



**Nufarm**

**Nufarm Finance (NZ) Limited**

ARBN 099 125 783

103-105 Pipe Road  
LAVERTON NORTH VIC 3026

15 November 2011

**Nufarm Finance (NZ) - Consolidated Constitution**

Please find attached the Consolidated Constitution for Nufarm Finance (NZ) Ltd.

Rodney Heath  
Nufarm Finance (NZ) Limited

**CONSTITUTION**

*OF*

**NUFARM FINANCE (NZ) LIMITED**

(previously Fernz Corporation (NZ) Limited)

(Registration Number AK/107147 and ARBN 099 125 783)

*INCORPORATING AMENDMENTS PASSED BY THE SHAREHOLDERS  
ON 28 SEPTEMBER 2006 AND 10 DECEMBER 2010*

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THE COMPANIES ACT 1993

CONSTITUTION

- of -

FERNZ CORPORATION (NZ) LIMITED

PART 1

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions - in this Constitution if not inconsistent with the context:

'Act' means the Companies Act 1993 and includes regulations made under the Act and shall, unless the context otherwise requires, include the Act (and regulations thereunder) as amended or re-enacted or substituted from time to time.

'Affected Group' has the meaning given to that term in section 4 of the Rules.

'Affected Securities' has the meaning given to that term in section 4 of the Rules.

'Alternate Director' means any person appointed under Clause 10.13.

'Appraisal Report' has the meaning given to that term in section 1 of the Rules.

'Associated Person' has the meaning given to that term in section 1 of the Rules.

'ASX' means Australian Stock Exchange Limited (ACN 008 624 691) and includes, any body corporate succeeding to all or most of the powers, functions and duties of Australian Stock Exchange Limited.

Passed by special resolutions of shareholder on 28/09/2006

'ASX Listing Rules' means the listing rules of the ASX and any other rules of the ASX which are applicable while the Company is admitted to the official list of the ASX, except to the extent of any express written waiver by the ASX.

Passed by special resolutions of shareholder on 28/09/2006

'Auditor' means the person appointed to act as auditor of the Company.

'Bank' has the meaning given to that term in section 1 of the Rules.

'Board' means the Directors who number not less than the required quorum acting together as a board of directors.

'Books' includes books, photographic records, material stored on computer tapes or disks and all other methods of storing information, which comply with the requirements from time to time of the Act.

'Broker' has the meaning given to that term in section 1 of the Rules.

'Business Day' means a day on which the Exchange is open for trading.

'Chairperson' means the chairperson of Directors for the time being of the Company and includes any deputy chairperson or other person who is acting for the time being as chairperson of the Company.

'Class' has the meaning given to that term in section 1 of the Rules.

'Company' means Fernz Corporation (NZ) Limited.

'**Constitution**' means this constitution of the Company as amended or substituted from time to time.

'**Convert**', '**Conversion**' and '**Convertible**' have the meanings given to those terms in section 1 of the Rules.

'**Debt Security**' has the meaning given to that term in section 1 of the Rules.

'**Default**' and '**Defaulter**' have the meanings given to those terms in section 4 of the Rules.

'**Differential Offer**' has the meaning given to that term in section 4 of the Rules.

'**Director**' means a person appointed as, or holding the office of, a director in accordance with Part X of this Constitution or a person occupying the position of director by whatever name called.

'**Distribution**' has the meaning given to that term in section 2(1).

'**Distribution Right**' has the meaning given to that term in Clause 3.4.4(b).

'**Dividend**' has the meaning given to that term in section 53.

'**Employee**' means an employee of the Company, and for the purposes of Clauses 3.4.2, 3.4.5, 3.4.6, 4.6.2, 4.7.2 and 6.6 has the meaning given to that term in Clause 3.4.6(c)(ii).

'**Equity Security**' means an equity security (as that term is defined in section 1 of the Rules) issued by the Company and includes without limitation a Share.

'**Exchange**' means the New Zealand Stock Exchange and, as the context permits, includes any delegate of the Exchange (including the Panel).

'**Insider**' has the meaning given to that term in section 4 of the Rules.

'**Issuer**' has the meaning given to that term in section 1 of the Rules.

'**Listing**' and '**Listed**' have the meanings given to those terms in section 1 of the Rules.

'**Managing Director**' means a Director appointed to that office pursuant to Clause 10.12.1.

'**Material Transaction**' has the meaning given to that term in Clause 6.4.

'**Minimum Holding**' has the meaning given to that term in section 1 of the Rules.

'**Minority Veto Provisions**' has the meaning given to that term in section 4 of the Rules.

'**Month**' means calendar month.

'**Notice and Pause Provisions**' has the meaning given to that term in section 4 of the Rules.

'**Offering Document**' has the meaning given to that term in section 1 of the Rules.

'**Office**' means the registered office for the time being of the Company.

'**Option**' means an option (as that term is defined in section 1 of the Rules) granted by the Company.

'**Ordinary Resolution**' has the meaning given to the term 'Ordinary Resolution of the Issuer' in section 1 of the Rules.

'**Panel**' has the meaning given to that term in section 1 of the Rules.

'**Prospectus**' and '**Profile**' have the meanings given to those terms in section 1 of the Rules.

'**Quoted**', '**Quotation**' and '**Quote**' have the meanings given to those terms in section 1 of the Rules.

'**Recognised Stock Exchange**' has the meaning given to that term in section 1 of the Rules.

'**Record Date**' means the time fixed by the Board for the determination of the Security holders to whom an entitlement, right or obligation relating to Securities shall apply which shall comply with Rule 1.13.

'**Register**' means the share register required to be kept pursuant to section 87 and Clause 5.6.

'**Registered Address**' in relation to any Shareholder means the address of the Shareholder as entered in the Register or, if the Shareholder has supplied to the Company an address within or beyond New Zealand for the purpose of giving notices to that Shareholder, shall mean the address so supplied and shall include any such address supplied to the Company by:

- (a) any person entitled to a Share following the death or bankruptcy of a Shareholder; or
- (b) the manager or committee of a mentally disordered Shareholder.

'**Related Company**' has the meaning given to that term in section 2(3) (read together with section 2(4)).

'**Related Party**' has the meaning given to that term in Clause 6.5.

