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4 December 2018

Market Announcements  
Australian Securities Exchange  
Level 4, 20 Bridge Street  
SYDNEY  
NSW 2000

**CONSTITUTION**

Attached is the replacement Constitution of Bathurst Resources Limited (ASX:BRL) which was adopted by shareholders at the Company's Annual General Meeting held on 28 November 2018.

Bill Lyne  
Company Secretary

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# Constitution

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**BATHURST RESOURCES LIMITED**

**NZCN 4382538**

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## Constitution of Bathurst Resources Limited

### Pursuant to the Companies Act 1993

#### 1. Definitions and Interpretation

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

**Act** means the Companies Act 1993 of New Zealand;

**Alternate Director** means a person appointed by a Director as his or her alternate under clause 28;

**Applicable Escrow Period** refers to the escrow period which applies to each category of Restricted Security as set out in the table in Appendix 9B of the ASX Listing Rules;

**Applicable Law** means:

- (i) the Act, the ASX Listing Rules, the ASX Operating Rules and the ASX Settlement Operating Rules;
- (ii) the laws and regulations of New Zealand; and
- (iii) the laws and regulations of any other jurisdiction that is or are applicable to the operation and implementation of the provisions of this Constitution, the Company or any related company;

**ASX** means ASX Limited ABN 98 008 624 691 and, where the context permits, the Australian Securities Exchange operated by, or any related company or subsidiary of, ASX Limited;

**ASX Listing Rules** means the listing rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver or relief granted by ASX;

**ASX Operating Rules** means the operating rules of the ASX (covering access to trading facilities and the conduct of market participants) as amended or replaced from time to time, except to the extent of any express written waiver or relief granted by the ASX;

**ASX Settlement** means ASX Settlement Pty Ltd ABN 49 008 504 532;

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement (or of any relevant organisation which is an alternative to, or successor or replacement of, ASX Settlement or any applicable clearing and settlement facility licensee), as amended or replaced from time to time, except to the extent of any express written waiver by the ASX;

**Board** means Directors who number not less than the minimum number of Directors (and required quorum) as provided for in this Constitution acting together as the board of directors of the Company;

**Company** means Bathurst Resources Limited (NZ Company Number 4382538);

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

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

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

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

**Equity Security** means a Share and any other equity security (as that latter term is defined in the ASX Listing Rules) in the capital of the Company that has been issued, or is to be issued, by the Company, as applicable;

**Escrow Agreement** means, in relation to a Securityholder, an agreement between that Securityholder and the Company under which the Securityholder has agreed to restrict the disposition of or dealing in the Equity Securities that are the subject, and in accordance with the terms, of that agreement;

**Escrowed Securities** means any Equity Securities which are the subject of an Escrow Agreement;

**Fully Paid Up Equity Security** means an Equity Security in respect of which no money is payable to the Company in consideration of the issue of that Equity Security;

**Interest Group** has the meaning set out in section 116 of the Act;

**Interested**, in relation to a Director, has the meaning set out in section 139 of the Act;

**Jointly Held** means in relation to an Equity Security, an Equity Security in respect of which the Security Register records two or more persons as the joint holders of that Equity Security;

**Managing Director** means a person appointed as a managing director of the Company under clause 29.1;

**Meeting** means any meeting of Securityholders or Interest Groups, and for the sake of clarity includes the annual general meeting and any extraordinary or special meeting of any of the foregoing.

**month** means a calendar month;

**Notice of Meeting** means any notice issued in respect of a Meeting;

**Official List** means the official list of entities that ASX has admitted and not removed;

**Ordinary Resolution** means a resolution that is approved by a simple majority of the votes of those Securityholders entitled to vote and voting on that Resolution;

**person** includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality);

**Personal Representative** means:

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

**Records** means the documents required to be kept by the Company under section 189(1) of the Act;

**registered** means duly recorded in the Security Register in accordance with the provisions of this Constitution;

**Registered Office** means the office or location of a company, including the Company, as specified in the public records of that company, as varied from time to time.

**Representative** means:

- (i) a person duly appointed as a proxy under clause 24;
- (ii) a person duly appointed as a Securityholder's attorney;
- (iii) a Personal Representative; or
- (iv) a representative duly appointed by a corporation under clause 25;

**related company** has the meaning set out in section 2(3) of the Act;

**Resolution** means either an Ordinary Resolution or a Special Resolution;

**Restricted Securities** has the meaning set out in ASX Listing Rule 19;

**Restriction Agreement** means a restriction agreement in a form set out in the ASX Listing Rules or otherwise approved by the ASX and includes any agreement which the Company and any Securityholder agrees is a restriction agreement;

**Right** means, for the purpose of clause 4.3, any right, title or interest in respect of the offer made by the Company in respect of an Equity Security.

**Securityholder** means a person whose name is entered in the Security Register as the holder for the time being of one or more Equity Securities (and for the avoidance of doubt, includes each Shareholder);

**Security Register** means the register of Equity Securities for the Company kept in accordance with the provisions of section 87 of the Act;

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

**Share** means a share of any class that is issued, or to be issued, by and in the capital of, the Company, as the case may require;

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

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

**subsidiary** has the meaning set out in section 5 of the Act;

**Unmarketable Parcel** means a parcel of Equity Securities of a single class registered in the same name or the same joint names which is:

- (i) less than the number that constitutes a marketable parcel of Equity Securities of that class under the ASX Operating Rules; or

- (ii) subject to the ASX Listing Rules and the ASX Operating Rules, any other number determined by the Board from time to time; and

**Working Day** has the meaning set out in section 2(1) of the Act.

1.2 **Other Defined Terms:** Subject to the provisions of clause 1.1:

- (i) expressions used in this Constitution and that are defined in the Act (whether generally or for the purposes of one or more particular provisions) have the meanings given to them by the Act;
- (ii) where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this Constitution; and
- (iii) while the Company is admitted to the Official List, any term in this Constitution that is defined in the ASX Listing Rules (whether or not expressed with an initial capital letter) has the meaning given to that term by the ASX Listing Rules.

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

- (i) the table of contents, headings and descriptions relating to sections of the Act or any other legislation, are inserted for convenience only and shall be ignored in construing this Constitution;
- (ii) the singular includes the plural and vice versa;
- (iii) one gender includes the other genders;
- (iv) a reference to a thing includes a part of that thing and includes but is not limited to a right;
- (v) the terms "included", "including" and similar expressions when introducing a list of items do not exclude a reference to other items of the same class or genus;
- (vi) where any word or expression is defined in this Constitution, any other grammatical form of that word or expression has a corresponding meaning;
- (vii) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
  - (a) that legislation or provision as from time to time amended, re-enacted or substituted; and
  - (b) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (viii) expressions such as "written" and "in writing" include any means of representing or reproducing words, figures and symbols in a tangible and visible form;
- (ix) references to a clause, part, annexure, exhibit or Schedule (other than sections or sub-sections of the Act) are references to a clause, part, annexure, exhibit or Schedule in this Constitution, unless stated otherwise;
- (x) a reference to an asset includes all property or title of any nature including but not limited to a business, a right, a revenue and a benefit, whether beneficial, legal or otherwise;



- (xi) a reference to a body that ceases to exist or whose power or function is transferred to another body, is a reference to the body which replaces or substantially succeeds to the power or function of the first body;
- (xii) any reference to the ASX Listing Rules, ASX Operating Rules or ASX Settlement Operating Rules is a reference to those rules as from time to time amended or substituted;
- (xiii) if there is any conflict or inconsistency between:
  - (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
  - (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,
 the provision, word or expression in this Constitution prevails.

#### 1.4 **Currency**

- (i) A reference in this Constitution to “\$”, “NZ\$”, “New Zealand Dollars” or “dollars” is a reference to the lawful tender for the time being and from time to time of New Zealand.
- (ii) The Directors may:
  - (a) differentiate between Securityholders as to the currency in which any amount payable to a Securityholder is paid whether by way of or on account of dividends, repayment of capital, participation in the distribution of surplus property or otherwise;
  - (b) determine to pay a distribution in a currency other than New Zealand dollars and the amount payable will be converted into New Zealand dollars in any manner, at any time and at any exchange rate as the Directors think fit; and
  - (c) in deciding the currency in which a payment is made to a Securityholder, have regard to the registered address of that Securityholder, the register in which the Equity Securities of that Securityholder are registered and any other matters as the Directors consider appropriate.

Payment in a currency of an amount that is converted under this clause 1.5 is as between the Company and the Securityholder adequate and proper payment of the amount otherwise payable.

#### 1.5 **Timing, Working Day and Day**

- (i) Any reference to time is a reference to New Zealand Standard time unless expressly provided otherwise.
- (ii) If this Constitution requires that the day on which a thing must be done is a day which is not a Working Day, then that thing must be done on or by the immediately preceding Working Day.
- (iii) If an event occurs on a day which is not a Working Day, or occurs later than 5.00 p.m. local time at the place that the event occurs, then the event is deemed to have occurred on the next Working Day in the place that the event occurs.

- (iv) A reference to a day is a reference to a time period which begins at midnight and ends 24 consecutive hours later.
- (v) A reference to a period of time unless specifically written otherwise, excludes the first day of that period.

## 1.6 Exercising Power

- (i) The Company may, in any way the Act permits:
  - (a) exercise any power;
  - (b) take any action; or
  - (c) engage in any conduct or procedure,
 which, under the Act, a company limited by shares may exercise, take or engage in.
- (ii) Where this Constitution provides that a person “may” do a particular act or thing, the act or thing may be done at the person’s discretion.
- (iii) Where this Constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the same way and subject to the same conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (iv) Where this Constitution confers a power to do a particular act or thing, the power may be exercised from time to time and may be exercised subject to conditions.
- (v) Where this Constitution confers a power to do a particular act or thing concerning particular matters, the power is, unless the contrary intention appears, to be taken also to include a power to do that act or thing as to only some of those matters or as to a particular class of those matters and to make different provision concerning different matters or different classes of matters.
- (vi) Where this Constitution confers a power on a person to make appointments to an office or position (except the power to appoint a Director under clause 27.3), that power is, unless the contrary intention appears, to be taken to include a power to:
  - (a) appoint a person to act in the office or position until a person is appointed to the office or position;
  - (b) remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the company); and
  - (c) appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.
- (vii) Where this Constitution gives power to a person to delegate a function or power:
  - (a) the delegation may be concurrent with the performance or exercise of that function or power by that person;
  - (b) the delegation may be either general or limited in any way provided in the terms of delegation;

- (c) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
- (d) the delegation may include the power to delegate; and
- (e) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.

