.1 be comprised solely of the Directors of the Company; and
 - 15.2.2 have a minimum of three members; and
 - 15.2.3 have a majority of members that are Independent Directors; and
 - 15.2.4 have at least one member with an accounting or financial background.
- 15.3 **Responsibilities:** The responsibilities of the Audit Committee shall include:
 - 15.3.1 ensuring that processes are in place and monitoring those processes so that the Board is properly and regularly informed and updated on corporate financial matters; and
 - 15.3.2 recommending the appointment and removal of the independent auditor; and
 - 15.3.3 meeting regularly to monitor and review the independent and internal auditing practices; and
 - 15.3.4 having direct communication with and unrestricted access to the independent and any internal auditors or accountants; and
 - 15.3.5 reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations; and
 - 15.3.6 ensuring that the external auditor or lead audit partner is changed at least every five years.

PART E - SHAREHOLDERS' MEETINGS

Shareholders' Meetings

- 16.1 **Compliance with Schedule 2:** Meetings of shareholders of the Company shall be conducted in accordance with Schedule 2 attached to and forming part of this Constitution.

PART F - MAJOR TRANSACTIONS AND TRANSACTIONS WITH RELATED PARTIES

Disposal or Acquisition of Assets

17.1 **Restrictions** The Company shall not (subject to clause 17.2) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Company or assets to be held by the Company:

17.1.1 which would change the essential nature of the business of the Company; or

17.1.2 in respect of which the gross value is in excess of 50% of the Average Market Capitalisation of the Company,

except with the prior approval of an Ordinary Resolution of the Company (or a Special Resolution if Section 129 applies to the transaction or transactions).

PROVIDED THAT for the purposes of this clause 17.1, "Average Market Capitalisation" means the average end-of-day market capitalisation of the Company's Equity Securities carrying Votes over the 20 Business Days before the earlier of the day the transaction is entered into or is announced to the market.

17.2 **Exception:** Clause 17.1 shall not apply to:

17.2.1 a takeover offer by the Company in respect of a Code Company; or

17.2.2 any transaction entered into by the Company with a Bank, on arms length terms and in the ordinary course of banking business, as a result of which transaction the Company has recourse to the credit risk of that Bank.

Transactions with Related Parties

18.1 **Restriction:** The Company shall not enter into a Material Transaction if a Related Party is, or is likely to become:

18.1.1 a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or

18.1.2 in the case of a guarantee or other transaction of the nature referred to in clause 18.2.4 below, a direct or indirect beneficiary of such guarantee or other transaction,

unless:

18.1.3 that Material Transaction is an employment agreement with a natural person who is not a director (within the meaning of Section 126) of the Company or any of its Subsidiaries; or

18.1.4 the total value of that Material Transaction is less than \$250,000; or

18.1.5 that Material Transaction is approved by an Ordinary Resolution of the Company.

18.2 **Definition of Material Transaction:** For the purpose of clause 18.1, "Material Transaction" means a transaction or a related series of transactions whereby the Company:

18.2.1 purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 5% of the Average Market Capitalisation of the Company; or

18.2.2 issues its own Securities or acquires its own Equity Securities having a market value in excess of 5% of the Average Market Capitalisation of the Company; or

18.2.3 borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 5% Average Market Capitalisation of the Company; or

- 18.2.4 enters into any guarantee, indemnity, or similar obligation, or gives any security for, or of obligations which could expose the Company to liability in excess of 5% of the Average Market Capitalisation of the Company; or
- 18.2.5 provides or obtains any services (including without limitation the underwriting of Securities or services as an employee) in respect of which the actual gross cost to the Company in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 0.5% of Average Market Capitalisation of the Company; or
- 18.2.6 amalgamates, except for amalgamations of a wholly owned Subsidiary of the Company with another wholly owned Subsidiary of the Company or with the Company.