'**Relevant Group**' has the meaning given to that term in section 4 of the Rules.

'**Relevant Information**' has the meaning given to that term in section 1 of the Rules.

'**Relevant Interest**' has the meaning given to that term in section 4 of the Rules.

'**Renounceable**' has the meaning given to that term in section 1 of the Rules.

'**Restricted Transfer**' has the meaning given to that term in section 4 of the Rules.

'**Right**' has the meaning given to that term in section 1 of the Rules.

'**Rules**' means the New Zealand Stock Exchange Listing Rules as amended or substituted from time to time as shall apply to the Company, and 'Rule' shall be construed accordingly. References to 'permitted by the Rules' or 'pursuant to the Rules' shall be read as permitted by or pursuant to the Rules themselves or permitted or allowed by the Exchange pursuant to any Ruling or pursuant to any waiver of a Rule granted by the Exchange.

'**Ruling**' has the meaning given to that term in section 1 of the Rules.

'**Seal**' means the official corporate seal of the Company.

'**Secretary**' means any person appointed by the Board from time to time in accordance with Clause 10.18.

'**Security**' means a security (as that term is defined in section 1 of the Rules) issued by the Company.

'**Share**' means a share (as that term is defined or used in the Act) in the Company.

'**Shareholder**' means a person whose name is entered in the Register as the holder for the time being of Shares.

'**Shareholders' Funds**' has the meaning given to 'Shareholders' Funds of the Issuer in section 1 of the Rules.

'**Solvency Test**' has the meaning given to that term in section 4 and where applicable section 52.

'**Special Resolution**' has the meaning given to that term in section 2(1). For the purposes of Part VII, '**Special Resolution**' has the meaning given to that term in section 4 of the Rules.



'**Statement**' has the meaning given to that term in section 1 of the Rules.

'**Subsidiary**' has the meaning given to that term in section 1 of the Rules.

'**Transfer**, '**Transferor**' and '**Transferee**' have the meanings given to those terms in section 4 of the Rules.

'**Treasury Stock**' has the meaning given to that term in section 1 of the Rules.

'**Vote**' has the meaning given to that term in section 1 of the Rules.

'**Working Day**' has the meaning given to that term in section 2(1).

1.2 **Interpretation** - In this Constitution, if not inconsistent with the context and the Rules:

- (a) references to 'sections' are references to sections of the Act and references to 'Clauses' and 'Parts' are references to Clauses and Parts of this Constitution;
- (b) headings and sub-headings do not assist interpretation and appear only for convenience;
- (c) words importing the singular number include the plural number and vice versa;
- (d) words importing persons include firms and corporations and 'firm' includes 'partnership';
- (e) words importing the masculine gender include the feminine or neutral gender and vice versa;
- (f) save as aforesaid, any terms not defined in this Constitution but which are defined in the Act shall bear the same meaning in this Constitution as in the Act;
- (g) save as aforesaid, any terms not defined in this Constitution nor defined in the Act but which are defined in the Rules shall bear the same meaning in this Constitution as in the Rules;
- (h) where this Constitution adopts any definition in the Rules, references in that definition to 'Issuer' shall be construed as references to the Company;
- (i) a reference to a 'share' is a reference to that term as used or defined in the Act;
- (j) 'in writing' and 'written' includes facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (k) for so long as the Company is admitted to the official list of the ASX, references in this Constitution to the Rules, and terms defined under those Rules, will be applied and read together with the ASX Listing Rules, and terms defined under the ASX Listing Rules, if applicable to the Company.

Passed by  
special  
resolutions of  
shareholder  
on 28/09/2006

## PART II

### 2. COMPLIANCE WITH NEW ZEALAND STOCK EXCHANGE RULES

2.1 **Rules** - Notwithstanding any other provisions contained in this Constitution but subject to all applicable law, the Company may do anything permitted by the Rules and at all times, for so long as the Company remains Listed, shall comply with the Rules provided that:

- (a) any failure to comply with the Rules or with Clauses 6 or 9.15 shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Rules or those provisions of this Constitution shall not be entitled to enforce that transaction or contract; and
- (b) the above provision does not affect the rights of any holder of Securities of the Company against the Company or the Directors arising from failure to comply with the Rules or those provisions of this Constitution.

### 2.2 Ruling

2.2.1 **Act or omission deemed authorised** - If the Exchange has made a Ruling in relation to the Company authorising any act or omission which in the absence of that Ruling would be in contravention of the Rules or this Constitution, that act or omission shall be, unless a contrary intention appears in this Constitution, subject to clause 2.2.2, deemed to be authorised by the Rules and by this Constitution.

2.2.2 **Act or omission not authorised** - If the Exchange has made a Ruling in relation to the Company authorising any act or omission (which in the absence of that Ruling would be in contravention of the Rules or this Constitution) in respect of which the Constitution provides expressly that a Ruling does not have the effect of deeming that act or omission to be authorised by this Constitution, the Ruling shall not have the effect of deeming that act or omission to be authorised by this Constitution.

2.3 **ASX Listing Rules to prevail** - While the Company is listed on the Exchange, if there is any provision in this Constitution that is inconsistent with the Rules relevant to the Company, the Rules prevail except when this would cause inconsistency with the ASX Listing Rules.

Passed by special resolutions of shareholder on 28/09/2006
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## PART III

### 3. ISSUE OF SHARES, CONVERTIBLE SECURITIES, OPTIONS, RESTRICTION ON ISSUES OF NEW SECURITIES

#### 3.1 Power to Issue Shares

3.1.1 **Issue** - The issue of Shares and Treasury Stock shall be under the control of the Board which may, subject always to the provisions of Clause 3.4 and the Act, issue, allot or otherwise dispose of any Share or Treasury Stock to such persons, on such terms and conditions, and at such times and in such manner as the Board thinks fit.

3.1.2 **Rights** - Subject to Clause 3.4, the Act and the Rules and without prejudice to any special rights previously conferred on the holders of any existing Share or Class of Shares, any Share may be issued with such preferred, deferred or other special rights or such restrictions whether in regard to voting. Distributions or otherwise as the Board may from time to time determine.

3.1.3 **Redeemable Shares** - Subject to Clause 3.4, the Act and the Rules, the Board may issue Shares that are redeemable on a specified date or at the option of the Company or at the option of the holder of the Shares.

