

26 September 2019

Amendments to constitution

Evolve Education Group Limited's shareholders recently approved amendments to its constitution. A copy of the constitution as amended is attached.

Ends

Contact Stephen Davies (Chief Financial Officer)

Constitution of Evolve Education Group Limited

Under the Companies Act 1993

Constitution of Evolve Education Group Limited

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Constitution of Evolve Education Group Limited

1. Defined terms and interpretation

1.1 Defined terms

In this Constitution, unless the context otherwise requires:

Act means the Companies Act 1993;

Alternate Director means a Director appointed pursuant to clause 23;

Board means the Directors who number not less than the required quorum acting together as the board of Directors of the Company;

Company means **Evolve Education Group Limited**;

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

Director means a person appointed as, or holding the office of, a director of the Company in accordance with this Constitution;

NZX Listing Rules means the listing rules applying to the NZX Main Board as altered from time to time by NZX, subject to any ruling or waiver relevant to the Company granted by NZX from time, and any reference to any NZX Listing Rule shall be construed accordingly;

Personal Representative means:

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

Representative means a person appointed as a proxy or a Personal Representative;

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

1.2 Construction

In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or statutory instrument as from time to time amended or re-enacted or substituted;
- (d) a reference to a NZX Listing Rule includes that NZX Listing Rule as from time to time amended or substituted;

- (e) the singular includes the plural and vice versa and one gender includes the other genders;
- (f) the words "written" and "writing" include facsimile and email communications and any other means of communication resulting in permanent visible reproduction;
- (g) the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (h) words or expressions defined in the Act or the NZX Listing Rules have the same meaning in this Constitution except as otherwise expressly provided in this Constitution. In the event of any conflict between a word or expression defined in the Act and in the NZX Listing Rules, the meaning in the NZX Listing Rules will prevail unless this will result in a failure to comply with the requirements of the Act or any other legislation or regulatory requirement, in which case the meaning in the Act will prevail.

2. The Act and the NZX Listing Rules

2.1 The Act

The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

2.2 Compliance with NZX Listing Rules

Notwithstanding anything else in this Constitution, for so long as the Company is Listed on the NZX:

- (a) those provisions of the NZX Listing Rules which are required to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification;
- (b) the Company shall comply with the NZX Listing Rules (as modified by, and subject to any waiver or Ruling);
- (c) if there is any provision in this Constitution that is inconsistent with the NZX Listing Rules relevant to the Company, the NZX Listing Rules (as modified by any such waiver or Ruling) shall prevail;
- (d) if the NZX Listing Rules are changed so that any act or omission by the Company, which was formerly prohibited by the NZX Listing Rules, is subsequently required or permitted by the change, the act or omission is deemed to be authorised by this Constitution with effect from the date of the change;
- (e) Shareholders must not cast a vote if prohibited from doing so by the NZX Listing Rules; and
- (f) Directors must not cast a vote if prohibited from doing so by the NZX Listing Rules.

To the extent that any provision of this Constitution is expressed as being subject to the NZX Listing Rules or requires compliance with the NZX Listing Rules, such provision will only be subject to, or require compliance with, the NZX Listing Rules for so long as the Company is listed.

2.3 NZX Rulings

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

2.4 Effect of failure to comply

Failure to comply with:

- (a) the NZX Listing Rules; or
- (b) a provision of this Constitution corresponding with a provision of the NZX Listing Rules (whether such provision is set out in full in this constitution or incorporated in it pursuant to clause 2.2)

shall not affect the validity or enforceability of any transaction, contract, action or other matter done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the non-compliance shall not be entitled to enforce that transaction or contract. This provision does not limit the rights of shareholders against the Company or the Directors.

3. Rights attaching to Shares

3.1 New Shares

Subject to clause 4 and the NZX Listing Rules, further Shares in the Company (including different Classes of Equity Securities) may be issued which:

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

3.2 Alteration of Rights

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

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

4. Issue of new Equity Securities

4.1 Issue of new Equity Securities

The Board may issue Equity Securities to any person and in any number it thinks fit provided that, while the Company is Listed, the issue is made in compliance with the NZX Listing Rules. The

provisions of sections 45 of the Act shall not apply to any issue or proposed issue of Equity Securities by the Company.