## 1.7 Enforcement

- (i) Each Securityholder submits to the non-exclusive jurisdiction of the courts of New Zealand and any court competent to determine appeals from any of those courts with respect to any proceedings that may be brought at any time relating to this Constitution.
- (ii) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
  - (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
  - (b) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

## 2. Listing Rules and the Act

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- 2.1 **Companies Act 1993:** The Company, the Board, each Director and each Securityholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated, amended or modified by this Constitution.
- 2.2 **Application of ASX Listing Rules and related provisions:** In this Constitution, a reference to the ASX Listing Rules, the ASX Operating Rules, the ASX Settlement Operating Rules, the ASX or related matters, has effect if, and only if, at the relevant time the Company is admitted to the Official List. To the extent that any provision of this Constitution is expressed as being subject to the ASX Listing Rules, the ASX Operating Rules, the ASX Settlement Operating Rules, the ASX or related matters, or requires compliance with the ASX Listing Rules, the ASX Operating Rules, the ASX Settlement Operating Rules, the ASX or related matters, such provision will only be subject to, or require compliance with, the ASX Listing Rules, the ASX Operating Rules, the ASX Settlement Operating Rules, the ASX or related matters whilst and for so long as the Company is admitted to the Official List.
- 2.3 **Priority of ASX Listing Rules:** For so long as the Company is admitted to the Official List:
  - (i) notwithstanding anything contained in this Constitution, if the ASX Listing Rules prohibit an act being done, the act must not be done;
  - (ii) nothing contained in this Constitution prevents an act being done that the ASX Listing Rules require to be done;
  - (iii) if the ASX Listing Rules require or authorise an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the ASX Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;

- (v) if the ASX Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (vi) if any provision of this Constitution is or becomes inconsistent with the ASX Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

2.4 **Waivers or Rulings:** If ASX has granted a waiver or ruling in relation to the Company authorising any act or omission which in the absence of that waiver or ruling would be in contravention of the ASX Listing Rules or this Constitution, that act or omission will, unless and only to the extent that a contrary intention appears in this Constitution, be deemed to be authorised by the ASX Listing Rules or this Constitution.

### 3. Share Capital

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3.1 **Share issued on incorporation:** One Share was issued on incorporation of the Company at a price of \$1.00. That Share was redeemed by the Company on 29 June 2013 for \$1.00.

3.2 **Rights and powers attaching to Shares:** Subject to any special rights or restrictions for the time being attached to any Share, and to the rights and restrictions set out elsewhere in this Constitution, each Share confers on the registered holder of that Share:

- (i) the right on a poll duly called or required at or for the purposes of a Meeting, to one vote on each Resolution (subject to the provisions of clause 21.5 in the case of Shares that are not fully paid);
- (ii) the right to an equal share in dividends or other distributions authorised by the Board; and
- (iii) the right to an equal share in the distribution of the surplus assets of the Company.

3.3 **Classes of Equity Securities:** Different classes of Equity Securities may be issued by the Company. Without limiting the classes of Equity Securities that may be issued, any Equity Security may be issued upon any one or more of the following terms and conditions, namely that it:

- (i) ranks equally with, or in priority to, any existing Equity Security;
- (ii) confers preferential rights to distributions of capital or income;
- (iii) confers special, limited or conditional voting rights;
- (iv) is convertible from one class of Equity Security to another;
- (v) does not confer voting rights; or
- (vi) is redeemable.

#### 3.4 Alteration of Capital

- (i) The Company may reduce, alter or buy-back its share or other equity capital in any manner provided by the Applicable Law and otherwise in accordance with any applicable provisions of this Constitution.
- (ii) Subject to any applicable provisions of this Constitution, the Board may:

- (a) consolidate and divide all Equity Securities or any class of Equity Securities, in proportion to those Equity Securities or other Equity Securities of that class, as determined by the Board; or
  - (b) subdivide all Equity Securities or any class of Equity Securities in proportion to those Equity Securities or other Equity Securities of that class, as determined by the Board.
- (iii) In addition, the Board may do anything which is required to give effect to any Resolution authorising a reduction, alteration, consolidation, sub-division or buy-back of the share or other equity capital of the Company, including where a Securityholder becomes entitled to a fraction of an Equity Security on a consolidation, division or sub-division:
- (a) making cash payments;
  - (b) ignoring fractions;
  - (c) appointing a trustee to deal with any fractions on behalf of Securityholders; and
  - (d) rounding up each fractional entitlement to the nearest whole Equity Security by capitalising any amount available for capitalisation even though only some Securityholders participate in the capitalisation.
- (iv) Subject to the Applicable Law, if the terms of issue of Equity Securities in a particular class provide for the Company to vary or cancel rights attached to Equity Securities by a procedure specified in the terms of issue, then a variation or cancellation will be effective if that procedure is followed. If those terms of issue provide for the variation or cancellation of rights by the Company, then unless provided otherwise, the procedure for variation or cancellation by the Company is a resolution of the Board.

### 3.5 Certificates and Statements

- (i) Subject to the Applicable Law, the Company need not issue certificates for Equity Securities if the Board so resolves.
- (ii) Subject to the Applicable Law, the Company may issue certificates for Equity Securities, cancel any certificates for Equity Securities and replace lost or destroyed or defaced certificates for Equity Securities, on the basis and in the form which the Board resolves.
- (iii) If the Company determines to issue certificates for Equity Securities, only the Securityholder whose name appears first in the Security Register in respect of a Jointly Held Equity Security is entitled to a certificate in respect of that Equity Security and delivery of that certificate to that person is taken to be delivery to all Jointly Held Securityholders of that Equity Security.

The Company must issue to a Securityholder any statement of the holdings of Equity Securities registered in the name of that Securityholder or those Jointly Held Securityholders, as required by the Applicable Law.

## 4. Issue of New Equity Securities

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- 4.1 **Powers of Board to issue:** Subject to the Applicable Law and any rights and restrictions attached to a class of Equity Securities, the Company may, by resolution of the Board, issue Share or other Equity Securities, including Equity Securities with rights of conversion to Shares, to any person, at any time and for any consideration, as the Board resolves.

- 4.2 **No statutory pre-emptive rights:** The provisions of section 45(1) and section 45(2) of the Act shall not apply to any issue or proposed issue of Equity Securities by the Company.
- 4.3 **Transfer of Rights:** Every person to whom unissued Equity Securities are offered pursuant to an offer complying with the Applicable Law may decline or accept that offer, or if permitted under the terms of that offer, transfer all or any of their Rights attaching to that offer to any person or persons to whom the Equity Securities, when issued, could be transferred provided that:
- (i) the Directors have and will retain the right to decline to register or otherwise accept any such transfer of Rights; and
  - (ii) the provisions of this Constitution that apply to the transfer of Equity Securities, with all necessary modifications, will apply to any transfer of Rights to unissued Equity Securities.
- 4.4 **Bonus issues:** Subject to the Applicable Law, the Board may resolve to apply any amount which is available for Distribution:
- (i) in paying up Equity Securities to:
    - (a) Securityholders who would be entitled to that amount if it was distributed by way of dividend, and in the same proportions; or
    - (b) if applicable, any other Securityholder who is entitled by the terms of issue of such Equity Securities to participate in any bonus issue by the Company, whether at the time the bonus issue is made to the Securityholder, or at some other time, in accordance with their respective entitlements; or
  - (ii) a combination of the payments permitted in clause 4.4(i).

## 5. Alteration of Rights of Securityholders

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- 5.1 **Procedure in respect of Equity Securities:** The Company shall, before taking action affecting the rights attached to any Equity Securities, comply with the provisions of section 116 and section 117 of the Act.
- 5.2 **Issue of equal or prior ranking Equity Securities:** For the purposes of clause 5.1, the issue of any new Equity Securities, or any conversion of existing Equity Securities into Shares or other Equity Securities ranking equally with, or in priority to, existing Equity Securities, whether as to voting rights, Dividends, Distributions or otherwise, is deemed not to be an action affecting the rights attaching to those existing Equity Securities.
- 5.3 **Cancellation or variation of rights:** Subject to the terms and conditions of the issue of Equity Securities in a particular class, the Company may vary or cancel any of the rights, terms or conditions attaching to Equity Securities of that class, with the approval by Special Resolution of each applicable Interest Group.
- 5.4 Clause 19.13 applies to a Meeting held or proposed to be held for the purpose of seeking an approval required pursuant to clause 5.3.

## 6. Acquisition and Redemption of Equity Securities

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- 6.1 **Powers to acquire, hold and redeem Equity Securities:** The Company may:
- (i) purchase or otherwise acquire Equity Securities from one or more of the Securityholders;

- (ii) hold any Equity Securities so purchased or acquired; and
- (iii) redeem any redeemable Equity Securities held by one or more of the Securityholders,

in accordance with the provisions, and subject to the restrictions, of the Applicable Law and this Constitution.

## 7. Equitable Interests in Equity Securities

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- 7.1 **No notice of trusts:** No notice of a trust, whether express, implied, or constructive, may be entered on the Security Register.
- 7.2 **No recognition of equitable interests:** Except as required by Applicable Law or by this Constitution, no person shall be recognised by the Company as holding any Equity Security upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Equity Security, or any interest in any fraction or part of an Equity Security or (except as provided by this Constitution or by law) any other rights in respect of any Equity Security, except an absolute right of the registered holder to the entire Equity Security.