3.1.4 **Ranking** - Subject to Clause 3.4 and the Rules, the Board may issue further Shares ranking equally with or in priority to existing Shares.

- 3.1.5 **Pre-emptive rights** - Except as provided in this Constitution, any pre-emptive rights specified in section 45 are hereby negated.
- 3.2 **Convertible Securities**
- 3.2.1 **Issue of Convertible Securities** - Subject to the provisions of Clause 3.4 and section 49, the Board may from time to time at its discretion issue Convertible Securities upon such terms and conditions as the Board may think fit.
- 3.3 **Options**
- 3.3.1 **Grant of Options** -Subject to the provisions of Clause 3.4 and section 49, the Board may from time to time at its discretion grant Options to subscribe for Securities in the Company upon such terms and conditions as to payment or exercise or otherwise as shall be determined by the Board at the time such Options are granted.
- 3.4 **Restrictions on Issues of new Securities**
- 3.4.1 **Prohibition on issue** - The Board must not issue any Equity Securities unless:
- (a) the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved (subject to Clause 3.4.3) by separate resolutions (passed by a simple majority of Votes) of holders of each Class of Quoted Equity Securities of the Company whose rights or entitlements could be affected by the issue, and the issue is completed within the time specified in Clause 3.4.2; or
  - (b) the issue is made in accordance with any of Clauses 3.4.4 to 3.4.8 inclusive.
- 3.4.2 **Time limit** - An issue authorised by resolutions passed pursuant to Clause 3.4.1(a) shall be completed:
- (a) if that issue is made solely to Employees (as defined in Clause 3.4.6(c)(ii)), within twelve months after the passing of those resolutions; or
  - (b) in all other circumstances, within six months after the passing of those resolutions.
- 3.4.3 **Exception** - A resolution pursuant to Clause 3.4.1(a) of the holders of a Class of Securities shall not be required if:
- (a) the terms of issue of those Securities expressly reserved the right to make the issue of new Equity Securities in question, and specified at least the maximum number, and Class, of new Equity Securities which could be issued, and the time within which they could be issued: or
  - (b) those Securities were issued before 1 September 1994 on terms that the holders of those Securities would not be entitled to vote on a resolution of the nature referred to in Clause 3.4.1(a); or
  - (c) those Securities were issued on terms that the holders of those Securities would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in Clause 3.4.1(a) and the issue is approved by a resolution (passed by a simple majority of Votes) of holders of all the relevant Classes voting together.
- 3.4.4 **Pro rata Issues** -
- (a) The Board may issue Equity Securities if:
    - (i) those Equity Securities are offered to holders of existing Equity Securities of the Company on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder relative to other holders of Equity Securities) to Votes and to Distribution Rights, and that offer is Renounceable; or

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

Notwithstanding sub-paragraphs (i) and (ii) of this Clause 3.4.4(a) the Board shall be entitled:

- (iii) to issue any Equity Securities in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such Equity Securities are not materially more favourable to the persons to whom they are issued than the terms of the original offer;
  - (iv) to offer and issue Equity Securities to the holders of existing Securities in accordance with specific rights attached to those existing Securities to participate in issues of Equity Securities, notwithstanding that the effect may be that existing proportionate rights to Votes and Distribution Rights are not maintained;
  - (v) to authorise a disproportionate offer to the extent necessary to round up holdings of Equity Securities to a Minimum Holding, or to avoid the creation of holdings which are less than Minimum Holdings; and
  - (vi) to not offer or issue Equity Securities to holders of existing Equity Securities the terms of which expressly exclude the right to participate in the relevant offer or issue.
- (b) In this Clause 3.4.4, 'Distribution Right' means a right of the nature referred to in paragraph (a) or paragraph (b) of the definition of 'Equity Security' in Rule 1.1.2.

**3.4.5 Issues Within 10% limit** - The Board may issue Equity Securities if:

- (a) the issue is not made in whole or in part to any Director, Associated Person of a Director or Employee (as defined in Clause 3.4.6(c)(ii)) of the Company; and
- (b) the total number of Equity Securities issued, and all other Equity Securities of the same Class issued pursuant to this Clause 3.4.5 during the shorter of the period of 12 months preceding the date of the issue and the period from the date on which the Company was Listed to the date of issue, will not exceed the aggregate of:
  - (i) 10% of the total number of Equity Securities of that Class on issue at the commencement of that period;
  - (ii) 10% of the number of the Equity Securities of that Class issued during that period pursuant to any of Clauses 3.4.1(a), 3.4.4, 3.4.6 and 3.4.8; and
  - (iii) any Securities of that Class issued pursuant to this Clause 3.4.5 during that period, the issue of which has been ratified by an Ordinary Resolution;less
  - (iv) 10% of the number of Equity Securities of that Class which have been acquired or redeemed by the Company during that period (other than Equity Securities held as Treasury Stock).

For the purposes of this Clause 3.4.5, Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to the Equity Securities into which they will, or may, Convert. Provided also that where the conversion ratio is fixed by reference to the market price of the underlying Securities, the market price, unless otherwise specified in the terms of issue, shall be the average end of day market price over the Business Days in the calendar month before the earlier of the day the issue is made or announced to the market.

### 3.4.6 **Employee Share Issues -**

- (a) The Board may issue Equity Securities if:
- (i) the issue is made to Employees of the Company;
  - (ii) the issue is of a Class of Securities already on issue;
  - (iii) the total number of Securities issued, and all other Equity Securities of the same Class issued to Employees of the Company pursuant to this Clause 3.4.6 during the shorter of the period of twelve months preceding the date of the issue and the period from the date on which the Issuer was Listed to the date of the issue, does not exceed 2% of the aggregate of:
    - (AA) the total number of Equity Securities of that Class on issue at the commencement of that period; and
    - (BB) the total number of Equity Securities of that Class issued during that period pursuant to any of Clauses 3.4.1(a), 3.4.4, 3.4.5 and 3.4.8; and
  - (iv) the total number of Securities issued, and all other Equity Securities of the same Class issued to Employees of the Company pursuant to this Clause 3.4.6 during the shorter of the period of five years preceding the date of the issue and the period from the date on which the Company was Listed to the date of the issue, does not exceed 5% of the total number of Equity Securities of that Class on issue immediately preceding the date of the issue.
- (b) Directors and Associated Persons of Directors shall not participate in any such issue unless the scheme for such participation and the precise levels of entitlement for each such person have been previously approved by an Ordinary Resolution.
- (c) For the purposes of this Clause 3.4.6:
- (i) Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert.
  - (ii) 'Employee' in relation to the Company includes an employee or officer of the Company or any of its Subsidiaries, a labour only contractor, consultant, or consultant company who or which contracts with the Company or any of its Subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of or in respect of any pension, superannuation or like fund established for the benefit of any of the above employees or officers.