PROVIDED THAT for the purposes of this clause 18.2, “Aggregate Net Value” means the net value of those assets calculated as the greater of the net tangible asset backing value (from the most recently published financial statements) or market value and “Average Market Capitalisation” has the same meaning as set out in clause 17.1.

18.3 Definition of Related Party: For the purposes of clause 18.1, “Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- 18.3.1 a Director or officer of the Company or any of its Subsidiaries; or
- 18.3.2 a *Substantial Security Holder of the Company*; or
- 18.3.3 an Associated Person of the Company or any of the persons referred to in 18.3.1 or 18.3.2, other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or
- 18.3.4 a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in 18.3.1, 18.3.2, or 18.3.3 or of whom the attainment

of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself,

but excludes a wholly owned Subsidiary of the Company, other than a wholly owned Subsidiary which:

18.3.5 is a party to a Material Transaction of the type described in clause 18.2.5; and

18.3.6 the Company intends to sell, or otherwise dispose of, the subsidiary to a Related Party.

18.4 **Exception:** Clause 18.1 shall not apply to:

18.4.1 any transaction entered into by the Company with a Bank which is a Related Party of the Company, on arms length terms and in the normal course of banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank; or

18.4.2 the issue, acquisition, or redemption, by the Company of Securities of the Company, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a Distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder. For the purposes of this clause 18.4.2, a transfer by the Company of Equity Securities held by the Company in itself is deemed to constitute an issue of Securities; or

18.4.3 any employment or service contracts which are Material Transactions under clause 18.2.5 where the NZX is satisfied that the terms of the contract have been set on an arm's length, commercial basis; or

18.4.4 any transaction indemnifying any Director or Employee of the Company or a Related Company which would be a Material Transaction under clause 18.2.4, where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings,

threatened proceedings or circumstances in any capacity which are likely to result if a claim by the Director or Employee under the proposed indemnity; or

18.4.5 arrangements, amalgamations or compromises pursuant to Part XV of the Act.

Issues and Buybacks of Securities Affecting Control

19.1 **Restrictions:** Notwithstanding the provisions of clauses 5.1 to 5.7 and 7.1 to 7.8 of this Constitution, but subject to the NZSX Listing Rules no issue, acquisition, or redemption of Securities shall be made by the Company if:

19.1.1 there is significant likelihood that the issue, acquisition or redemption will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) *effective control of the Company*; and

19.1.2 that person or group of Associated Persons is entitled before the issue, acquisition, or redemption to exercise, or direct the exercise of, not less than 1% of the total Votes attaching to Securities of the Company,

unless the precise terms and conditions of the issue, acquisition, or redemption, have been approved by an Ordinary Resolution of the Company.

PART G - OTHER PROVISIONS

Calls on Equity Securities

- 20.1 **Ability to call:** Subject to the terms of issue of any Equity Securities, the Board may resolve to require the holders of unpaid or partly paid Equity Securities to pay all or part of the amount unpaid on the Equity Securities ("the Call"). Notice of the Call must be given to the holder at the time of the Call or to a subsequent holder of the Equity Securities. Failure to give notice to a holder will not invalidate a Call but it will not be payable by that holder until the notice has been served on the holder. The notice must specify the day by which and the place at which the Call must be paid. Notice of a Call sent by post to a holder to the address recorded in the Share Register as the address of the holder, will be deemed to have been served on the holder the day after it was posted. Subject to clause 20.9, a Call may be revoked or postponed at any time by the Board.
- 20.2 **Call deemed made:** A Call shall be deemed to have been made at the time when the resolution of the Board authorising the Call was passed and may be required to be paid by instalments.
- 20.3 **Joint holders' liability:** The joint holders of an Equity Security shall be jointly and severally liable to pay all calls in respect of that Equity Security.
- 20.4 **Unpaid Calls to accrue interest:** Subject to clause 20.9, if a sum called in respect of an Equity Security 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 may determine either at the time of the Call or subsequently. The Board may at its discretion waive payments of any such interest either in whole or in part.
- 20.5 **Payment on allotment:** Any sum which by the terms of issue of an Equity Security becomes payable on allotment or at any fixed date shall for the purposes of this Constitution be deemed to be a Call duly made and payable on the date on which by the terms of issue the same becomes payable and in case of non-payment all the relevant provisions of this Constitution as to payment of

interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a Call duly made and notified.