4.2 Consolidation and subdivision of Shares

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

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

4.3 Bonus issues

Subject to any applicable provisions of the NZX Listing Rules, the Board may resolve to apply any amount which is available for Distribution to Shareholders either:

- (a) in paying up in full Shares or other Securities of the Company to be issued credited as fully-paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of those Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in paragraph (a)(i).

5. Buybacks and redemptions of Shares and financial assistance

5.1 Powers

The Company may in accordance with the provisions, and subject to the restrictions, of the Act, this Constitution and, while the Company is Listed, the NZX Listing Rules:

- (a) make an offer to one or more holders of Shares to acquire Shares in such numbers or proportions as it thinks fit;
- (b) purchase or otherwise acquire Shares issued by it from one or more Shareholders;
- (c) purchase or otherwise acquire other Equity Securities from one or more holders;
- (d) hold any Shares or other Equity Securities so purchased or acquired as Treasury Stock; and
- (e) redeem any redeemable Shares or other Equity Securities held by one or more holders,

either:

- (f) at its option;
- (g) at the option of the holder of the Shares or other Equity Securities if permitted by the terms of issue; or
- (h) on a date specified in this Constitution or the terms of issue of the Shares or other Equity Securities,

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company as provided in section 68 of the Act.

5.2 Permitted financial assistance

The Company may give financial assistance for the purpose of, or in connection with, the acquisition of any Shares or other Equity Securities issued, or to be issued, by the Company provided that the giving of that assistance is in accordance with the provisions of the Act and, while the Company is Listed, the NZX Listing Rules.

6. Call on Securities

6.1 Ability to call

Subject to the terms of issue of any Security, the Board may resolve to require the holders of unpaid or partly paid Securities to pay all or part of the amount unpaid on the Securities. Notice of the call must be given to the holder at the time of the call or to a subsequent holder of the Securities. Failure to give notice to a holder will not invalidate a call but it will not be payable by that holder until the notice has been served on the holder. The notice must specify the day by which and the place at which the call must be paid. Notice of a call sent by post to a holder to the address recorded in the Register as the address of the holder will be deemed to have been served on the holder the day after it was posted. Subject to clause 6.9, a call may be revoked or postponed at any time by the Board or may be required to be paid by instalments.

6.2 Call deemed made

A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.

6.3 Joint holders' liability

The joint holders of a Security shall be jointly and severally liable to pay all calls and instalments due in respect of that Security.

6.4 Unpaid calls to accrue interest

If a sum called in respect of a Security is not paid in full on or before the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment to the time of actual payment) at such rate as the Board may determine either at the time of the call or subsequently. Subject to clause 5.9, the Board may at its discretion waive payments of any such interest either in whole or in part.

6.5 Payment on allotment

Any sum which by the terms of issue of a Security becomes payable on allotment or at any fixed date shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable and in case of non-payment all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

6.6 Proof of Holding

On the trial or hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that the name of the holder of the Security sued is entered in the Register as the holder or one of the holders of the Securities in respect of which such debt accrued, that the resolution making the call is duly recorded in the records of the Company and that notice of such call was duly given to the holder sued in pursuance of this Constitution; and it shall not be necessary to prove the appointment or qualification of the Directors who made such call nor any

other matter whatsoever; and the proof of the matters aforesaid shall be conclusive evidence of the debt.

6.7 Directors' discretion to differentiate

The Board may, on the issue of Securities, by agreement with the holders concerned, differentiate between the holders as to the amounts to be paid and the times of any calls or payment.

6.8 Payments in advance

The Board may if it thinks fit receive from any holder of Securities willing to advance the same all or any part of the money uncalled and unpaid upon any Securities held by that holder and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate as may be agreed upon between the Board and the holder of Securities paying the sum in advance; but no holder shall be entitled as of right to any interest on any money so paid in advance and the Board may decline to pay any interest. The Board may at any time repay the amount so advanced upon giving to the holder of Securities one month's notice in writing.