3.4.7 **Exception for scheme trustee** - For the purposes of Clause 3.4.6, an issue to a Director, or an Associated Person of a Director, solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be an issue to a Director or Associated Person, of a Director, or an issue in which Directors or Associated Persons participate.

### 3.4.8 **Other Issues** - The Board may issue Equity Securities if:

- (a) The issue is made as consideration in an offer made by the Company in accordance with:
- (i) Part I of the Companies Amendment Act 1963; or
  - (ii) any takeover code approved under section 28 of the Takeovers Act 1993; or
  - (iii) the provisions of the constitution or trust deed of another Issuer which comply with section 4 of the Rules; or
  - (iv) any takeover law regime of a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of the Exchange is at least

as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in sub-Clauses (a)(i), (a)(ii) or (a)(iii);

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

- (b) the issue is made upon Conversion of any Securities from time to time issued by the Company if the terms of issue of those Securities provided for Conversion to Equity Securities of the kind issued; or
- (c) the issue is made to an existing holder of Equity Securities of the Company in order to bring that holder's holding up to a Minimum Holding; or
- (d) the issue is made pursuant to an arrangement, amalgamation or compromise effected pursuant to Parts XIII or XV of the Act; or
- (e) the issue is made pursuant to a plan for the issue of Securities in lieu of Dividends.

3.4.9 **Treasury Stock** - The transfer by the Company of Treasury Stock of the Company shall, for the purposes of Clause 3.4, be deemed to constitute an issue of Equity Securities.

3.4.10 **Increased control** - Notwithstanding the provisions of Clauses 3.4.1 to 3.4.9 inclusive and Clause 4.6, no issue, acquisition or redemption of Securities of the Company shall be made by the Company if:

- (a) there is a significant likelihood that the issue, acquisition, or redemption will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and
- (b) that person or group of Associated Persons is entitled before the issue, acquisition, or redemption to exercise, or direct the exercise of, not less than 1% of the total Votes attaching to Securities of the Company;

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

## PART IV

### 4. **ALTERATION OF SHAREHOLDERS' RIGHTS; CALLS; FORFEITURE; SURRENDER; LIEN; ACQUISITION; REDEMPTION; FINANCIAL ASSISTANCE; MINIMUM HOLDINGS;**

#### 4.1 **Procedure for alteration of Shareholders' Rights**

4.1.1 **Rights** - All or any of the rights attached to Shares may be modified, abrogated or altered by the Company subject to compliance by the Company with Clauses 4.1.2 and 4.1.3.

4.1.2 **Procedure** - The Company shall comply with the provisions of sections 116 and 117. For the purposes of this Clause 4.1.2, those sections shall be deemed to be modified so that:

- (a) references in those sections to 'shares' shall (subject to Clause 4.1.3) be deemed to include references to all Equity Securities of the Company, and references to 'shareholders' shall be read accordingly;
- (b) in respect of Equity Securities which are not 'shares of the Company':
  - (i) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of Votes of the holders of those Equity Securities entitled to vote and voting; and

- (ii) references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

4.1.3 **Exception** - The Company shall not be required by the modifications made by Clause 4.1.2 to sections 116 and 117 to comply with those sections in respect of actions that affect the rights attached to:

- (a) Equity Securities which are not Quoted; or
- (b) Equity Securities which are not 'shares' of the Company if:
  - (i) those Equity Securities were issued before 30 April 1995; or
  - (ii) those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the approval of holders of those Equity Securities, and those terms were clearly disclosed in the Offering Document (if any) pursuant to which those Equity Securities were offered.

## 4.2 **Calls on Shares**

4.2.1 **Calls** - The Board may from time to time make calls as it thinks fit upon the Shareholders in respect of all or any of the moneys unpaid on their Shares and not by the conditions of allotment thereof made payable at fixed times. At least ten Business Days' notice specifying the time and place for payment and to whom such call shall be paid shall be given of each call and each Shareholder shall pay the amount of every call so made on such Shareholder to the persons and at the times and places appointed by the Board. A call may be made payable by instalments.

4.2.2 **Liability of joint holders** - The joint holders of a Share shall be jointly and severally liable for the payment of all calls and instalments due in respect of that Share.

4.2.3 **Power to differentiate** - The Board may, on any Issue of Shares, differentiate between the holders of those Shares in respect of the amount of calls to be paid and in the time of payment of such calls.

4.2.4 **Liability for interest on unpaid calls** - If the sum payable in respect of any call or instalment is not paid on or before the due date for payment thereof, the holder for the time being of the Share in respect of which the call has been made shall be liable to pay interest at such rate or rates as the Board may determine from the due date to the date of actual payment.

### 4.2.5 **Sums payable in terms of issue deemed calls -**

- (a) If by the terms of issue of any Shares or otherwise any amount is made payable at any fixed time or by instalments at fixed times, every such amount or instalment shall be payable as if it were a call duly made by the Board and of which due notice has been given and all the provisions contained in Clauses 4.2, 4.3, 4.4 and 4.5 shall apply to such amount or instalment accordingly and to the Shares in respect of which they are payable.
- (b) Every such amount or instalment shall when due be payable to the Company by the person who for the time being is registered as the holder of the Shares.

4.2.6 **Calls may be paid in advance** - The Board may, if it thinks fit, receive from any Shareholder willing to advance the same all or any part of the money uncalled and unpaid on any Shares held by that Shareholder and may (until the same would, but for the advance, become payable) pay interest on all or any part of the money so advanced, at such rate as may be agreed upon between the Board and the Shareholder paying the sum in advance, but no Shareholder shall be entitled as of right to any interest on any money so paid in advance except by agreement with the Board. The Company may at any time repay the amount so advanced.