## 8. Calls on Equity Securities

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- 8.1 **Board may make calls:** The Board may, from time to time, make such calls as it thinks fit upon the Securityholders in respect of any amount unpaid on any Equity Security held by them which is not made payable at fixed times by the terms of issue of those Equity Securities. A call may be made payable by instalments. Subject to the provisions of clause 5.3, the Board may revoke, postpone or otherwise vary the terms and conditions attaching to any call.
- 8.2 **Time of call:** A call is deemed to be made at the time when the resolution of the Board making the call is passed.
- 8.3 **Fixed instalments deemed calls:** An amount which, by the terms of issue of an Equity Security, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.
- 8.4 **Notice of call:** At least 10 Working Days' notice of any call shall be given to the Securityholder of an Equity Security, in respect of which the call is made, specifying the time and place of payment.
- 8.5 **Differential calls:** The Board may, on the issue of Equity Securities, differentiate between the Securityholders as to the amounts to be paid in respect of the Equity Securities and the times of payment of such amounts.
- 8.6 **Manner of payment:** A Securityholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.
- 8.7 **Joint Securityholders:** Jointly Held Securityholders are jointly and severally liable to pay all calls in respect of r Equity Securities, as applicable, that are registered in their names.
- 8.8 **Default interest:** If a call in respect of an Equity Security is not paid on or before the due date, the Securityholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board determines, unless the Board waives payment of interest wholly or in part.
- 8.9 **Proceedings for recovery of call:** In any proceedings for recovery of the amount outstanding in respect of a call:

- (i) it is sufficient to prove that:
  - (a) the name of the relevant Securityholder is entered in the Security Register as the holder, or one of the Jointly Held Securityholders, of the Equity Securities to which the call relates; and
  - (b) except in relation to any amount which, by the terms and conditions of issue of an Equity Security is payable on allotment or at a fixed date, the resolution of the Board making the call is entered in the Records and notice of the call has been duly given,

and proof of the matters mentioned in this clause is conclusive evidence of the debt outstanding in respect of a call; and
- (ii) it is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.

8.10 **Payment in advance of calls:** The Company may by resolution of the Board:

- (i) accept from a Securityholder the whole or part of the amount unpaid on an other Equity Security even if no part of that amount has been called by the Company;
- (ii) authorise payment by the Company of interest on the whole or any part of the amount so accepted, from the date of acceptance to the date on which the amount becomes payable, at any rate agreed between the Board and the Securityholder, as the case may be, paying the amount; and
- (iii) unless otherwise agreed between the Company and the Securityholder, repay the whole or any part of the amount so accepted at any time.

## 9. Forfeiture of Equity Securities

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- 9.1 **Notice requiring payment of call:** If a Securityholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that Securityholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.
- 9.2 **Contents of notice:** The notice shall specify a further date (not earlier than 10 Working Days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the Equity Security in respect of which the call or instalment of a call is due, is liable to be forfeited.
- 9.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Equity Security in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all Dividends and Distributions declared in respect of the forfeited Equity Security and not paid before the forfeiture.
- 9.4 **Notice of forfeiture:** When an Equity Security has been forfeited, the Company shall give notice of the resolution referred to in clause 9.3 to the Securityholder in whose name the Equity Security stood immediately prior to the forfeiture, and shall enter in the Security Register, details of that forfeiture.
- 9.5 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Equity Security, on such terms as the Board thinks fit.
- 9.6 **Effect of forfeiture:** The Securityholder of an Equity Security that has been forfeited ceases to be a Securityholder of the forfeited Equity Security, but remains liable to the Company for all money payable in respect of the forfeited Equity Security.



## 10. Lien on Equity Securities

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- 10.1 **Lien on Equity Securities:** Subject to the provisions of clause 10.2, the Company has a first and paramount lien upon each Equity Security, the proceeds of sale of the Equity Security, and all Dividends and Distributions made in respect of the Equity Security, for:
- (i) any amount due and unpaid in respect of that Equity Security which has been called or is payable on a fixed date;
  - (ii) all amounts that the Company is required by law to pay in respect of that Equity Security, whether or not the due date for payment has occurred; and
  - (iii) all interest and expenses due and payable to the Company in respect of the unpaid amounts in respect of that Equity Security, to the extent permitted by the ASX Listing Rules.
- 10.2 **Application of lien:** Clause 10.1 shall not apply to an Equity Security if, were clause 10.1 applicable to it, that Equity Security would not have been validly issued. Unless otherwise agreed between the Company and the relevant Securityholder, the registration of a transfer of an Equity Security shall operate as a waiver of any lien which the Company may have on that Equity Security, except as provided in clause 13.1.
- 10.3 **Lien on loans under Employee Incentive Schemes:** Unless expressly stated otherwise in any applicable employee incentive scheme, the Company also has a first and paramount lien on each Equity Security registered in the name of the Securityholder, for all money payable to the Company by the Securityholder under any loan to or for the benefit of that Securityholder made under an employee incentive scheme.
- 10.4 **Lien on Distributions:** A lien on an Equity Security created or existing pursuant to the provisions of clause 10.1 or clause 10.3 extends to all Dividends and Distributions in respect of that Equity Security.
- 10.5 **Exemptions:** The Board may, at its sole discretion, at any time exempt an Equity Security or the Securityholder of that Equity Security, wholly or in part from any or all of the provisions of this clause 10.
- 10.6 **Company's right to recover payments from Securityholder:** A Securityholder must reimburse the Company on demand in writing for all payments that the Company makes to a government or taxation authority in respect of that Securityholder, the death or insolvency of that Securityholder, the Shares registered in the name of that Securityholder, or any Dividends or Distributions on any of those Shares, where the Company is either:
- (i) required by law to make the relevant payment; or
  - (ii) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is required by law to make the relevant payment.

The Company is not obliged to advise the Securityholder in advance of its intention to make the payment.

- 10.7 **Reimbursement is a Debt Due and Payable:** The obligation of a Securityholder to reimburse the Company is a debt due to the Company as if it was a call on all the Equity Securities registered in the name of that Securityholder, duly made at the time when the written demand for reimbursement is given by the Company to that Securityholder. The provisions of this Constitution relating to non-payment of calls, including forfeiture, payment of interest and the sale of the Equity Securities registered in the name of a Securityholder, under lien, apply to the debt.

## 11. Sale of Equity Securities Subject to Forfeiture or Lien

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- 11.1 **Company may sell Equity Securities:** Without limitation to the provisions of clause 9, the Company may sell any forfeited Equity Security or any other Equity Security on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any Equity Security:
- (i) unless the amount in respect of which a lien exists is due and payable; and
  - (ii) until the expiry of 10 Working Days after written notice demanding payment of the amount has been given to the person entitled to receive notice of Meetings of Securityholders in respect of the Equity Security.
- 11.2 **Transfer on Sale Under Lien:** For the purpose of giving effect to a sale under clause 11.1, the Company may receive the consideration, if any, given for the Equity Security so sold and may execute a transfer of the Equity Security sold in favour of the purchaser of the Equity Security, and do all such other things as may be necessary or appropriate to effect the transfer.
- 11.3 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of a forfeited Equity Security or of any other Equity Security sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the registered holder of that Equity Security at the time of its forfeiture or, in the case of an Equity Security sold for the purpose of enforcing a lien, the holder of that Equity Security immediately prior to the sale or, if applicable in either case, to the Personal Representative of that holder.
- 11.4 **Evidence:** A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that an Equity Security has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.
- 11.5 **Sale procedure:** For giving effect to any sale after forfeiture of any Equity Security or for enforcing a lien over any Equity Security, the Board may authorise any person to transfer any Equity Security to the purchaser. The purchaser shall be registered as the holder of the Equity Security and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.

## 12. Transfer of Equity Securities

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- 12.1 **Right to transfer:** Subject to any restrictions contained in this Constitution or attaching to any Equity Security and subject to the Applicable Law, a Securityholder or Personal Representative of that Securityholder may transfer any Equity Security:
- (i) under a system of transfer approved under section 376 of the Financial Markets Conduct Act 2013, which is applicable to the Company;
  - (ii) as provided by the ASX Settlement Operating Rules;
  - (iii) under any other security transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which Equity Securities are listed and which is applicable to the Company;
  - (iv) by an instrument of transfer which complies with this Constitution and that is permitted by the Applicable Law and is approved by the Board.

- 12.2 **Method of transfer:** An Equity Security which is disposed of in a transaction which complies with the requirements of a system of transfer authorised under the provisions of clause 12.1(i) or clause 12.1(ii) may be transferred in accordance with the requirements of that system. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of the Financial Markets Conduct Act 2013 if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company and the Security Registrar.
- 12.3 **Other forms of transfer:** An instrument of transfer of an Equity Security to which the provisions of clause 12.2 are not applicable shall:
- (i) be in any common form or any other form approved by the Company and the Security Registrar;
  - (ii) be signed or executed by or on behalf of the transferor; and
  - (iii) if registration as holder of the Equity Security imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.
- 12.4 **Electronic Transfer Systems:** The Company:
- (i) may do any act, matter or thing permitted pursuant to the Applicable Law to facilitate involvement by the Company in any clearing and settlement facility provided pursuant to the Applicable Law for the transfer of financial products; and
  - (ii) must comply with the obligations imposed on it by the ASX Settlement Operating Rules in relation to a transfer of an Equity Security.
- 12.5 **Delivery to Company:** An instrument transferring Equity Securities must be delivered to the Company or the Security Registrar, together with such evidence (if any) as the Company or the Security Registrar reasonably requires to prove the title of the transferee to, and/or right of the transferor to transfer, the applicable Equity Securities.
- 12.6 **Board may refuse to register:** Subject to the Act (which imposes certain procedural requirements on a board), the Board may refuse to register, or delay the registration of, a transfer of any Equity Security:
- (i) if the Company has a lien on the Equity Security;
  - (ii) if the transferor fails to produce such evidence as the Company, the Security Registrar reasonably requires to prove the title of the transferee to, or right of the transferor to transfer, the Equity Security;
  - (iii) if the transfer has not been duly stamped in accordance with any Applicable Law;
  - (iv) if the transfer is not accompanied by payment of any applicable fee which the Company is entitled to charge pursuant to clause 12.10;
  - (v) unless the transfer is delivered to the Company for registration, at the place where the Security Register is kept, together with the certificate (if any) of the Equity Security to be transferred and any other evidence as the Board may reasonably require to prove the title of the transferee to that Equity Security, the right of the transferor to transfer that Equity Security, and the proper execution of the instrument of transfer;
  - (vi) if registration of the transfer (together with registration of any further transfer or transfers then held by the Company and awaiting registration) would result in the creation of an Unmarketable Parcel standing in the name of the transferee; or

- (vii) if the transfer would constitute a disposal of Restricted Securities during the Applicable Escrow Period and that disposal is not permitted under the ASX Listing Rules or by ASX,

or in any other circumstances permitted by the Act or the ASX Listing Rules.