6.9 Cancellation of amount due

No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

7. Lien on Securities

7.1 Lien on unpaid and partly paid Securities

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

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

7.2 Power of sale

If any amount due in respect of a Security on which the Company has a lien is unpaid for more than 10 Business Days after notice in writing demanding payment has been given to the holder or the person entitled to receive notices in respect of that Security:

- (a) the Company may sell the Security on such terms as the Board determines; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Security to, or at the direction of, the purchaser and may register the purchaser (or person directed by the purchaser) as the holder of the Security, discharged from all calls due prior to the purchase.

7.3 Absolute title of purchaser

The title of a purchaser of any Securities sold pursuant to clause 7.2 shall not be affected by any irregularity or invalidity in any sale.

7.4 Application of sale proceeds

The net proceeds of sale of any Security sold pursuant to clause 7.2, after deducting expenses of sale, shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts, and the balance (if any) shall be paid to the person entitled to the Security at the date of sale. The remedy of any person aggrieved by such sale shall be in damages only and against the Company exclusively.

8. Forfeiture of Shares

8.1 Notice

If a call, instalment, or other amount owing on a Security is not paid when due, the Board may give 10 Business Days notice to the holder requiring payment of the call, instalment, or other amount owing together with interest on that amount. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Security will be liable to be forfeited by the holder.

8.2 Forfeiture

If the notice is not complied with, the Security may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.

8.3 Sale of forfeited Securities

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

8.4 Application of sale proceeds

The net proceeds of sale of any forfeited Security shall be applied in the same manner as set out in clause 7.4.

8.5 Absolute title of purchaser

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

8.6 Consequences of forfeiture

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

8.7 Evidence of forfeiture

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

8.8 Failure to submit evidence of title not forfeiture

Equity Securities shall not be liable to forfeiture for the failure of persons entitled thereto (by transmission or otherwise) to submit evidence of title within a specified time.

9. Transfer of Shares

9.1 Board may refuse to register

Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse or delay the registration of the transfer of any Share if:

- (a) permitted to do so by the Act or the NZX Listing Rules;
- (b) the Company has a lien on the Share;
- (c) in the case of a transfer by an instrument in writing, it is not accompanied by the relevant Share certificate (if any);

- (d) the transferor fails to produce such evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share;
- (e) 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 proposed transferee holding less than a Minimum Holding of Shares of the relevant Class; or
- (f) in the case of a transfer by an instrument in writing, if it has not been properly completed,

provided that the Board resolves to exercise its power under this clause 9.1 within 30 Business Days after receipt of the relevant transfer, and notice of the resolution is sent to the transferor and to the transferee within five Business Days of the resolution being passed by the Board.

9.2 Multiple Registers

Subject to the Act and, in particular, the requirement that the principal Register must be kept in New Zealand, the Share 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 company share registrars.

9.3 Compulsory disposal when holding less than Minimum Holding

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

- (a) the Board may arrange for the sale of the relevant Shares on behalf of the Shareholder, through the NZX Main Board (including through a broker acting on the Company's behalf);
- (b) the Shareholder shall be deemed to have authorised the Company to act on behalf of the Shareholder in relation to the sale of the relevant Shares, and to sign all necessary documents relating to such sale;
- (c) the Company shall account to the purchaser for the net proceeds of sale (after deduction of reasonable sale expenses and any other amounts owing) which shall be held on trust by the Company for, and paid (together with interest at such rate (if any) as the Board deems appropriate) to the Shareholder; and
- (d) the title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of the Company shall be a good discharge to the purchaser for the purchase price.

9.4 Securities other than Shares

The provisions of this clause 9 shall apply, with any necessary modifications, to Securities of the Company other than Shares except to the extent (if any) provided otherwise by the terms of issue of such Securities, by the NZX Listing Rules or by law.

10. Transmission

10.1 Transmission on death of holder

If a holder of Securities dies the survivor, if the deceased was a joint Shareholder, or the holder's Personal Representative, shall be the only persons recognised by the Company as having any title

to or interest in the Securities of the deceased holder. Nothing in this clause 10.1 shall release the estate of a deceased joint holder from any liability in respect of any Security or constitute a release of any lien which the Company may have in respect of any Security.