4.2.7 **Proof that call is owing** - On the trial or hearing of any action for the recovery of any money due in respect of any call it shall be sufficient to prove that the name of the Shareholder sued is entered in the Register as the holder or one of the holders of the Shares in respect of which such debt arose, that the resolution making the call is duly recorded in the minute book of meetings of the Board and that notice of such call was duly given to the Shareholder. It shall not be necessary to prove the appointment or qualifications of the Directors comprising the Board which made such call nor any other matter whatsoever and proof of the matters aforesaid shall be conclusive evidence of debt.

- 4.2.8 **Cancellation of unpaid amounts** - No obligation to pay any amount which is unpaid on any Share shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.
- 4.3 **Forfeiture of Shares**
- 4.3.1 **Board may require payment of call with interest and expenses** - if any Shareholder fails to pay any call on the due date for payment thereof, the Board may, at any time thereafter during such time as the call remains unpaid, serve a further notice on such Shareholder requiring such Shareholder to pay such call together with any interest that may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.
- 4.3.2 **Notice requiring payments to contain certain particulars** - The notice referred to in Clause 4.3.1 shall name a further day (not being less than ten Business Days after the date on which such notice is deemed to have been served) on or before which such call and all interest and expenses that have accrued or have been incurred by the Company by reason of such non-payment are to be paid. It shall also name the place where payment is to be made (the place so named being either the office or some other place at which calls of the Company are made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the Shares in respect of which such call was made or is payable will be liable to be forfeited.
- 4.3.3 **Forfeiture for non-payment** - If the requirements of any notice given pursuant to Clause 4.3.1 are not complied with, any Share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all Dividends and other Distributions declared in respect of the forfeited Share and not actually paid before the forfeiture.
- 4.3.4 **Evidence** - An entry in the minute book of the Company that a Share in the Company has been duly forfeited on a date stated in the minute shall be conclusive evidence of the facts stated in that minute as against all persons claiming to be entitled to the Share.
- 4.3.5 **Shares forfeited deemed cancelled** - Any Share forfeited in accordance with this Clause 4.3 shall be deemed to be cancelled immediately on forfeiture.
- 4.3.6 **Holders of forfeited Shares cease to be Shareholders but remain liable for calls made before forfeiture** - A person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall continue to be liable to pay and shall forthwith pay to the Company all calls, instalments, interest and expenses owing upon or in respect of such Shares at the time of forfeiture (together with interest thereon from the date of the forfeiture at such rate or rates as the Board determines, until the actual date of payment) and the Board may enforce the payment of such monies or any part thereof if it thinks fit, but shall not be under any obligation to do so.
- 4.3.7 **Notice of forfeiture to be given and entered in Register** - On the forfeiture of any Share, the Board shall cause a note of such forfeiture and the date thereof to be entered in the Register and shall cause notice of such forfeiture and the date thereof to be given to the relevant Shareholder.
- 4.3.8 **Restriction on forfeiture** - Notwithstanding anything in this Clause 4.3, Shares shall not be liable to forfeiture for failure of the persons entitled to them (by transmission or otherwise) to submit evidence of title within a specified time.
- 4.4 **Surrenders of Shares**
- 4.4.1 **Directors may accept surrenders of Shares** - The Board may accept from any Shareholder a surrender of such Shareholders Shares which are liable to forfeiture or any part thereof upon such terms as may be agreed upon between such Shareholder and the Board subject always to compliance with the Rules.
- 4.5 **Lien**
- 4.5.1 **Company to have lien on Shares** - The Company shall have a first and paramount lien upon each Share registered in the name of each Shareholder (whether solely or jointly with others) for all unpaid calls and instalments payable in respect of that Share and any interest payable on such amounts, and for all sums of money which the Company may be called upon to pay under any statute or legislative enactment in respect of that Share, whether payable presently or in the future, and such lien shall extend to all Dividends or other Distributions from time to time declared in respect of such Share. No equitable interest in any Share shall be created except upon the condition



that Clause 5.8 is to have full effect. The registration of a transfer of Shares on which the Company has any lien shall, unless notice to the contrary is first given to the transferee, operate as a waiver of such lien.

4.5.2 **Lien may be enforced by sale of Shares** - The Company may sell, in such manner as the Board thinks fit, any Shares on which the Company has a lien, but no sale shall be made unless a sum in respect of which a lien exists is presently payable, nor until the expiration of ten Business Days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the persons entitled thereto by reason of the death or bankruptcy of the holder.

4.5.3 **Application of proceeds of sale** - The proceeds of any sale of Shares in satisfaction of a lien, shall be applied first in satisfaction of the debts or obligations of the Shareholder to the Company in respect of which the lien exists and interest thereon and expenses related thereto, and the residue (if any) shall be paid to such Shareholder or his or her executors administrators or assigns or as that Shareholder may direct.

4.5.4 **Title to Shares sold subject to a lien** - Upon any sale of Shares after enforcing a lien, the Board may authorise the Secretary to execute an instrument of transfer of the Shares sold and cause the purchaser's name to be entered in the Register in respect of those Shares. The purchaser shall not be bound to see to the regularity of the proceedings, or to the application of the purchase money, and after the purchaser's name has been entered in the Register in respect of such Shares, the validity of the sale shall not be impeached by any person and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

4.6 **Acquisition and redemption of Shares by the Company**

4.6.1 **Company may acquire and hold its own Shares** - Subject to Clauses 4.6.2 and 4.6.3 and in accordance with the provisions of the Act, the Company may purchase or otherwise acquire Shares (including without limitation purchases or offers made pursuant to sections 59(1) and 60(1)(b)(ii)), and for the purposes of section 67A is permitted to hold Shares.