- 12.7 **Obligation to Refuse Registration of Transfer:** The Company must refuse to register a transfer of Equity Securities where:
- (i) the Applicable Law requires the Company to do so;
  - (ii) a law about stamp duty requires the Company to do so;
  - (iii) this Constitution otherwise requires;
  - (iv) a disposal (including registering a transfer) of Restricted Securities occurs or is proposed to occur during an Applicable Escrow Period for those securities, except as permitted by the Restriction Agreement, the ASX Listing Rules or the ASX; or
  - (v) a disposal (including registering a transfer) of Escrowed Securities occurs or is proposed to occur during the escrow period for those securities, except as permitted by the Escrow Agreement.
- 12.8 **Written Notice of Holding Lock:** If the Board so resolves, the Company may apply, or may request ASX Settlement to apply, a holding lock (including to prevent a transfer, or to refuse to register a paper-based transfer document) where the Applicable Law permits the Company to do so.
- 12.9 **Failure to notify refusal to register:** Any failure by the Company to give notice of refusal to register any transfer, or any failure by the Company to give notice of any application for or grant of a holding lock, as may be required pursuant to the Applicable Law, does not invalidate a refusal to register the transfer or the application of a holding lock.
- 12.10 **Company to Register Transfer without Charge:** The Company must not charge a fee for registering or otherwise dealing with any registrable transfer (including transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms) in relation to an Equity Security in accordance with this Constitution except as permitted by the Applicable Law.
- 12.11 **When transfer effective:** A transferor of an Equity Security is deemed to remain the holder of the Equity Security until the name of the transferee is entered in the Security Register in respect of the other Equity Security.
- 12.12 **Company to retain instrument of transfer:** If the Company registers an instrument of transfer it shall retain that instrument.
- 12.13 **Return of Instrument of Transfer:** If the Board refuses registration of a transfer and, within 12 months of the giving of notice of the refusal to register, the person who deposited the instrument demands for it to be returned, the instrument of transfer must be returned to that person unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.
- 12.14 **Suspension of Registration:** The Board may suspend registration of transfers of Equity Securities at the times and for the periods it so determines. The periods of suspension must not exceed 20 Working Days in any one calendar year. Closure of the Security Register must be effected in accordance with the Applicable Law.
- 12.15 **Multiple registers:** The Security Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places, and may be kept by one or more security registrars.

- 12.16 **Compulsory disposal of Unmarketable Parcel:** The Board may sell any Equity Security that constitutes part of an Unmarketable Parcel if it does so in accordance with the provisions of this clause 12.16 to clause 12.19 (inclusive). The Board's power to sell any Equity Security constituting an Unmarketable Parcel under this clause 12.16 lapses if a takeover (as defined in the ASX Listing Rules) is announced after the Board gives a notice under clause 12.17 and before the Board enters into an agreement to sell the Equity Security.
- 12.17 **Notice of compulsory disposal:** Once in any 12 consecutive month period, the Board may give written notice to a Securityholder who holds an Unmarketable Parcel:
- (i) stating that the Company intends to sell all but not some of the Equity Securities constituting that Unmarketable Parcel; and
  - (ii) specifying a date at least six weeks (or any lesser period permitted under the ASX Listing Rules) after the notice is sent during which period the Securityholder may give the Company written notice that the Securityholder wishes to retain the holding of those Equity Securities.
- 12.18 If the Board's power to sell lapses under the provisions of clause 12.16, any notice given by the Board under this clause is taken never to have been given and the Board may give a new notice after the close of the offers made under the takeover.
- 12.19 The Company must not sell any Equity Securities constituting an Unmarketable Parcel if, in response to a notice given by the Company under the provisions of clause 12.16, the Company receives a written notice that the Securityholder wants to retain its holding of those Equity Securities.
- 12.20 A sale of Equity Securities under this clause includes all Dividends and Distributions payable on and other rights attaching to them. The Company must pay the costs of the sale. Otherwise, the Board may decide the manner, time and terms of sale.
- 12.21 For the purpose of giving effect to this clause, each Director has the power to effect or execute a transfer of an Equity Security as agent for the Securityholder who holds that Equity Security.
- 12.22 The Company must:
- (i) deduct any called amount in respect of an Equity Security sold under this clause from the proceeds of sale and pay the balance into a separate bank account it opens and maintains for the purpose only;
  - (ii) hold that balance in trust for the previous holder of that Equity Security (**Divested Holder**);
  - (iii) as soon as practical give written notice to the Divested Holder stating:
    - (a) what that balance is; and
    - (b) that it is holding that balance for the Divested Holder while awaiting the Divested Holder's instructions and return of the certificate (if any) for each Equity Security sold or satisfactory evidence of its loss or destruction;
  - (iv) if the Equity Securities sold under the provisions of this clause were certificated, not pay the proceeds of sale out of the trust account until it has received the certificate for them or satisfactory evidence of its loss or destruction; and
  - (v) subject to the other provisions of this clause 12.22, deal with the amount in the account as the Divested Holder instructs.

- 12.23 **Irregularity of title:** The title of the transferee of an Equity Security sold under this clause is not affected by any irregularity in the sale. The sole remedy of any person previously interested in the Equity Security is damages which may be recovered only from the Company.
- 12.24 **Securities other than Shares:** For the sake of clarity, the provisions of this section 12 and section 13 shall apply, with any necessary modifications, to each class of Equity Security, except to the extent (if any) provided otherwise by the terms and conditions of issue of such securities, by the ASX Listing Rules, or by law.

### 13. Transmission of Equity Securities

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- 13.1 **Transmission on death of Securityholder:** If, in respect of any Equity Security, the Securityholder of that Equity Security dies, then:
- (i) if the deceased was registered as a Jointly Held Securityholder of that Equity Security, each other Jointly Held Securityholder of that Equity Security that survives that deceased Securityholder; and
  - (ii) in any other case, the Personal Representative of that deceased Securityholder,
- shall be the only person or persons recognised by the Company as having any title to or interest in that Equity Security but nothing in this clause shall release any surviving Jointly Held Securityholder or the estate of a deceased Securityholder from any liability in respect of that Equity Security or constitute a release of any lien which the Company may have in respect of that Equity Security.
- 13.2 **Rights of Personal Representatives:** A Personal Representative of a Securityholder is entitled to:
- (i) exercise all rights (including without limitation the rights to receive Dividends and Distributions, to attend Meetings of Securityholders in respect of the relevant Equity Security, and to vote in person or by Representative at any such Meeting or otherwise), and is subject to all limitations attached to the Equity Securities held by that Securityholder; and
  - (ii) be registered as the holder of those Equity Securities, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this sub-clause.
- 13.3 **Joint Personal Representatives:** Where an Equity Security is subject to the control of two or more persons as Personal Representatives, for the purposes of this Constitution, that Equity Security will be deemed to be Jointly Held by both or each of those Personal Representatives.
- 13.4 **Transmission Events:**
- (i) Subject to the Insolvency Act 2006 (NZ) and the Applicable Law, a person who establishes to the satisfaction of the Board that it is entitled to an Equity Security because of an event of insolvency may:
    - (a) elect to be registered as a Securityholder in respect of that Equity Security by giving a signed notice in writing to the Company; or
    - (b) transfer that Equity Security to another person.

- (ii) Subject to the Applicable Law, a transfer pursuant to clause 13.4(i) is subject to all of the provisions of this Constitution relating to any transfer of an Equity Security.

## 14. Restricted Securities

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- 14.1 **No disposal:** Restricted Securities cannot be disposed of during the Applicable Escrow Period except as permitted under the ASX Listing Rules or by ASX.
- 14.2 **No Company acknowledgement of a disposal:** The Company must refuse to acknowledge a disposal (including a registration of a transfer) of Restricted Securities during the Applicable Escrow Period except as permitted under the ASX Listing Rules or by ASX.
- 14.3 **No voting rights or Dividends:** During the subsistence of a breach of the ASX Listing Rules or the provisions of any Restriction Agreement relating to a Restricted Security, the holder of that Restricted Security is not entitled to any voting rights, or (subject to compliance with section 53(3) of the Act) Dividends or Distributions, in respect of his or her Restricted Security.

## 15. Dividends and Distributions

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- 15.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the declaration and payment of a Dividend or a Distribution, satisfy the solvency test may, subject to the Act and this Constitution, authorise the declaration and payment of a Dividend or a Distribution by the Company at times, and of amounts, and to any Securityholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such declaration and payment.
- 15.2 **Form of Dividend or Distribution:** Subject to the rights attaching to Equity Securities in any class, the Board may declare and pay a Dividend or a Distribution in such form as it thinks fit, but except as provided in clause 15.3 shall not differentiate between Securityholders of those Equity Securities, as to the form in which a Dividend or a Distribution is made, without the prior approval, of those Securityholders.
- 15.3 **Entitlement to a Dividend or Distribution:** The Board shall not authorise the declaration and payment of a Dividend or a Distribution:
  - (i) in respect of some but not all the Equity Securities in the same class; or
  - (ii) 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 same class,

other than in respect of non-Fully Paid Up Equity Securities, and the amount of Dividend or Distribution payable in respect of those non-Fully Paid Up Equity Securities will be equal to the proportion of the Dividend or Distribution payable in respect of Fully Paid Up Equity Securities that is equal to the proportion that the dollar amount that has actually been paid to the Company in respect of those non-Fully Paid Up Equity Securities bears to the aggregate of all dollar amounts that has actually been paid and the aggregate of all dollar amounts that remain payable to the Company, in respect of those non-Fully Paid Up Equity Securities.
- 15.4 **Deduction of money:** The Board may deduct from a Dividend or Distribution payable to a Securityholder any amount which is due and payable by that Securityholder to the Company on account of calls, as provided for in this Constitution or under the Applicable Law or otherwise in relation to any Equity Securities held by that Securityholder.
- 15.5 **Method of payment:** A Dividend or Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Securityholders or, in the case of Jointly Held Securityholders, to the Jointly Held Securityholder named first in the Security Register, or to such other person and in such manner as a Jointly Held Securityholder or all the Jointly Held

Securityholders may in writing direct. Any one of two or more Jointly Held Securityholders may give a receipt for any payment in respect of the Equity Securities held by them as Jointly Held Securityholders.