10.2 Rights of Personal Representatives

A holder's Personal Representative:

- (a) is entitled to exercise all rights (including without limitation the rights to receive Distributions, to attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the Securities held by that holder; and
- (b) is entitled to be registered as holder of those 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 paragraph (b).

10.3 Joint Personal Representatives

Where a Security is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Security.

10.4 Refusal of Transfer

Notwithstanding the provisions of clauses 10.1 to 10.3, the Board has the same right to refuse or delay registration of a transfer of Securities as it would have had in the case of a transfer of the Securities by that holder of Securities before the appointment of the Personal Representative.

11. Meetings of Shareholders

11.1 Meetings of Interest Groups

A meeting of the Shareholders constituting an Interest Group may be called by the Board at any time. All the provisions of this Constitution relating to meetings of Shareholders shall apply, with all necessary modifications, to meetings of Interest Groups, except that:

- (a) the necessary quorum for a meeting is one Shareholder having the right to vote at the meeting, present in person or by Representative;
- (b) any Shareholder in the relevant Interest Group, present in person or by Representative, may demand a poll; and
- (c) if the Board so elects, one meeting may be held of Shareholders constituting more than one Interest Group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of the Shareholders in each Interest Group.

12. Proceedings at meetings of Shareholders

12.1 Quorum

While the Company is Listed, a quorum for a meeting of Shareholders is five Shareholders having the right to vote at the meeting present in person or by Representative. If the Company is not Listed, a quorum for a meeting of Shareholders is present if Shareholders or their Representatives are present who between them are able to exercise 50% of the votes to be cast on the business to be transacted by the meeting.

12.2 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the procedure at meetings of Shareholders.

12.3 Adjournment of meeting

The chairperson may (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.

12.4 Dissolution of disorderly meeting

If a meeting becomes so unruly, disorderly or inordinately protracted, such 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 therefore, dissolve the meeting.

12.5 Completion of unfinished business if meeting dissolved

If a meeting is dissolved by the chairperson pursuant to clause 12.4, the unfinished business of the meeting shall be deemed to have been dealt with as follows:

- (a) in respect of a resolution concerning the approval or authorisation of a Distribution; that the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution;
- (b) in respect of a resolution concerning the remuneration of the auditors; that the Board be authorised to fix the remuneration of the auditors;
- (c) in respect of any other item of business; that the chairperson may, as part of the decision to dissolve the meeting under clause 14.6, direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll, in accordance with clause 15.2, without further discussion whereupon such poll shall be conducted immediately and the meeting deemed dissolved on conclusion of the taking of such poll.

13. Chairperson of meetings of Shareholders

13.1 Chairperson

If the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she shall chair the 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.

13.2 Directors may appoint chairperson

If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting, or 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, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.

13.3 Shareholders may appoint chairperson

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

14. Voting at meeting of Shareholders

14.1 Postal votes

Unless the Board determines otherwise, Shareholders 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 the first schedule to the Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.

14.2 Entitlement to vote

A Shareholder may exercise the right to vote either in person or by Representative.

14.3 Number of votes

Subject to any rights or restrictions for the time being attached to any Share:

- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
- (b) on a poll every Shareholder present in person or by Representative has:
 - (i) in respect of each fully-paid Share held by that Shareholder, one vote; and
 - (ii) each Share which is not fully-paid shall carry only a fraction of the vote or votes which would be exercisable if that Share were fully-paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

14.4 Vote of overseas protected persons

A Shareholder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Shares held by that Shareholder, by his or her committee, manager, curator bonis, or other person of a similar nature appointed by that court, voting in person or by a Representative.

14.5 Chairperson not allowed casting vote

In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson of the meeting does not have a second or casting vote.

14.6 Voting restrictions

Notwithstanding anything to the contrary in this Constitution, the NZX Listing Rules or the Act, a person is not entitled to cast a vote in favour of a resolution when that person is disqualified from doing so by virtue of the voting restrictions specified in the NZX Listing Rules.

14.7 Disqualified person may act as proxy

Clause 14.6 shall not prevent a person disqualified from voting under that clause, who has been appointed as a Representative by another person who is not disqualified from voting under that clause, from voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.