4.6.2 **Restrictions on acquisition** - Subject to Clause 4.6.3, any acquisition of the Company's Equity Securities by the Company must be:

- (a) effected by offers made by the Company through the Exchange's order matching market, or through the order matching market of a Recognised Stock Exchange; or
- (b) effected in compliance with section 60(1)(a) (read together with section 60(2)); or
- (c) an acquisition of the nature referred to in section 61(7); or
- (d) approved in accordance with Clause 4.6.6; or
- (e) required by a Shareholder pursuant to sections 110 or 118; or
- (f) effected in compliance with section 60(1)(b)(ii) (read together with section 61) and;
  - (i) is made only from any person who is not a Director, Associated Person of a Director or an Employee (as defined in Clause 3.4.6(c)(ii)) of the Company; and
  - (ii) the total number of Equity Securities of the same Class acquired pursuant to this Clause 4.6.2(f) during the shorter of the period of twelve months preceding the date of acquisition and the period from the date on which the Company was Listed to the date of the acquisition, will not exceed 10% of the total number of Equity Securities of that Class on issue at the commencement of that period;

provided that for the purpose of this clause 4.6.2(f), Securities which will, or may, convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, Securities into which they will, or may, convert;

provided also that where the Conversion ratio is fixed by reference to the market price of the underlying Securities, the market price for the purposes of this clause 4.6.2(f) shall be the

average end of day market price over the Business Days in the calendar month before the earlier of the day the acquisition is entered into or announced to the market.

4.6.3 **Prior notice of acquisition** - Before the Company acquires Equity Securities of that Company, other than an acquisition from a holder who holds less than a Minimum Holding, the Company must give at least three Business Days notice to the Exchange. That notice shall specify:

- (a) a period of time not exceeding twelve months from the date of the notice within which the Company will acquire Equity Securities; and
- (b) the Class and maximum number of Equity Securities to be acquired in that period:

Provided that the Company may at any time by three Business Days notice to the Exchange vary any notice so given and may cancel such notice at any time.

4.6.4 **Company may redeem redeemable Shares** - Subject to Clause 4.6.5 and in accordance with the provisions of the Act, the Company may redeem any Share which is issued as redeemable in accordance with the terms of issue.

4.6.5 **Restrictions on redemption** - The Company shall not redeem Equity Securities of the Company, other than a redemption from a holder who holds less than a Minimum Holding, unless:

- (a) those Equity Securities were issued before 1 September 1994 and the Company is bound or entitled to redeem those Equity Securities pursuant to their terms of issue; or
- (b) those Equity Securities were issued in compliance with Clause 3.4.1(a) or Clause 3.4.4 and the Company is bound or entitled to redeem those Equity Securities pursuant to the terms of their issue; or
- (c) those Equity Securities are redeemed in compliance with section 69(1)(a); or
- (d) those Equity Securities are Debt Securities which may be Converted into Shares, and, before that Conversion, they are redeemed in cash; or
- (e) the redemption of those Equity Securities is approved in accordance with Clause 4.6.6.

4.6.6 **Acquisition or redemption with approval of Equity Security holders** - The Company may acquire Equity Securities under Clause 4.6.2(d) or redeem Equity Securities under Clause 4.6.5(e) if the precise terms and conditions of the specific proposal the 'Proposal) to acquire or redeem those Equity Securities have been approved by separate resolutions (passed by a simple majority of Votes) of members of each separate group of each Class of Quoted Equity Securities of the Company whose rights or entitlements are materially affected in a similar way by the Proposal. Any such acquisition shall be completed within twelve months and any such redemption completed within six months after the passing of the relevant resolutions.

4.7 **Financial assistance**

4.7.1 **Restrictions on financial assistance**

- (a) Subject to Clause 4.7.1(b) and to the provisions of the Act, the Company may give financial assistance to a person for the purpose of, or in connection with, the acquisition of issued Shares or Shares to be issued, or 'shares' issued or to be issued by the Company's holding company.
- (b) The Company may only give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Company if the giving of that assistance:
  - (i) complies with Clause 4.7.2; or
  - (ii) is approved in accordance with Clause 4.7.3.

4.7.2 **Permitted financial assistance in respect of Equity Securities** - The Company may give financial assistance of the nature referred to in Clause 4.7.1(b) if:

- (a) the financial assistance is not given in whole or in part to any Director, Associated Person of a Director or Employee (as defined in Clause 3.4.6(c)(ii)), and the amount of the financial assistance, together with the amount of all other financial assistance given under this Clause 4.7.2(a) by the Company during the shorter of the period of twelve months preceding the date of giving of the financial assistance, and the period from the date on which the Company was Listed to the date of giving of the financial assistance, does not exceed 5% of Shareholders' Funds; or
- (b) the financial assistance is given to Employees (as defined in Clause 3.4.6(c)(ii)) and:
  - (i) the amount of the financial assistance, together with the amount of all other financial assistance given under this Clause 4.7.2(b) by the Company during the shorter of the period of twelve months preceding the date of the giving of the financial assistance, and the period from the date on which the Company was Listed to the date of giving of the financial assistance, does not exceed 2% of Shareholders Funds; and
  - (ii) the amount of the financial assistance, together with the amount of all other financial assistance given under this Clause 4.7.2(b) during the shorter of the period of five years preceding the date of giving of the financial assistance and the period from the date on which the Company was Listed to the date of giving of the financial assistance, does not exceed 5% of Shareholders' Funds; and
  - (iii) the financial assistance is not given to any Director or Associated Person of a Director unless that assistance is given solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest; or
- (c) the financial assistance is offered or given so that all holders of Equity Securities of the Company are treated, or given the opportunity to be treated, on the same basis.

4.7.3 **Financial assistance with approval of Equity Security holders** - The Company may give financial assistance under Clause 4.7.1(b) if the precise terms and conditions of the giving of that financial assistance have been approved by separate resolutions (passed by a simple majority of Votes) of members of each separate group of each Class of Quoted Equity Securities of the Company whose rights or entitlements are materially affected in a similar way by the proposed giving of such financial assistance. Any such financial assistance shall be given within 6 months after the passing of the relevant resolutions.

#### 4.8 **Minimum Holdings**

4.8.1 **Small holder** - The Company at any time may give notice in writing ('Company Notice') to a Shareholder whose holding of Securities is less than a Minimum Holding ('Small holder') of its intention to exercise its powers under this Clause 4.8. Any Director may act on the Company's behalf in exercising the powers of the Company under this Clause 4.8.

4.8.2 **Sale** - Unless during the period specified in the Company Notice, being not less than three months after despatch of the Company Notice, the Small holder concerned lodges for registration a transfer of Securities which, together with Securities already registered in the Small holders name, will result in the holding of Securities equal to or more than a Minimum Holding, the Company may arrange for the sale of the Small holder's Securities through the Exchange or in some other manner approved by the Exchange.