- 15.6 **No interest on Dividends or Distributions:** The Company is not liable to pay interest in respect of any Dividend or Distribution, when or at any time after being declared.
- 15.7 **Payment of small Distribution amounts:** Where the net amount of a Dividend or Distribution payable to a Securityholder is less than such minimum amount as may be determined from time to time by the Board for the purposes of this clause, the Company may, with the prior approval of that Securityholder, defer payment of the Dividend or Distribution to that Securityholder until the earlier of:
- (i) such time as that Securityholder has an aggregate entitlement to net Dividends or Distributions that exceeds such minimum amount; and
  - (ii) the date upon which that Securityholder ceases to hold any Equity Securities.
- 15.8 **Unclaimed Dividends or Distributions:** Dividends or Distributions unclaimed for more than one year after having been declared may be used for the benefit of the Company until claimed. All Dividends or Distributions unclaimed for more than five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board shall nevertheless, at any time after such forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement to the relevant Dividend or Distribution.

## 16. Participation of Securityholders

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- 16.1 **Alternative forms of Meeting:** A Meeting may be held by a number of Securityholders (or their Representatives), who constitute a quorum:
- (i) being assembled together at the place, date and time appointed for the Meeting;
  - (ii) participating in the Meeting by means of audio, audio and visual, or electronic communication; or
  - (iii) by a combination of both of the methods described in clause (i) and clause (ii).
- For the avoidance of doubt, a Securityholder or its Representative participating in a Meeting by means of audio, audio and visual, or electronic communication is present at the Meeting and part of the quorum.
- 16.2 **Participation by electronic means:** A Securityholder, or the Securityholder's Representative, may participate in a Meeting by means of audio, audio and visual, or electronic communication if:
- (i) the Board approves those means; and
  - (ii) the Securityholder or Representative complies with any conditions imposed by the Board in relation to the use of those means (including, for example, conditions relating to the identity of the Securityholder Representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).
- 16.3 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Act, the ASX Listing Rules or this Constitution, a power or right of approval reserved to Securityholders may be exercised by Ordinary Resolution.



## 17. Meetings of Securityholders

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- 17.1 **Annual Meetings:** The Company shall hold annual Meetings of Shareholders in accordance with section 120 of the Act.
- 17.2 **Special Meetings:** A special Meeting of Securityholders entitled to vote on an issue:
- (i) may be called by the Board at any time; and
  - (ii) shall be called by the Board on the written request of Securityholders holding Equity Securities carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the Meeting.
- 17.3 **Time and place of Meetings:** Each Meeting shall be held at such time and place as the Board appoints.

## 18. Notice of Meetings and Postponed Meetings of Securityholders

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- 18.1 **Written notice:** For so long as the Company is admitted to the Official List, written notice of the time and place of a Meeting shall be sent to:
- (i) every Securityholder entitled to receive notice of the Meeting, not later than the first day of the period of notice specified in the Act;
  - (ii) every Director; and
  - (iii) the auditor of the Company,
- and in any event, not less than 10 Working Days before the meeting, but with the consent of all Securityholders entitled to attend and vote at a Meeting, that Meeting may be convened by such shorter notice, and in such manner, as those Securityholders agree and otherwise in compliance with the Applicable Law.
- 18.2 **Contents of Notice of Meeting:** A Notice of Meeting shall state:
- (i) the nature of the business to be transacted at the Meeting in sufficient detail to enable a Securityholder to form a reasoned judgment in relation to it;
  - (ii) the text of any Resolution to be submitted to the Meeting;
  - (iii) in the case of any Special Resolution required by sections 106(1)(a) or 106(1)(b) of the Act, the right of a Securityholder under section 110 of the Act; and
  - (iv) that a Securityholder entitled to attend and vote at the Meeting is entitled to appoint a proxy or other Representative to attend and vote instead of the Securityholder and that proxy or other Representative need not be a Securityholder.
- 18.3 **Compliance with ASX Listing Rules:** For so long as the Company is admitted to the Official List, a Notice of Meeting must comply with the requirements of the ASX Listing Rules and any other requirements specified by ASX.
- 18.4 **Calculation of Period of Notice:** In computing the period of notice required under the provisions of clause 18.1, both the day on which the Notice of Meeting is given or taken to be given and the day of the Meeting convened by it are to be disregarded.
- 18.5 **Form of Resolutions:** So far as reasonably practicable, each Resolution to be proposed at a Meeting shall be framed in a way which enables a Securityholder or its Representative to:

- (i) vote for the Resolution;
  - (ii) vote against the Resolution; or
  - (iii) abstain from voting on the Resolution.
- 18.6 **Attendance waives certain rights:** A person's attendance at a Meeting, whether in person or through the attendance of a proxy or other Representative of that person, waives any objection that person may have, to:
- (i) a failure to give a Notice of Meeting, or the giving of a defective Notice of Meeting, of that Meeting, unless and only if that person states the nature of each of his objections at the beginning of that Meeting; and
  - (ii) the consideration of a particular matter at that Meeting which is not stated in the Notice of Meeting, unless and only if that person states his objection to the consideration of that matter when it is first presented at that Meeting.
- 18.7 **Waiver of notice irregularity:** Without limitation to the provisions of clause 18.6, an irregularity in a Notice of Meeting is waived if all the Securityholders who are entitled to attend and vote at the Meeting, attend that Meeting, whether in person or by proxy or other Representative, and agree to waive that irregularity.
- 18.8 **Accidental omission of Notice of Meeting:** The accidental omission to give a Notice of Meeting to, or the failure to receive or late receipt of a Notice of Meeting or notice of the cancellation, adjournment or postponement of a Meeting by, any person entitled to receive that Notice of Meeting or such other notice, does not invalidate the proceedings at the Meeting that is the subject of that Notice of Meeting, including any Resolution passed at the Meeting or at a postponed Meeting or the cancellation or postponement of a Meeting.
- 18.9 **Cancellation or Postponement of a Meeting:** Where a Meeting (including an annual general meeting) is convened by the Board, the Board may, by notice whenever it deems fit, cancel the Meeting or postpone the holding of the Meeting to a date, time and place determined by the Board.
- 18.10 **Exceptions:** Clause 18.9 does not apply to a Meeting convened in accordance with the Act by Securityholders or by any one or more of the Directors on the request of Securityholders or to a Meeting convened by a court.
- 18.11 **Contents of Notice of Postponement of Meeting:** A notice of postponement of a Meeting must specify:
- (i) the postponed date and time for the holding of the Meeting;
  - (ii) the place for the holding of the Meeting which may be either the same as or different to the place specified in the notice convening the original Meeting; and
  - (iii) if the Meeting is to be held in two or more venues, the technology that will be used to facilitate the holding of the Meeting in that manner.
- 18.12 **Notice of Cancellation or Postponement of a Meeting:** Notice of cancellation or postponement or change of place of a Meeting must state the reason for cancellation or postponement and be:
- (i) published in a daily newspaper circulating in Australia and a daily newspaper circulating in New Zealand;
  - (ii) given to the ASX; or

- (iii) subject to the Applicable Law and the ASX Listing Rules, given in any other manner determined by the Board.

18.13 **Number of Clear Working Days for Postponement of Meeting:** The number of clear days from the giving of a notice postponing the holding of a Meeting to the date specified in that notice for the holding of the postponed Meeting must not be less than 10 Working Days.

18.14 **Business at Postponed Meeting:** The only business that may be transacted at a Meeting which has been postponed is the business specified in the original notice convening the Meeting.

18.15 **Proxy, Attorney or corporate representative at Postponed Meeting:** Where, by the terms of an instrument appointing a proxy or attorney or an appointment of a corporate representative:

- (i) the appointed person is authorised to attend and vote at a Meeting or Meetings to be held on or before a specified date; and
- (ii) the date for holding the Meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of corporate representative,

then, in accordance with the provisions of this clause 18.15, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of corporate representative unless the Securityholder appointing the proxy, attorney or corporate representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the Meeting has been postponed.

18.16 **Director Entitled to Notice of Meeting:** Subject to the Applicable law, a Director is entitled to receive each Notice of Meeting and to attend all Meetings and all separate Meetings of the holders of any class of Equity Securities or any Interest Group and is entitled to speak at any of those Meetings.

## 19. Proceedings at Meetings of Securityholders

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19.1 **Securityholder at a specified time:** The Board may determine for the purposes of a particular Meeting that all Equity Securities that are quoted on the ASX at a specified time and date before the Meeting, are taken to be held at the time and date of the Meeting, by those persons who are registered as holding those Equity Securities at that specified time and date. The determination must be made and published in the Notice of Meeting of that Meeting and otherwise in accordance with the Act.

19.2 **Reference to a Securityholder:** Unless the contrary intention appears, a reference to a Securityholder in this clause 19 means a person who is a Securityholder or a Representative of that Securityholder:

19.3 **Requirement for quorum:** Subject to the provisions of clause 19.55, no business may be transacted at a Meeting if a quorum is not present.

19.4 **Quorum:** Subject to the provisions of clause 19.55, a quorum for a Meeting is 2 Securityholders having the right to vote at the Meeting, present in person or by Representative.