- 20.6 **Proof of Holding:** On the trial or hearing of any action for the recovery of any money due for any Call it shall be sufficient to prove that the name of the holder of the Security sued is entered in the Share Register of the Company as the holder or one of the holders of the Equity Securities in respect of which such debt accrued, that the resolution making the Call is duly recorded in the records of the Company and that notice of such Call was duly given to the holder sued in pursuance of this Constitution, and it shall not be necessary to prove the appointment or qualification of the Directors who made such call nor any other matter whatsoever, and the proof of the matters aforesaid shall be conclusive evidence of the debt.
- 20.7 **Directors' discretion to differentiate:** The Board may, on the issue of Equity Securities, by agreement with the holders concerned, differentiate between the holders as to the amounts to be paid and the times of any Calls or payment.
- 20.8 **Payments in advance:** The Board may if it thinks fit receive from any holder of Equity Securities willing to advance the same all or any part of the money uncalled and unpaid upon any Equity Securities held by that holder and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate as may be agreed upon between the Board and the holder of Equity Securities paying the sum in advance, but no holder shall be entitled as of right to any interest on any money so paid in advance and the Board may decline to pay any interest. The Board may at any time repay the amount so advanced upon giving to the holder of Equity Securities three months' notice in writing.
- 20.9 **Cancellation of amount due:** No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution passed in accordance with clause 9.2.

Suspension of Right to Dividends, Forfeiture and Lien

- 21.1 **Notice from Directors:** If a holder of an Equity Security 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 a notice on the holder requiring payment of 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.

- 21.2 **Due date specified:** The notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Equity Securities in respect of which the call was made will be liable to be forfeited.
- 21.3 **Board may withhold Distributions for non-payment of Calls:** If a holder of an Equity Security fails to pay any Call (or instalment of a Call) on the day appointed for payment under clause 21.2, the Board may at any time after that date, while any part of the Call or instalment payable by the holder remains unpaid, suspend payment of any Dividends or other Distributions payable to the holder.
- 21.4 **Amount owing under Call may include interest:** The amount owing under the Call for the purposes of clauses 21.3, 21.5 and 21.6 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 holder of the amount owing under the Call.
- 21.5 **Application of suspended Dividends:** All Dividends and other Distributions suspended pursuant to clause 21.3 may be applied by the Company to reduce the amount owing under the Call. Dividends and other Distributions so applied will be deemed to have been paid in full.
- 21.6 **Lifting suspension of right to Dividends:** When the total Dividends and Distributions withheld and applied under clause 21.5 equal the total amount owing under the Call, including amounts owing under clause 21.4, the suspension of the right to Dividends and Distributions will be lifted, and all rights to be paid Dividends and Distributions on the Equity Securities will resume.
- 21.7 **Directors' Resolution:** If the requirements of any notice given in accordance with clause 21.2 are not complied with, any Equity Security in respect of which

the notice has been given may at any time thereafter before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all Dividends declared in respect of the forfeited Securities and not actually paid before the forfeiture.