14.8 Discovery of disqualified persons

The Company shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in clause 14.6, the identity of holders of Securities who are disqualified from voting on that resolution pursuant the NZX Listing Rules, and on request shall supply a list of such holders to NZX and to any holder of Equity Securities of the Company.

14.9 Deadline for challenge

Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a vote at a meeting in breach of clause 14.6, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of clause 14.6. Any objection by a holder of Securities to the accuracy or completeness of any list of holders of Securities referred to in clause 14.8 shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.

15. Polls

15.1 When poll taken

A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business of the meeting, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

15.2 Poll procedure

A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.

15.3 Declaration of result

The chairperson is entitled to declare the result of a poll either at or after the meeting upon receipt of a certificate from the scrutineers setting out the maximum number of votes that could be cast at the meeting and stating that sufficient votes to determine the result of the resolution have been counted.

16. Proxies and corporate representatives

16.1 Validity of proxy vote

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

16.2 Form of notice of proxy

A notice appointing a proxy shall be in such form as the Board may direct and must provide for four-way voting on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote, and must not be sent with any name or office (e.g. 'chairman of directors') filled in as proxy holder. So far as reasonably practicable, resolutions must be framed in a manner which facilitates four-way voting instructions for proxy holders.

17. Shareholder management review

17.1 Management review by Shareholders

The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but no such resolution is binding on the Board.

18. Directors

18.1 Number of Directors

The Company shall comply with the minimum Board composition requirements of the Rules. The minimum number of Directors (other than Alternate Directors) is three and the maximum number of Directors (other than Alternate Directors) is eight.

18.2 Appointment by Ordinary Resolution

Subject to clauses 18.1, 22.3 and the NZX Listing Rules, any natural person who is not disqualified under the Act and, if required under the NZX Listing Rules, who has been nominated within the time limits under the NZX Listing Rules, may be appointed as a Director at any time by an Ordinary Resolution. Each resolution to appoint, elect or re-elect a Director must be for the appointment, election or re-election of one Director only. Nothing in this clause 18.2 shall prevent voting on the election of a Director at a meeting where the number of candidates for the office of Director exceeds the vacancies available under clause 18.1, provided that, if an ordinary resolution has been passed in respect of more candidates than may be appointed under clause 18.1, then only the number of Directors, equal to the number of vacancies to be filled, will be elected and the Directors to be appointed will be those candidates who received the highest number of votes.

18.3 Appointment by Board

Subject to clauses 18.1, 22.3 and the NZX Listing Rules, the Board may at any time appoint any natural person who is not disqualified under the Act to be a Director. Any Director so appointed under this clause may hold office only until the next annual meeting of the Company (at which he or she must retire), 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 meeting.

18.4 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. Similarly the chairperson of the Board continues in office and is deemed to have been appointed as chairperson pursuant to this Constitution.

18.5 Rotation of Directors

Each Director shall retire from office when required to do so by the NZX Listing Rules, but subject to the NZX Listing Rules, shall be eligible for re-election (including at any meeting at which the Director retires).

18.6 Re-election of retiring Director

A Director retiring at a meeting shall continue to hold office:

- (a) until he or she is re-elected; or
- (b) if he or she is not re-elected, until the meeting of security holders at which he or she retires (or any adjournment of that meeting) elects someone in his or her place; or
- (c) if the meeting of security holders does not elect someone in his or her place, until the end of the meeting or any adjournment of the meeting.

18.7 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.

18.8 Vacation of office

A Director ceases to be a Director if he or she:

- (a) is removed from office by an Ordinary Resolution; or
- (b) 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; or
- (c) 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); or
- (d) becomes disqualified from being a Director pursuant to the Act; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (f) has for more than six months been absent without approval of the Board from all meetings of the Board held during that period.

18.9 Timing of appointment

If a person who is not already a Director is appointed or elected as a Director at a meeting of Shareholders, that person shall take office as a Director immediately after the conclusion of the meeting or after any adjournment of the meeting, whichever is earlier.

19. Alternate Directors

19.1 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 or an Alternate Director and who is approved by a majority of the other Directors, to be that Director's alternate. No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this clause 19.