19.5 **Lack of quorum:** If a quorum is not present within 30 minutes after the time and date specified in the Notice of Meeting, for the Meeting:

- (i) in the case of a Meeting called by the Board on the written request of Securityholders entitled to exercise that right, the Meeting is dissolved; and

- (ii) in the case of any other Meeting, the Meeting is adjourned to a Meeting to be convened on the same day in the following week and at the same time and place, or to such other date, time and place as the Board may appoint (**Adjourned Meeting**) and, if at the Adjourned Meeting a quorum is not present within 30 minutes after the time and date appointed for the Adjourned Meeting, the Securityholders or their Representatives present will constitute a quorum.
- 19.6 **Regulation of procedure:** Subject to the provisions of the Act and any Applicable Law, and except as otherwise provided in this Constitution, a Meeting may regulate its own procedure for the conduct of that Meeting.
- 19.7 **Conduct of Meetings:** Without limiting the powers that the law confers on the chairperson, the chairperson of a Meeting:
- (i) has charge of the general conduct of the Meeting and the procedures to be adopted at the Meeting;
  - (ii) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the Meeting; and
  - (iii) may, having regard where necessary under the Act or any other Applicable Law, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the Meeting,
- and a decision by the chairperson under this clause 19.7 is final.
- 19.8 **Admission to General Meetings:** Without limiting any other powers of the chairperson, the chairperson may expel or refuse admission to a Meeting to a person who:
- (i) has a placard or banner;
  - (ii) has an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
  - (iii) refuses to produce or to permit examination of any article or the contents of any article, in the person's possession;
  - (iv) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
  - (v) is not:
    - (a) a Securityholder who is entitled to attend the Meeting, or their duly appointed Representative or a professional adviser of any of the foregoing; or
    - (b) a director, officer or an auditor of the Company.
- 19.9 **Dissolution or Adjournment of General Meeting:** Without limitation to the provisions of clause 19.11, the chairperson of a Meeting may, at any time during the Meeting, dissolve or adjourn the Meeting or any business, motion, question, Resolution, debate or discussion being considered or remaining to be considered by the Meeting either to a later time at the same Meeting or to an adjourned Meeting at any time and place, but:
- (i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Securityholders, present in person or by Representative; and
  - (ii) only unfinished business is to be transacted at a Meeting resumed after a dissolution or an adjournment.

Unless required by the chairperson, a vote may not be taken or demanded by the Securityholders present in person or by proxy, attorney or Corporate Representative in respect of any dissolution or adjournment.

- 19.10 **Notice of Adjourned Meeting:** It is not necessary to give any Notice of Meeting of an adjournment or of the business to be transacted at any adjourned Meeting unless a Meeting is adjourned for more than 20 Working Days. In the case of adjournment of a Meeting for more than 20 Working Days, Notice of Meeting of the adjourned Meeting must be given in accordance with the provisions of clause 18.1 and clause 18.2.
- 19.11 **Adjournment or dissolution of disorderly Meeting:** If a Meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the Meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the Meeting, may, in his or her sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the Meeting.
- 19.12 **Completion of unfinished business if Meeting dissolved:** If a Meeting is dissolved by the chairperson pursuant to the provisions of clause 19.11 or clause 19.11, the unfinished business of the Meeting shall be dealt with as follows:
- (i) in respect of a Resolution concerning the approval or authorisation of a Dividend or a Distribution, the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise, vary the terms of or refuse to authorise, such Dividend or Distribution;
  - (ii) in respect of a Resolution concerning the remuneration of the auditors, the Meeting shall be deemed to have Resolved that the Board be authorised to fix the remuneration of the auditors; and
  - (iii) the chairperson may direct that any other item of uncompleted business, which in the chairperson's opinion requires to be voted upon, be put to the vote by a poll without further discussion, in accordance with the provisions of clause 23.5.
- 19.13 **Meetings of a Class of Securityholders or Interest Groups:** All provisions of this Constitution relating to a Meeting, and the conduct of any business at that Meeting, apply, so far as they are capable of application and with any necessary changes, to the conduct of any business at a Meeting of any class of Securityholders or of any Interest Group, required to be held pursuant to this Constitution or any Applicable Law except that:
- (i) a quorum for such Meeting (other than a meeting of an Interest Group) is two Securityholders (present in person or by Representative) who are entitled to attend and participate in the business of such Meeting, or if only one person is entitled to attend and participate in the business of such Meeting, that person;
  - (ii) a quorum for a Meeting of an Interest Group is one Securityholder having the right to vote at that Meeting, present in person or by Representative;
  - (iii) if the Board so elects, one Meeting may be held of Securityholders constituting more than one class of Equity Securities or more than one Interest Group, so long as voting at that Meeting is exclusively by way of a poll, and proper arrangements are made to distinguish between the votes of the Securityholders in each class of Equity Securities and/or Interest Group; and
  - (iv) any Securityholder (present in person or by Representative) who holds Equity Securities of the class or is a member of the relevant Interest Group (as applicable), may demand a poll.

## 20. Chairperson of Meetings

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20.1 **Chairperson:** If the Directors have elected a chairperson of the Board and he or she is present at a Meeting, he or she shall chair that Meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire Meeting or in relation to any particular business to be considered at the Meeting.

20.2 **Absence of Chairperson at General Meeting:** If a Meeting is held and:

- (i) a chairperson has not been elected by the Board; or
- (ii) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the Meeting or is unable or unwilling to act,

the following will preside as chairperson of the Meeting (in order of precedence) if they are willing and able to so do:

- (iii) the deputy chairperson (if any);
- (iv) a Director chosen by a majority of the Board;
- (v) the only Director present; or
- (vi) a Securityholder chosen by a majority of the Securityholders present in person or by Representative.

## 21. Voting at Meetings

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21.1 **Voting at Meeting in one place:** In the case of a Meeting held under the provisions of clause 16.1(i), unless a poll is demanded in accordance with the provisions of clause 23.1, the chairperson of the Meeting shall determine whether voting will be by voice or by show of hands.

21.2 **Voting at audio/visual Meeting:** In the case of a Meeting held under the provisions of clause 16.1(ii) or clause 16.1(iii), unless a poll is demanded in accordance with the provisions of clause 23.1, voting at the Meeting shall be by any method permitted by the chairperson of the Meeting.

21.3 **Postal votes:** Unless the Board determines otherwise, Securityholders may not exercise the right to vote at a Meeting by casting postal votes. If the Board determines that postal voting will be permitted at a Meeting, the provisions of clause 7 of Schedule 1 to the Act shall apply, with such modifications (if any) as the Board thinks fit.

21.4 **Entitlement to vote:** A Securityholder may exercise the right to vote either in person or by Representative.

21.5 **Number of votes:** Subject to the provisions of clause 14.3, clause 22 and the ASX Listing Rules, and to any rights or restrictions for the time being attached to any Equity Security:

- (i) where voting is by show of hands or by voice every Securityholder present in person or by Representative has one vote; and
- (ii) on a poll every Securityholder present in person or by Representative has:
  - (a) in respect of each fully paid Equity Security held by that Securityholder, one vote; and

- (b) in respect of each Equity Security held by that Securityholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Equity Security was fully paid, that is equivalent to the proportion which the amount that has been paid (excluding amounts credited as paid) on that Equity Security bears to the total amount paid and payable on that Equity Security (excluding amounts credited as paid and amounts paid in advance of calls). On the application of this clause 21.5, any fraction of a vote in respect of a single Equity Security which arises is to be disregarded
- 21.6 **Vote of protected persons:** A Securityholder who is of unsound mind or in respect of whom an order relating to the mental health of that person has been made by any court having appropriate jurisdiction, may vote in respect of any Shares held by that Securityholder, by his or her committee, trustee, manager, or other person of a similar nature appointed by that court, voting in person or by Representative.
- 21.7 **Declaration by chairperson:** Subject to the provisions of clause 23.1, a declaration by the chairperson that a Resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairperson nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the Resolution.
- 21.8 **Chairperson's casting vote:** The chairperson of a Meeting is not entitled to a casting vote.
- 21.9 **Jointly Held Equity Securities:** Where an Equity Security is registered as being Jointly Held, the vote of the person named first in the Security Register as a Securityholder of that Equity Security who votes on a matter must be accepted in respect of an exercise of the applicable voting rights attaching to that Equity Security, to the exclusion of the vote of any other person named in the Security Register as a Securityholder of that Equity Security.
- 21.10 **Electronic voting:** The Board may permit, in relation to a particular Meeting or generally:
- (i) the appointment of proxies or corporate representatives to be made by electronic means;
  - (ii) postal votes to be cast by electronic means; and
  - (iii) to the extent permitted by Applicable Law, votes to be cast on Resolutions at Meetings by electronic means.
- The procedures in relation to such electronic appointment or electronic voting shall be those required by Applicable Law (if any) together with any other procedures determined by the Board. If the Board permits electronic appointment of proxies or representatives or electronic voting in accordance with this clause, such electronic appointments may be made or electronic votes cast notwithstanding any other provision of this Constitution.
- 21.11 **Objection to Voting Qualification:** An objection to the right of a person to attend or vote at a Meeting or adjourned or postponed Meeting:
- (i) may not be raised except at that Meeting or adjourned or postponed Meeting; and
  - (ii) must be referred to the chairperson of the Meeting, whose decision on the matter will be final.

A vote not disallowed under such an objection is valid for all purposes.

## 22. Restrictions on Voting

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- 22.1 **No voting rights when amount owing on Equity Security:** A Securityholder is not entitled to vote at any Meeting (including a Meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Equity Security by the Securityholder to the Company.
- 22.2 **Restriction or Escrow Agreement:** A Securityholder is not entitled to vote at a Meeting in respect of any Equity Security that is the subject of a current Restriction Agreement or a current Escrow Agreement, for so long as any breach of that agreement subsists.

## 23. Polls

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- 23.1 **Right to demand poll:** At a Meeting a poll may be demanded by:
- (i) the chairperson of that Meeting;
  - (ii) not less than 5 Securityholders having the right to vote at that Meeting;
  - (iii) a Securityholder or Securityholders representing not less than 10% of the total voting rights of all Securityholders having the right to vote at that Meeting; or
  - (iv) a Securityholder or Securityholders holding Equity Securities that confer a right to vote at that Meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Equity Securities that confer that right.
- 23.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a Resolution. The demand for a poll may be withdrawn.
- 23.3 **Matters on which a poll cannot be demanded:** A poll cannot be demanded on any Resolution concerning:
- (i) the election of the chairperson of a Meeting; or
  - (ii) the dissolution, adjournment or postponement of a Meeting.
- 23.4 **Poll procedure:** A poll demanded on any issue, matter or question other than those referred to in clause 23.3, shall be taken at such time, date and manner as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of that poll.
- 23.5 **Result of poll:** The result of a poll is deemed to be a Resolution of the Meeting at which the poll is demanded.
- 23.6 **Votes:** On a poll:
- (i) votes may be cast either personally or by Representative;
  - (ii) votes shall be counted according to the votes attached to the Equity Securities of each Securityholder present in person or by Representative and voting in respect of those Equity Securities; and
  - (iii) a Securityholder need not cast all the votes to which the Securityholder is entitled and need not exercise in the same way all of the votes which a Securityholder casts.
- 23.7 **Scrutineers:** The auditors of the Company shall be scrutineers unless they are unable or unwilling to act, or the chairperson of the Meeting directs otherwise, in which case the scrutineers shall be appointed by the chairperson.