- 21.8 **Note on Register:** When any Equity Security shall have been so forfeited, notice of the resolution shall be given to the holder in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture, with the date thereof, shall forthwith be made in the Share Register, and any certificate of any Equity Securities so forfeited as aforesaid shall be immediately cancelled by the Company and the holder in whose name such cancelled Equity Security stood immediately prior to such cancellation shall return the certificate (if any) for such Equity Security so forfeited to the Company within 14 days of receiving notice of such resolution as aforesaid.
- 21.9 **Sale of forfeited Security:** Subject to clause 20.9, a forfeited Equity Security may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board thinks fit.
- 21.10 **Liability remains following sale:** A person whose Equity Securities have been forfeited shall cease to be a holder in respect of the forfeited Equity Securities, but shall, notwithstanding, remain liable to pay to the Company all money which at the date of forfeiture was payable by that holder to the Company in respect of the Equity Securities but that holder's liability shall cease if and when the Company receives payment in full of all such money in respect of the Equity Securities.
- 21.11 **Non-payment:** 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 an Equity Security becomes payable at a fixed time on account of the issue price of the Equity Security as if the same had been payable by virtue of a call duly made and notified.
- 21.12 **Lien:** The Company shall have a first and paramount lien upon all the Equity Securities registered in the name of each holder of Equity Securities whether solely or jointly with others and upon the proceeds of sale thereof, and on

Distributions from time to time declared in respect of such Equity Securities for:

21.12.1 unpaid Calls, instalments, or other amounts, and any interest payable on such amounts, relating to the specific Equity Securities; and

21.12.2 such amounts as the Company may be called upon to pay under any legislation in respect of the specific Equity Securities,

AND for the purpose of giving better effect to the provisions of this clause each holder of Equity Securities irrevocably appoints the Company and each officer of the Company as attorney for that holder authorising the Company to complete an assignment to the Company of any moneys owing by that holder under the provisions of this clause and each holder agrees to ratify and confirm any act carried out by the Company in that behalf.

21.13 **Sale of Equity Securities subject to lien:** The Company may sell in such manner as the Board thinks fit any Equity Securities on which the Company has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the Equity Securities or the person entitled thereto by reason of his or her death or bankruptcy.

21.14 **Accounting for proceeds:** If Equity Securities are forfeited and sold, or are sold to enforce a lien, any residue after the satisfaction of unpaid calls, instalments, premiums or other amounts and interest thereon, and expenses, shall be paid to the previous holder, or to the executors, administrators or assigns of the previous holder.

21.15 **Evidence of forfeiture:** A certificate under the hand of a Director and countersigned by a second Director that the power of sale hereinbefore mentioned has arisen and is exercisable by the Company under this Constitution, or that an Equity Security in the Company has been duly forfeited on the date stated therein, shall be conclusive evidence of the facts stated therein.

- 21.16 **Authority to transfer:** For giving effect to any such sale after forfeiture or for enforcing a lien in purported exercise of the powers hereinbefore given the Directors may authorise some person to transfer the Equity Securities sold to the purchaser thereof. The purchaser shall be registered as the holder of the Securities comprised in any such transfer and he shall not be bound to see to the application of the purchase money nor shall such purchaser's title to the Equity Securities be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively. If the certificate for forfeited Equity Securities is not delivered up to the Company the Directors may issue a new certificate distinguishing it as they think fit from the certificate not delivered up.

Distributions

- 22.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the Solvency Test may, subject to the Act and this Constitution, authorise Distributions by the Company at times, and of amounts, and to any holders of Equity Securities, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.
- 22.2 **Form of Distribution:** Subject to the rights of holders of any Equity Securities in a Class, the Board may make a Distribution in such form as it thinks fit, but except as provided in clause 22.3 shall not differentiate between holders as to the form in which a Distribution is made without the prior approval of the holders of Equity Securities.
- 22.3 **Currency of payment:** The Board, if it thinks fit, may differentiate between holders of Equity Securities as to the currency in which any Distribution is to be paid. In exercising its discretion the Board may have regard to the registered address of a holder of Equity Securities, the register on which a holder's Equity Securities are registered and such other matters (if any) as the Board considers appropriate. If the Board determines to pay a Distribution in a currency other than New Zealand currency, the amount payable shall be converted from New Zealand currency in such manner, at such time, and at such exchange rate, as the Board thinks fit.