19.2 Rights of Alternate Director

Unless otherwise specified by the terms of his or her appointment, an Alternate Director:

- (a) is entitled, in the absence or unavailability of the Director who appointed him or her (the "**Appointor**"), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
- (b) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor;
- (c) 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 notice be given to the Alternate Director.

19.3 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 were a Director.

19.4 Cessation of appointment

An Alternate Director ceases to be an Alternate Director:

- (a) if the Appointor ceases to be a Director, or revokes the appointment by written notice to the Company; or
- (b) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director; or
- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

20. Proceedings of the Board

20.1 Third schedule of Act not to apply

The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

20.2 Alternative forms of meeting

A meeting of the Board may be held either:

- (a) by a number of the Directors that constitutes a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by a conference between Directors some or all of whom are in different places, provided that each Director who participates is able:
 - (i) to hear each of the other participating Directors addressing the meeting; and
 - (ii) if he or she so wishes, to address each of the other participating Directors simultaneously, whether directly, by conference telephone or by another form of communications equipment (whether in use when this Constitution is adopted or developed subsequently) or by a combination of such methods.

Where two or more Directors participate from New Zealand in a meeting held in this way, the meeting shall be deemed to take place in New Zealand at the place agreed between such Directors. Where one Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place from where that Director participates. Where no Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place where the chairman of the meeting participates. Any Director may, by prior notice to a senior officer of the Company, indicate that he or she wishes to participate in the meeting in the abovementioned manner in which event the Director shall procure that an appropriate conference facility is arranged. A Director participating in this way is deemed to be present in person at the meeting and shall be counted in the quorum and entitled to vote to the extent otherwise allowed by this Constitution.

20.3 Procedure

Except as provided in this Constitution, the Board may regulate its own procedure.

20.4 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 or as provided in clause 20.5):

- (a) Not less than two Business Days' notice of a meeting of the Board shall be sent to each Director in all circumstances, unless:

- (i) the Director waives that right; or
 - (ii) a shorter period of notice is required to enable the Board to comply with its obligations under the NZX Listing Rules; or
 - (iii) the issue which is to be the subject of the meeting is, in the reasonable opinion of a majority of the Directors, a matter of urgency, in which event such notice as is practicable in the circumstances shall be still sought to be given to each such Director.
- (b) Notice to a Director of a meeting of the Board may be:
- (i) given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by email to the email address given by the Director to the Company for such purpose; or
 - (v) sent by another form of communications equipment in accordance with any request made by the Director from time to time for such purpose.
- (c) A notice of meeting shall specify:
- (i) the date, time and place of the meeting;
 - (ii) the nature of the business to be transacted at the meeting in sufficient detail to enable a Director to give due consideration to it; and
 - (iii) in the case of a meeting by means of conference telephone or by another form of communications equipment, the manner in which each Director may participate in the proceedings of the meeting.
- (d) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
- (i) in the case of oral communication, at the time of notification;
 - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (iii) in the case of posting, at the time of receipt (which in the absence of proof to the contrary shall be considered to be three days after it is posted);
 - (iv) in the case of email, at the time of receipt; or
 - (v) in the case of another form of communications equipment, at the time of transmission.

20.5 Director may convene meeting

Without limiting the provisions of clauses 20.3 or 20.4, a Director has the right at any time to convene a meeting of the Board, or to require a senior officer of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than seven days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.

20.6 Waiver of notice irregularity

A Director may at any time (including at the meeting to which a notice of meeting relates) protest as to any irregularity in a notice of meeting (including if the business transacted at the meeting

was not specified, or was not specified in sufficient detail, in the notice for that meeting). An irregularity in the giving of notice of a meeting is deemed to be 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.