4.8.3 **Attorney** - For the purposes of this Clause 4.8, the Small holder concerned is deemed to have appointed any Director as the Small holder's attorney to execute all documents relating to the sale and transfer of such Securities.

4.8.4 **Trust** - The Company shall account to the Small holder for the proceeds of sale less reasonable sale expenses incurred by the Company in respect thereof which may be held by the Company in trust for the Small holder concerned and paid to the Small holder on providing any evidence of title for the Securities so sold.

## PART V

### 5. TRANSFER AND TRANSMISSION OF SHARES; SHARE REGISTER

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

5.2 **Execution of transfers of Shares** - Any Share may be transferred:

- (a) in any manner authorised by the Securities Transfer Act 1991; and
- (b) by an instrument in common form or any other form approved by the Board which has been signed by or on behalf of the transferor and, if registration as a holder imposes a liability on the transferee, also signed by the transferee.

5.3 **Verification** - The Board may, before approving an instrument of transfer for registration under clause 5.2(b), require that the validity of the transferor's signature be verified and may require that the signature of the parties to the transfer be witnessed.

### 5.4 Restrictions on transfers of Shares

5.4.1 **Board's refusal to register** - The Board may decline to register any transfer of Shares where:

- (a) the Company has a lien on the Shares; or
- (b) there is insufficient evidence of entitlement to transfer; or
- (c) registration of such transfer, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than a Minimum Holding.

5.4.2 **No other restrictions** - Subject to Clause 5.4.1 as set out above and to the provisions of any legislation, the Board shall not impose any restriction on the right of a holder of a Share to transfer that Share or upon the registration of a properly completed transfer of Shares.

5.4.3 **Time of registration after receipt of written transfer** - Subject to the rights of the Company in terms of this Constitution and to the provisions of any legislation, all properly executed and documented written transfers of Securities shall be registered within two Business Days of their receipt by the Company.

5.5 **Return of unregistered transfers** - A transfer of any Shares the registration of which has been declined shall be promptly returned to the person submitting it, for completion, and (subject to Clause 5.4) shall be registered when any errors or omissions have been rectified.

5.6 **Share Register and share registrars** - The Company shall maintain a share register in accordance with the Act and the reference in section 87 of the Act to 'shares' shall be deemed to include a reference to Equity Securities of the Company. The Company shall be entitled to divide and keep two or more Registers in different places, which may be maintained by agents. The Company may also appoint more than one person to act as a share registrar at any given time. During such time as the Company only has one Register, every instrument of transfer shall be left for registration at the Office or with any agent of the Company appointed to act as a share registrar. If the Company appoints a registrar to keep a register, it shall ensure that such registrar complies with this Constitution and with section 11 of the Rules.

5.7 **No trusts recognised** - Except as required by law or as expressly authorised by this Clause 5, the Company shall be entitled to treat the registered holder of any Share, as the absolute owner thereof and shall not, unless ordered by a court of competent jurisdiction be liable or under any obligation to recognise any trust or equity or equitable or other claim to or interest in such Share on the part of any other person whether or not it shall have actual or other notice thereof and any such notice, if given, shall be absolutely inoperative as against the Company for any purpose.

- 5.8 **Registration of Shareholdings in Parcels**
- 5.8.1 **Separate parcels** - The share registrar of the Company, on request by a holder of Securities, or proposed transferee, may register a shareholding in separate parcels identified by a distinguishing word, number or other parcel differentiator. Where a holder's shareholding is so registered, the Company may communicate separately with the holder of Securities in respect of each parcel, pay Dividends and otherwise act, so far as the Directors consider convenient, as if the separate parcels belonged to different holders of Securities.
- 5.8.2 **Apportionment of parcels according to relevant interests** - If a Defaulter (for the purposes of Clause 7.13) holds its Relevant Interest in a parcel of Securities in which there are also Relevant Interests held by persons who are not Defaulters. on request by the holder of the Securities, the proportion of the parcel equal to the proportion which the Defaulter's Relevant Interest bears to the Relevant Interests of the other persons may be registered as a separate parcel under Clause 5.8.1. For so long as the Directors are reasonably satisfied as to the fairness of the determination of the relevant proportions (recognising the dissimilarities there may be among types of Relevant Interest) the Defaulter may be treated by the Company as not having a Relevant Interest in the other parts of the parcel.
- 5.9 **Certificates may be posted** - The Company may send any certificate or document or Security by ordinary post to the Registered Address of the Shareholder (unless such Shareholder has given written instructions to the contrary) and shall not be responsible for any loss arising therefrom.
- 5.10 **Certificates for joint holders** - The Company shall not be bound to issue more than one certificate in respect of a Share or Shares held jointly by several persons and delivery of any certificate for jointly held Shares to the person first named on the Register shall be sufficient delivery to all such holders.
- 5.11 **No share certificate** - Where Shares may be transferred under a system of transfer authorised or approved under section 7 of the Securities Transfer Act 1991 under which share certificates need not be issued the Company shall not be required to issue share certificates in respect of those Shares.
- 5.12 **Transmission of Shares**
- 5.12.1 **On death of Shareholder, survivor or executor only recognised** - In the case of the death of a Shareholder, the survivors or survivor, where the deceased was a joint holder, or the legal personal representatives of the deceased, where the deceased was a sole holder, shall be the only persons recognised by the Company as having any title to or interest in Shares of the deceased; but nothing in this Clause 5.12 shall release the estate of a deceased joint holder from any liability which had arisen by virtue of such joint ownership.
- 5.12.2 **Person becoming entitled on death or bankruptcy of Shareholder may be registered** - Any person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall, upon such evidence being produced as may from time to time be properly required by the Board, have the right either to be registered as a Shareholder in respect of the Share or, instead of being so registered, to make such transfer of the Share as the deceased or bankrupt Shareholder could have made.
- 5.12.3 **Rights to Distributions of personal representative or assignee of bankrupt Shareholder** - Where a Shareholder dies or becomes bankrupt, the personal representatives or the assignee of such Shareholder's estate, as the case may be, shall, upon the production of such evidence as may from time to time be required by the Board be entitled to the same Distributions and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise) as the Shareholder would have been entitled to if the Shareholder had not died or become bankrupt, Where two or more persons are jointly entitled to any Share in consequence of the death of the Shareholder they shall, for the purposes of these Clauses, be deemed to be joint holders of the Share.
- 5.12.4 **Transfer on behalf of mentally disordered Shareholder** - Where any Shareholder becomes mentally disordered or subject to a protection of property order, that Shareholder's manager will be entitled, upon the production of any evidence that may from time to time be required by the Board, to transfer the Shares or to be registered as a Shareholder in respect of the Shares and to receive the same Distributions and other advantages and to have the same rights (whether in relation to meetings of the Company, or to voting, or otherwise ) as the Shareholder would have been entitled

to if that Shareholder had not become mentally disordered or subject to a protection of property order.