22.4 Entitlement to Dividends: The Board shall not authorise a Dividend:

22.4.1 in respect of some but not all the Equity Securities in a Class, or

22.4.2 that is of a greater value per Equity Security in respect of some Equity Securities of a Class than it is in respect of other Equity Securities of that Class;

unless the amount of the Dividend in respect of an Equity Security of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the holder under this Constitution or under the terms of issue of the Equity Security, but a holder of Equity Securities may waive that holder's entitlement to receive a Dividend or any part thereof by written notice to the Company signed by or on behalf of the holder.

22.5 Deduction of expenses: The Directors may deduct from any Distribution due to any holder of Equity Securities all sums of money, if any, which are:

22.5.1 presently payable to that holder of Equity Securities to the Company on account of any liability in respect whereof the Company has a lien on the Equity Securities on which such Distribution is payable; or

22.5.2 required by law to be deducted by the Company.

22.6 Method of payment: Any Distribution payable in cash in respect of the Securities may be paid by direct bank credit (if so authorised by the holder) or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders (subject to any arrangement between such joint holders consented to by the Directors), to the registered address of any one of the joint holders or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any Distributions payable in respect of the Equity Securities held by them as joint holders but the Company may require the receipt of all the joint holders. The Company shall not be responsible for the loss in transmission of any cheque or warrant sent through

the post as aforesaid whether sent at the request of a holder of Equity Securities or otherwise.

22.7 **No interest:** No Distribution shall bear interest against the Company.

22.8 **Unclaimed Distributions:** All Distributions unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors *for the benefit of the Company* until claimed and all Distributions unclaimed for five years after having been declared may be forfeited by the Directors for the benefit of the Company provided always that the Directors must at any time after such forfeiture annul the same and, subject to the Company meeting the Solvency Test, pay the Distributions so forfeited to any person producing evidence of entitlements to the same and shall do so unless in the opinion of the Directors such payment would adversely affect the Company.

Execution of Deeds

23.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company by:

23.1.1 *two or more Directors; or*

23.1.2 *any Director, or any person authorised by the Board, whose signature must be witnessed; or*

23.1.3 *one or more attorneys appointed by the Company in accordance with Section 181.*

SCHEDULE 1

Directors' Meetings

All meetings of Directors of the Company shall be conducted in accordance with the Third Schedule to the Act, except where varied by the following provisions:

1. **Procedure:** The Directors may meet together for the dispatch of business, adjourn, or otherwise regulate their meetings and proceedings as they may think fit. The quorum for meetings of Directors shall be a majority of Directors. No business may be transacted at a meeting of Directors if a quorum is not present.
2. **Notice**
 - a **Usual Notice for Meetings:** Every Director who is in New Zealand shall be given not less than five clear days' notice of a meeting unless the Director waives that right Notice may be given to a Director by:
 - i delivery of the notice to the Director in which case the notice will be deemed to be given when delivered;
 - ii sending the notice by facsimile transmission to the facsimile number given by the Director to the Company for the purposes of receiving notices, in which case the notice will be deemed to be given when sent; or
 - iii sending the notice by electronic mail to the email address given by the Director to the Company for the purposes of receiving notices, in which case the notice will be deemed to be given when sent;
 - iv posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted.
 - b **Urgent Meeting:** If, in the opinion of the chairperson or in his or her absence the deputy chairperson (if any) or in the absence of both, the Managing Director (if any), a meeting is required in the interests of the Company to be convened on less than five clear days' notice, the meeting may be convened on short notice **PROVIDED THAT:**

- i not less than three-quarters of the Directors entitled to be given notice consent to such shorter notice; or
- ii the chairperson, or in his or her absence the deputy chairperson (if any), or in the absence of both, the Managing Director (if any) and at least one other Director reasonably consider that by reason of extreme urgency, a meeting on short notice is required in the interests of the Company and that it is not practicable to give five clear days' notice.