- 23.8 **Declaration of result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers stating that sufficient votes to determine the result of the Resolution the subject of a poll have been counted and setting out the basis of that determination. Any such declaration is conclusive evidence of each of the facts declared.
- 23.9 **Deemed Authority to Demand Poll:** An instrument appointing a proxy is deemed to confer authority to demand or join in demanding a poll.

## 24. Proxies

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- 24.1 **Right to appoint:** A Securityholder may appoint a proxy to vote on behalf of that Securityholder at a Meeting. The proxy is entitled to attend and be heard at the Meeting, and to demand or join in demanding a poll, as if the proxy was that Securityholder that appointed that proxy. A proxy need not be a Securityholder.
- 24.2 **Multiple proxies:** A Securityholder may appoint more than one proxy for a particular Meeting, provided that not more than one proxy is appointed to exercise the rights attached to a particular Equity Security held by the Securityholder that appointed that proxy.
- 24.3 **Notice of appointment:** A proxy shall be appointed by written notice signed by or, in the case of an electronic notice, sent by the appointing Securityholder and the notice shall state whether the appointment is for a particular Meeting or for a specified term. The notice must (so far as the subject matter and form of the Resolutions to be proposed at the relevant Meeting reasonably permit), as a minimum, expressly enable and authorise the proxy to vote for or against, or abstain from voting, on all or any of those Resolutions. If the written notice appointing a proxy is signed under a power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.
- 24.4 **Proxy form to be sent with notice of Meeting:** The Company shall send a form of notice of appointment of proxy to every Securityholder entitled to attend and vote at a Meeting, with the notice convening the Meeting.
- 24.5 **Receipt of proxy form:** No appointment of a proxy is effective in relation to a Meeting unless a copy of the notice of appointment is received by the Company at its registered office, or by the Security Registrar, as is applicable, at such address as is specified for that purpose in the form of notice of appointment or in the notice convening the Meeting, not later than 48 hours before the time and date for the commencement of the Meeting or adjourned Meeting at which the person named in the notice as a proxy is appointed and authorised to vote.
- 24.6 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Equity Security in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office, or by the Security Registrar, before the commencement of the Meeting or adjourned Meeting for which the proxy is appointed and authorised to vote.
- 24.7 **Suspension of Proxy's Authority:** The authority of a proxy to speak and vote for a Securityholder at a Meeting is suspended while the Securityholder is present at that Meeting.

## 25. Corporate Representative

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- 25.1 A corporation which is a Securityholder may appoint a person to attend a Meeting on its behalf in the same manner as that in which it could appoint a proxy. The representative shall be entitled to attend and be heard at a Meeting as if the representative were the Securityholder that appointed that representative.

## 26. Securityholder Proposals and Management Review

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- 26.1 **Proposals for consideration at a Meeting:** A Securityholder may give written notice to the Board of a matter which the Securityholder proposes to raise for discussion or resolution at the next Meeting at which the Securityholder is entitled to vote. The provisions of clause 9 of Schedule 1 to the Act apply to any notice given pursuant to this clause.
- 26.2 **Management review by Securityholders:** Subject to the provisions of clause 19.9 and clause 19.11, the chairperson of a Meeting shall allow a reasonable opportunity for Securityholders who attend the Meeting to question, discuss, or comment on the management of the Company. The Securityholders may pass a Resolution relating to the management of the Company at that Meeting but no such Resolution will be binding on the Board or the Company.

## 27. Directors

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- 27.1 **Maximum number:** The maximum number of Directors (other than Alternate Directors) is 8. Subject to that maximum and the ASX Listing Rules, the number of Directors to hold office shall be fixed from time to time by the Board.
- 27.2 **Appointment by Securityholders:** Subject to the provisions of clause 27.1 and the ASX Listing Rules, a person may be appointed as a Director at any time by an Ordinary Resolution.
- 27.3 **Appointment by Board:** Subject to the provisions of clause 27.1 and the ASX Listing Rules, the Board may at any time appoint a person to be a Director to fill a casual vacancy or as an addition to existing Directors. A Director appointed to fill a casual vacancy or as an addition to the Board may hold office only until the next annual general Meeting of the Company, and is then eligible for election, but must not be taken into account in determining the Directors who are to retire by rotation at that annual general Meeting.
- 27.4 **Eligibility for Election:** No person, other than a Director retiring pursuant to the provisions of clause 27.6, a Director appointed pursuant to the provisions of clause 27.3 or a person nominated by the Board, is eligible to be elected as a Director at any meeting of Securityholders unless a nomination signed by a Securityholder accompanied by the consent of the nominee to act is given to the Company at least 35 Working Days before the meeting (or, in the case of a meeting that Shareholders have requested the Board call in accordance with the Act, 30 Working Days).
- 27.5 **Existing Directors to continue:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.
- 27.6 **Re-election of retiring Director:** A Director must not hold office (without re-election) past the conclusion of the third consecutive annual general Meeting of the Company following the Director's appointment or the third anniversary of the date of the most recent appointment of that Director, whichever occurs first. However, a Director appointed to fill a casual vacancy or as an addition to the Board must not hold office (without re-election) past the next annual general Meeting of the Company.
- 27.7 **Elections at each annual general Meeting:** The Company must hold an election of Directors at each annual general Meeting. The Directors to retire shall be those who have been longest in office since they were last elected or deemed elected. In the case of Directors who were last appointed Directors on the same day, those to retire shall be determined by agreement between those Directors or, if they cannot agree, by lot.
- 27.8 **Exceptions to rotation:** The Director, if any, who is appointed in accordance with the provisions of clause 29 is not required to retire by rotation. That Director shall be included in

the number of Directors upon which the calculation of the number of Directors to retire by rotation is made.

**27.9 Restriction on appointment of several Directors by single Resolution:** A single Resolution for the appointment of two or more persons as Directors shall not be moved unless a separate Resolution that it be so moved has first been passed by the Meeting without any vote being cast against it but nothing in this clause prevents the election of two or more Directors by ballot or poll.

**27.10 Vacation of office:** A Director automatically ceases to be a Director if he or she:

- (i) is removed from office by an Ordinary Resolution;
- (ii) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988;
- (iii) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice);
- (iv) becomes disqualified from being a Director pursuant to the Act or any other Applicable Law;
- (v) becomes bankrupt or makes an arrangement or composition with his or her creditors generally;
- (vi) retires from office and is not re-elected or deemed to have been re-elected under this Constitution; or
- (vii) has for more than 6 months been absent without approval of the Board from meetings of the Board held during that period.

**27.11 Directors not subject to Retirement:** The following persons are not subject to the provisions of clause 27.6 or clause 27.7 and are not taken into account in determining the Directors required to retire at an annual general Meeting:

- (i) the Managing Director of the Company or, if there is more than one Managing Director, the Managing Director of the Company nominated by the Board for the purpose of this clause 27.11; and
- (ii) an alternate Director of the Company.

**27.12 Timing of retirement and appointment:** If:

- (i) a Director retires at a Meeting and is not re-elected or deemed to be re-elected at that Meeting, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of that Meeting;
- (ii) a Director is removed from office at a Meeting by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, immediately after the conclusion of that Meeting, other than to the extent that the terms of the Ordinary Resolution that effects such removal state otherwise; or
- (iii) a person who is not already a Director is appointed or elected as a Director at a Meeting, that person shall take office as a Director immediately after the conclusion of that Meeting, other than to the extent that the terms of the Ordinary Resolution that effects such appointment or election state otherwise.

**27.13 No shareholding qualification:** A Director is not required to hold Equity Securities.

## 28. Alternate Directors

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- 28.1 **Power to appoint:** A Director may from time to time by written notice to the Company appoint any person, who is not already a Director and who is approved by a majority of the other Directors, to be that Director's alternate either for a specified period or generally, during the absence or inability to act from time to time of such Director. No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under the provisions of this clause 28.
- 28.2 **Rights of Alternate Director:** Unless otherwise specified by the terms of his or her appointment, an Alternate Director:
- (i) is entitled, in the absence or unavailability of the Director who appointed him or her (**Appointor**), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
  - (ii) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor; and
  - (iii) is not entitled to be given notice of a meeting of the Directors unless the Appointor has given written notice to the Company requesting that that notice also be given to the Alternate Director.
- 28.3 **Remuneration and expenses:** An Alternate Director is not entitled to any remuneration from the Company in his or her capacity as an Alternate Director but is entitled to be reimbursed by the Company for all expenses incurred in attending meetings of the Directors and in the discharge of his or her duties, to the same extent as if he or she was a Director.
- 28.4 **Cessation of appointment:** An Alternate Director ceases to be an Alternate Director:
- (i) if the Appointor ceases to be a Director (other than where the Director retires by rotation and is re-elected), or revokes the appointment of that Alternate Director by written notice to the Company;
  - (ii) on the occurrence of any event which would disqualify the Appointor as being qualified or entitled to remain in the office of a Director;
  - (iii) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director, to remain in the office of a Director; or
  - (iv) if a majority in number of the other Directors resolve to revoke the Alternate Director's appointment.

## 29. Managing Directors

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- 29.1 **Appointment:** The Board may from time to time appoint one or more Directors to the office of Managing Director for such period not exceeding five years, and on such other terms and conditions, as the Board thinks fit and, subject to the terms and conditions of any agreement entered into in any particular case, may at any time revoke or terminate such appointment. A Managing Director may be re-appointed at any time within three months before expiry of a term of appointment for a further period not exceeding five years, and on such other terms and conditions, as the Board thinks fit and may continue to be re-appointed for a further term of five years in the same manner.
- 29.2 **Resignation:** Subject to the provisions of clause 27.11, a Managing Director is subject to the same provisions as regards resignation, removal and disqualification as the other Directors, and if a Managing Director ceases to hold the office of Director from any cause he or she automatically ceases to be a Managing Director.

29.3 **Remuneration:** A Managing Director is entitled to receive such remuneration for his or her services as an employee (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Board may determine.

29.4 **No alternate Managing Director:** The power to appoint an alternate Director conferred on Directors by this Constitution does not confer on any Managing Director the power to appoint an alternate Managing Director.