20.7 Quorum

Subject to the NZX Listing Rules, a quorum for a meeting of the Board may be fixed by the Directors acting unanimously from time to time, and unless so fixed shall be a majority of Directors and comprise at least two Independent Directors, except that where, in respect of any matter, there is such a number of Directors who are Interested therein that there is not present a majority of the Directors who are not Interested and able to form a quorum, then the quorum shall be the number of Directors present who are not Interested in that matter, but the quorum shall not in any event be less than three. No business may be transacted at a meeting of Directors if a quorum is not present. If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned to the time, day and place agreed by the Directors then present and notice of the adjourned meeting must be immediately given to each Director, provided that if no such agreement is reached the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

20.8 Insufficient number of Directors

The Directors may act notwithstanding any vacancy in their body but, if and so long as the number of Directors holding office is less than the minimum number fixed by clause 18.1, the continuing Directors may act only for the purpose of increasing the number of Directors to that number or summoning a meeting of the Shareholders but for no other purpose.

20.9 Election of chairperson

The Directors must 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 preside at all meetings of the Directors but if no such chairperson or deputy chairperson is elected, or if at any meeting the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

20.10 Voting

Subject to the NZX Listing Rules, every Director has one vote. The Chairperson shall not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of 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.

20.11 Written resolution

A resolution in writing, signed or assented to by all of the Directors (other than a Director who has been granted a leave of absence) entitled to vote is as valid and effective as if passed at a meeting of the Board provided that the Directors signing or assenting to the resolution would constitute a quorum and would have power to pass 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 of the Company. The Company shall, within

seven days after any resolution is passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.

20.12 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 and, while the Company is listed, the NZX Listing Rules. 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.

20.13 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.

20.14 Minutes

The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board and its committees. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

21. Interests of Directors

21.1 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 the operation of clause 21.2.

21.2 Personal involvement of Directors

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

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

22. Directors' remuneration

22.1 Expenses

Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.

22.2 Director may hold another office or place of profit

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

23. Indemnity and insurance

23.1 Indemnity of Directors and employees

The Company shall indemnify a Director or employee of the Company or a related company for any liability or costs for which a Director or employee may be indemnified under the Act. The Board may determine the terms and conditions of such an indemnity.

23.2 Insurance of Directors and employees

The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a Director or employee under the Act. The Board may determine the amounts and terms and conditions of any such insurance.

24. Distributions

24.1 Currency of payment

The Board, if it thinks fit, may differentiate between Shareholders as to the currency in which any Distribution is to be paid. In exercising its discretion, the Board may have regard to the registered address of a Shareholder, the Register on which a Shareholder's Shares are Registered and such other matters (if any) as the Board considers appropriate. If the Board determines to pay a Distribution in a currency other than New Zealand currency, the amount payable shall be converted from New Zealand currency in such manner, at such time, and at such exchange rate, as the Board thinks fit.

24.2 Deduction of money

The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.

24.3 No interest on Distributions

The Company is not liable to pay interest in respect of any Distribution.

24.4 Payment of small dividend amounts

Where the net amount of a dividend payable to a Shareholder 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 Shareholder, defer payment of the dividend to that Shareholder until the earlier of:

- (a) such time as that Shareholder has an aggregate entitlement to net dividends of not less than such minimum amount; and
- (b) the date upon which that Shareholder ceases to hold any Shares.

24.5 Unclaimed Distributions

Dividends or other monetary Distributions unclaimed for more than one year after having been authorised, may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for 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.

25. Notices

25.1 Service of notices overseas

If the holder of a Share or other Quoted Security has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand or an electronic address, then notices shall be posted to that holder at such international physical address by airmail or by courier, or sent electronically to such electronic address, and shall be deemed to have been received by that holder 24 hours after the time of posting.

25.2 Accidental omissions

The failure to send an annual report, notice, or other document to a Shareholder or other Equity Security holder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.

25.3 Joint Shareholders

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

25.4 Shareholder deceased or bankrupt

If the holder of an Equity Security dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Act to the Personal Representative of the holder at the address supplied to the Company for that purpose.

26. Method of contracting

26.1 Deeds

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

- (a) two or more Directors; or
- (b) any Director, or any other person authorised by the Board, whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with the Act.

27. Liquidation

27.1 Distribution of assets

If the Company is liquidated the liquidator may, with the approval of Shareholders and any other sanction required by the Act:

- (a) divide among the Shareholders 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 Shareholders or between different Classes; and

- (b) 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 Shareholder is compelled to accept any shares or other securities on which there is any liability.