In the case of a meeting convened on short notice pursuant to this clause:

- A a copy of the notice convening the meeting shall be given to every Director entitled to be given notice either personally or shall be sent prior to the holding of a meeting by facsimile transmission to the facsimile number given by the Director to the Company for the purposes of receiving notices, in which case the notice will be deemed to be given when sent;
 - B the Managing Director or in his or her absence the next most senior executive of the Company, shall use all reasonable endeavours to contact every Director either personally or by telephone prior to the holding of the meeting to try to ensure that every Director is aware that the meeting is to be held;
 - C every Director shall be entitled to attend the meeting telephonically or by other electronic means; and
 - D the business to be transacted at the meeting shall be limited to business related to the urgent matter or matters which necessitated the meeting being called on short notice.
- c **Powers of Quorum:** A meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Constitution or the Act for the time being vested in or exercisable by the Directors generally.

3. **Meeting Methods:** For the purposes of this Constitution the contemporaneous linking together with simultaneous audio or audio and visual means of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Directors and all the provisions in this Constitution as to meetings of the Directors shall apply to such meetings by telephone so long as the following conditions are met:

- a all the Directors for the time being entitled to receive notice of a meeting of the Directors (including any alternate for any Director) shall be entitled to notice of such a meeting and to be linked by such means for the purposes of such meeting Notice of any such meeting may be given by such means;
- b each of the Directors taking part in such a meeting must be able to hear each of the other Directors taking part throughout the meeting; and
- c at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Directors of the Company to all the other Directors taking part.

A Director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times at such a meeting unless he or she has previously obtained the express consent of the chairperson to leave the meeting as aforesaid. Neither the meeting nor any business conducted at the meeting shall be invalidated if a Director does leave a meeting conducted in this manner without the express Consent of the Chairperson.

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

4. **Calling of Meeting:** The chairperson of Directors, the Managing Director or any two Directors may at any time summon a meeting of the Directors.

5. **Voting:** Questions arising at any meeting of the Directors shall be determined by vote of the Directors. On any such vote each Director shall have one vote. The chairperson of a Directors' meeting shall not be entitled to a casting vote.

A Director shall not vote in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter, **PROVIDED THAT** a Director may vote in respect of and be counted in the quorum for the purposes of a matter in which that Director is interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to Section 162 of the Act. In this clause, the term "interested" bears the meaning assigned to that term in Section 139.

6. **Chairperson:** The Directors shall from time to time elect a chairperson and (if they think fit) a deputy chairperson. The chairperson, or failing him or her, the deputy chairperson (if any), shall preside at all meetings of the Directors, but if no such chairperson or deputy chairperson is present within 10 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairperson of such meeting, and the Director so chosen shall preside at such meeting accordingly.

7. **Proceedings of Committee:** Any committee of Directors shall in the exercise of the powers so delegated conform to any regulation that may be imposed upon it by the Directors. Save as aforesaid the meetings and proceedings of a committee shall be governed by the provisions of this Constitution regulating the proceedings and meetings of Directors, *including those relating to the signing of written resolutions.*

8. **Defects:** All acts done by any meeting of the Directors or a committee of Directors or by any person acting as a Director, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid or that they or any of them were disqualified, shall be as valid as if every such person had been duly appointed and was qualified to be a Director.

9. **Resolution in Writing:** A resolution in writing signed by all of the Directors for the time being entitled to vote on that resolution (or their alternate Directors) shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted. Any such resolution may consist of several documents (including facsimile

or other similar means of communication) in like form each signed or assented to by one or more Directors. A copy of any such resolution must be entered into the minute book of Board proceedings.

10. **Minutes:** The Directors shall cause minutes to be made in books provided for the purpose of recording:

- a the names of the Directors present at each meeting of the Directors and of any committee of the Directors; and
- b all resolutions and proceedings at all meetings of the Company and of the Directors and of committees of Directors.

Any such minutes of any meeting of the Directors or of any committee signed by the chairperson of such meeting or by the chairperson of the next succeeding meeting as correct record of the meeting shall be prima facie evidence of the matters stated in such minutes.