## 30. Remuneration and Other Benefits of Directors

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30.1 **Restriction on authorisation:** The Board may, subject to the ASX Listing Rules, exercise the power conferred by section 161 of the Act to authorise payments and other benefits to and for Directors.

30.2 **Payment of expenses:** Directors are entitled to be paid for all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board, or any committee of the Board, or meetings of Securityholders, or in connection with the business of the Company.

30.3 **Special remuneration:** Without limiting clause 30.1, the Board may authorise the Company to pay special remuneration to any Director who is, or has been, engaged by the Company to carry out work in a capacity other than that of Director.

## 31. Indemnity and Insurance

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31.1 **Indemnity of Directors:** Subject to the provisions of clause 31.3 every Director shall be indemnified by the Company:

- (i) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or a director of a subsidiary of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (ii) in respect of any liability to any person other than the Company or a related company for any act or omission by him or her in his or her capacity as a Director or a director of a subsidiary of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability,

and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by a Director prior to the date of such revocation or amendment, but shall be subject to any limitations contained in any deed or agreement from time to time in force between the Company and the Director relating to indemnities.

31.2 **Other indemnities:** Subject to the provisions of clause 31.3 (and to any limitations contained in any deed or agreement relating to the indemnity), the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or of a related company:

- (i) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (ii) in respect of any liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

31.3 **Exceptions:** An indemnity conferred under the provisions of clause 31.1(ii), or given pursuant to the provisions of clause 31.2(ii), shall not apply in respect of:

- (i) any criminal liability;
- (ii) in the case of an employee of the Company or of a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company;
- (iii) in the case of a Director or a director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Act.

An indemnity conferred under the provisions of clause 31.1, or given pursuant to the provisions of clause 31.2, shall not apply in respect of any liability or costs in respect of which an indemnity is prohibited by any Applicable Law.

31.4 **Express indemnity:** Without limiting the indemnity conferred under the provisions of clause 31.1 the Company may, with the prior approval of the Board, by deed or agreement grant in favour of any Director an express indemnity to the same effect as that conferred under the provisions of clause 31.1, but subject to the exceptions in the provisions of clause 31.3.

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

- (i) liability, not being criminal liability, for any act or omission by him or her in such capacity;
- (ii) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (iii) costs incurred by him or her 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.

31.6 **Definitions:** In this section 31:

- (i) "Director" includes a former Director and "director" includes a former director; and
- (ii) other words given extended meanings in section 162(9) of the Act have those extended meanings.

## 32. Powers of Directors

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32.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

32.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act, this Constitution or any Applicable Law, to be exercised by the Securityholders.

32.3 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in Schedule 2 to the Act.

32.4 **Appointment of attorney:** The Company may, in accordance with the provisions of section 181 of the Act, exercise the power conferred by that section to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board

thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

- 32.5 **Ratification by Securityholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Securityholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

### 33. Interests of Directors

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- 33.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect or qualify the operation of the provisions of clause 33.2.

- 33.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to the ASX Listing Rules and to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:

- (i) contract with the Company in any capacity;
- (ii) be a party to any transaction with the Company;
- (iii) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (iv) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (v) retain any remuneration, profit or benefits in relation to any of the foregoing,

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

### 34. Proceedings of Board

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- 34.1 **Schedule 3 to the Act not to apply:** The provisions of Schedule 3 to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

- 34.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

- (i) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (ii) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

- 34.3 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure.

- 34.4 **Convening of meetings:** A Director, or an employee of the Company at the request of a Director, may convene a meeting of the Board by giving notice in accordance with clause 34.5.
- 34.5 **Notice of meeting:** The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings):
- (i) Not less than twenty four (24) hours' notice of a meeting shall be sent to each Director, unless:
    - (a) the Director waives that right; or
    - (b) in the opinion of the chairperson or of Directors who would together constitute a quorum at the meeting, the meeting is necessary as a matter of urgency, in which event such notice as is practicable in the circumstances shall be given.
  - (ii) Notice to a Director of a meeting may be:
    - (a) given to the Director in person by telephone or other oral communication;
    - (b) delivered to the Director;
    - (c) posted to the address given by the Director to the Company for such purpose;
    - (d) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
    - (e) sent by email or such other electronic means in accordance with any request or permission, actual or implied, made by the Director from time to time for such purpose.
  - (iii) A notice of meeting shall:
    - (a) specify the date, time and place of the meeting;
    - (b) in the case of a meeting by means of audio, or audio and visual, communication, specify the manner in which each Director may participate in the proceedings of the meeting; and
    - (c) give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, unless that detail is already known to all the Directors or the provision of such indication is impracticable in any particular circumstances.
  - (iv) A notice of meeting given to a Director pursuant to this clause 34.5 is deemed to be given:
    - (a) in the case of oral communication, at the time of notification;
    - (b) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
    - (c) in the case of posting, two Working Days after the date upon which it is posted;
    - (d) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile



was sent in its entirety to the facsimile telephone number given by the Director; or

- (e) in the case of electronic means, at the time of successful transmission.
  - (v) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with the provisions of this clause 34.5 but nevertheless the Director cannot be contacted, notice of the meeting shall be deemed to have been duly given to that Director.
- 34.6 **Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during, or after the meeting) to the waiver.
- 34.7 **Quorum:** A quorum for consideration of any matter at a meeting of the Board is two Directors present and entitled to vote on the matter, or such greater number as the Board may from time to time determine. No matter may be considered at a meeting of the Board if a quorum for the purposes of the matter is not present.
- 34.8 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and for so long as the number of Directors holding office is less than three, the continuing Directors may act only for the purposes of increasing the number of Directors to that number or calling a Meeting.
- 34.9 **Election of chairperson:** The Directors may from time to time elect a chairperson and (if they think fit) a deputy chairperson, of their meetings, and determine the period for which they respectively are to hold office. The chairperson, or failing the chairperson the deputy chairperson (if any), shall chair all meetings of the Directors. If at any time there is no such chairperson or deputy chairperson, or if at any meeting the chairperson or deputy chairperson is not present within ten (10) minutes after the time appointed for holding the meeting, or is present but not entitled to vote on a particular matter, the Directors present may choose one of their number to be chairperson of the meeting, or for consideration of the particular matter, as the case may be.
- 34.10 **Voting:** Every Director has one vote. In the case of an equality of votes, other than where two Directors form a quorum, the chairperson has a casting vote. A resolution of the Board is passed if it is agreed to without dissent by all Directors present and entitled to vote on the resolution, or if a majority of the votes cast on it are in favour of the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from, or votes against, or expressly abstains from voting on, the resolution at the meeting.
- 34.11 **Voting Restrictions:** A Director must not vote where that Director is not permitted to vote by the ASX Listing Rules, this Constitution, the Act or any other Applicable Law.
- 34.12 **Written resolution:** A resolution in writing, signed or assented to by all the Directors entitled to vote on the resolution is as valid and effective as if passed at a meeting of the Board duly convened and held in accordance with the provisions of this Constitution and any other Applicable Law, provided that those Directors would constitute a quorum for consideration of the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered in the Records.
- 34.13 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

- 34.14 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 34.15 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Securityholders and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of those proceedings.
- 34.16 **Board to manage in accordance with objectives:** The Company's business and affairs must be managed by, or under the direction or supervision of, the Board except to the extent that the Act, the ASX Listing Rules, this Constitution or any other Applicable Law provides otherwise.

## 35. Method of Contracting

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- 35.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:
- (i) two or more Directors;
  - (ii) any Director, together with any other person authorised by the Board, both of whose signatures must be witnessed; or
  - (iii) one or more attorneys appointed by the Company,
- in accordance with the provisions of s181 of the Act.
- 35.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.
- 35.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

## 36. Inspection of Records

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- 36.1 **Inspection by Directors:** Subject to the provisions of section 191 (2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.
- 36.2 **Inspection by Securityholders:** No Securityholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Securityholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Securityholders (who are not also Directors).

## 37. Notices

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- 37.1 **Method of service:** All notices, reports, accounts and other documents required to be sent to a Securityholder, shall be sent in the manner provided in section 391 of the Act.
- 37.2 **Service of notices overseas:** If a Securityholder has not given to the Company or the Security Registrar 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 holder at such address

and shall be deemed to have been received by that holder no less than twenty four (24) hours after the time of posting.

- 37.3 **Accidental omissions:** The failure to send an annual report, notice, or other document to a Securityholder in accordance with the provisions of the Act or this Constitution does not invalidate the proceedings at a Meeting if the failure to do so was accidental.
- 37.4 **Securityholders of Jointly Held Equity Securities:** A notice may be given by the Company to Securityholders of a Jointly Held Equity Security by giving the notice to the Securityholder named first in the Security Register in respect of that Jointly Held Equity Security.
- 37.5 **Securityholder becomes deceased, bankrupt or insolvent:** If a Securityholder dies or is adjudicated bankrupt or insolvent, notice may be given in any manner in which notice might have been given if the death, bankruptcy or insolvency had not occurred, or by giving notice in the manner provided in section 391 of the Act to the Personal Representative of that Securityholder at the address supplied to the Company for that purpose.
- 37.6 **Waiver by Securityholder:** Subject to section 212(2) of the Act, a Securityholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Securityholder the documents to which the waiver relates.

## 38. Liquidation

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- 38.1 **Distribution of surplus:** Subject to the rights attaching to the respective Equity Securities, the rights and obligations of Securityholders and to the provisions of clause 38.2, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Securityholders entitled to receive a proportion of those surplus assets (each an **Entitled Securityholder**) in proportion to their respective Securityholdings and subject to the terms of the relevant Equity Securities. If any Equity Securities are not fully paid up at that time, the liquidator of the Company may require those Equity Securities to be fully paid up before the Entitled Securityholder in whose name those Equity Securities are then registered, receives any distribution of the surplus assets of the Company in respect of those Equity Securities.
- 38.2 **Distribution of assets in kind:** If the Company is liquidated the liquidator may, with the approval of the Entitled Securityholders and any other sanction required by the Act:
- (i) divide among the Entitled Securityholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Entitled Securityholders or between different classes of Entitled Securityholders; and
  - (ii) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Entitled Securityholder is compelled to accept any Equity Security on which there is any liability.