11. **Vacancies and Reduction of Numbers:** Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the number fixed by this Constitution as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purpose.

SCHEDULE 2

Shareholders' Meetings

All meetings of Shareholders of the Company shall be conducted in accordance with the First Schedule to the Act, except where varied by the following provisions:

1. **Meetings:** Equity Security holders of all Classes shall be entitled to attend general meetings and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying Votes.

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

If the Directors have elected a chairperson, he or she shall chair a meeting of shareholders. If there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairperson of the meeting. If at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes after the time appointed for holding the meeting, the shareholders present shall choose one of their number to be chairperson of the meeting.

2. **Quorum:** A quorum for a meeting of Shareholders is present if:
 - a not less than 5 Shareholders or representatives of bodies corporate who are shareholders are present; or
 - b Shareholders or representatives of Shareholders who between them hold not less than 5% of the Equity Securities of the Company carrying voting rights are present.
3. **Proxies:** A Shareholder may exercise the right to vote either by being present in person or by proxy. Postal voting shall only be permitted at any particular meeting if the Directors designate such meeting as one at which postal votes may be cast and so identify the meeting in the relevant notice of meeting given to Shareholders.

A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder

No proxy is effective in relation to a meeting unless it has been received by or on behalf of the Company at any place specified for the purpose in the notice of meeting at least 48 hours before the start of the relevant meeting.

A proxy form shall be sent with each notice of meeting of Security holders and:

- a shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the Security holder to instruct the proxy as to the casting of the vote; and
- b shall not be sent with any name or office (e g , chairperson of Directors) filled in as proxy holder.

So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates two-way voting instructions for proxy holders.

A proxy is effective in relation to a meeting notwithstanding the previous:

- (a) death of the principal; or
- (b) insanity of the principal; or
- (c) revocation of the proxy; or
- (d) transfer of the Securities in respect of which the proxy is given;

unless notice in writing of any such matter has been produced to the satisfaction of the chairperson before the start of the meeting at which the proxy is to be used.

- 4. **Adjournment:** The chairperson may adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

5. No voting if disqualified

- a Notwithstanding anything to the contrary in the Act or this Constitution, a person is not entitled to cast a Vote in favour of a resolution where that person is disqualified from voting by the NZSX Listing Rules.
- b Paragraph 5(a) above shall not prevent a person who:
 - i is disqualified from voting under paragraph 5(a); and
 - ii has been appointed as a proxy or representative by another person (who is not disqualified from voting)

from voting in respect of the Securities held by that other person in accordance with the express instructions of that other person

6. Private Meetings

- a The meetings of the Company shall be regarded as private meetings. Except as provided in paragraph 6(b) below persons, other than Shareholders or persons holding proxies for Shareholders, may attend only at the discretion of the Chairperson of the meeting.
- b A director who is not a Shareholder of the Company is entitled to attend and speak at meetings of Shareholders.

7. 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 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 any proposed resolution to all shareholders entitled to receive notice of the meeting.

- c 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.
 - d 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.
 - 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.
8. **Procedure:** Except as provided in this Constitution, or as required by the Act, the chairperson of the meeting shall regulate the procedure at any meeting of Shareholders.
9. **Demand of a poll:** At a meeting of Shareholders, a poll may be demanded by:
- a not less than five Shareholders having the right to vote at the meeting; or

- b a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
- c a Shareholder or Shareholders holding Securities 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 Securities that confer that right; or
- d the chairperson of the meeting.

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

- 10. **Counting of votes on a poll:** If a poll is taken, votes must be counted according to the votes attached to the Securities of each Shareholder present (in person or by proxy) and voting.
- 11. **Chairperson not entitled to casting vote:** The chairperson of a Shareholders' meeting is not entitled to a casting vote.
- 12. **Right of proxy to demand a poll:** For the purposes of clause 10, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.