5.12.5 **Refusal of Transfer** - Notwithstanding the provisions of this Clause 5.12, the Board has the same right to refuse or suspend registration of a transfer of Shares as it would have had in the case of a transfer of the Shares by that Shareholder before becoming a mentally disordered or protected person, or before that Shareholder's death or bankruptcy, as the case may be.

5.13 **Transfer of Securities other than Shares** - The provisions of this Clause 5 shall also apply to the transfer of Securities other than Shares, with any necessary modifications.

## PART VI

### 6. ACQUISITIONS AND DISPOSALS OF ASSETS; TRANSACTIONS WITH RELATED PARTIES

6.1 **Acquisition or disposal of assets** - Subject to Clause 6.2 and without limiting section 129 (which requires approval of a 'major transaction' as defined therein by Special Resolution), the Company shall not enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Company or assets to be held by the Company:

- (a) which would change the essential nature of the business of the Company; or
- (b) in respect of which the gross value is in excess of 50% of the lesser of the Average Market Capitalisation or the Gross Value of the Assets of the Company;

except with the prior approval of an Ordinary Resolution or a Special Resolution if section 129 applies:

Provided that for the purposes of Clause 6.1(b):

"Average Market Capitalisation" means the average end of day market capitalisation over the Business Days in the calendar month before the earlier of the day the transaction is entered into or is announced to the market; and

"Gross Value of Assets" shall be calculated as the greater of the gross tangible asset backing value (from the most recently published financial statements) or market value (in both cases irrespective of and ignoring any liabilities attributable to the assets or of any Subsidiaries or other entities through which the assets are held).

The notice of meeting containing the resolution to approve any transaction referred to in this Clause 6.1 shall contain or be accompanied by the information required by Rule 9.1.2.

6.2 **Permitted exception to Clause 6.1** - Clause 6.1 shall not apply to any transaction entered into by the Company with a Bank, on arms length terms and in the ordinary course of banking-business, as a result of which transaction the Company has recourse to the credit risk of a Bank.

6.3 **Transactions with Related Parties** - The Company shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (c) of Clause 6.4, a direct or indirect beneficiary of such guarantee or other transaction;

unless that Material Transaction is approved by an Ordinary Resolution.

6.4 **Definition of Material Transaction** - For the purposes of Clause 6.3, 'Material Transaction' means a transaction whereby the Company:

- (a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Gross Value in excess of 5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company; or

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

Provided that, for the purposes of this Clause 6.4:

- (i) "Average Market Capitalisation" has the same meaning as in the proviso to Clause 6.1; and
- (ii) "Aggregate Gross Value" as used in clause 6.4(a) means the gross value of those assets calculated in accordance with the definition of Gross Value of Assets in the proviso to Clause 6.1.

**6.5 Definition of Related Party** - For the purposes of Clause 6.3, 'Related Party' means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) a Director or officer of the Company or any of its Subsidiaries; or
- (b) a substantial security holder (as defined in the Securities Amendment Act 1988) of the Company; or
- (c) an Associated Person of the Company or any of the persons referred to in sub-paragraphs (a) or (b) of this Clause 6.5, other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or
- (d) a person in respect of whom there are arrangements, other than the Material Transaction itself, intended to result in that person becoming a person described in sub-paragraphs (a), (b) or (c) of this Clause 6.5, or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself,

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

- (i) is a party to a Material Transaction of the type described in sub-paragraph (d) of Clause 6.4; and
- (ii) the Company intends to sell, or otherwise dispose of, to a Related Party.

**6.6 Permitted exceptions to Clause 6.3** - Clause 6.3 shall not apply to:

- (a) any transaction entered into by the Company with a Bank which is a Related Party of the Company, on arms length terms and in the normal course of banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank; or
- (b) the issue, acquisition or redemption by the Company of Securities of the Company, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a Distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder.

For the purposes of this clause, the transfer of Treasury Stock shall be deemed to constitute an issue; or

- (c) any employment or service contract which are Material Transactions under clause 6.4(d) where the Exchange is satisfied that the terms of the contract have been set on an arms length, commercial basis; or
- (d) any transaction indemnifying any Director or Employee (as defined in clause 3.4.6(c)) of the Company or any Related Company which would be a Material Transaction under clause 6.4(c), where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or Employee under the proposed indemnity; or
- (e) arrangements, amalgamations or compromises pursuant to Part XV of the Act.

6.7 The notice of any meeting of the Company to consider a resolution for the purposes of Clause 6.3 shall comply with Rule 9.2.5.

## PART VII

### 7. TAKEOVERS

7.1 **Notice requirements** - No Restricted Transfer of Quoted Equity Securities shall take place unless notice is given to the Company, and to the Exchange in a manner complying with Rule 10.2.3 for release to the market, not later than the time specified in Clause 7.2, containing the following particulars:

- (i) the price or consideration, either specified as a fixed amount or expressed as a range with the higher price or consideration being not greater than 20% more than the lower price or consideration of that range;
- (ii) any conditions or arrangements directly or indirectly associated with the Transfer which could be material to the assessment of the price or price range by prospective Transferors of the Equity Securities;
- (iii) identification of the Class, and the maximum number of Securities and percentage of the relevant Class, to which the Transfer proposal relates;
- (iv) the identity of all persons reasonably expected to acquire Relevant Interests in the Equity Securities as a result of the Transfer proposal;
- (v) the number of Equity Securities (expressed in each case as a percentage of the total number in each relevant Class of Securities) which will be held, or in which Relevant Interests will be held, upon completion of the proposed transactions, by each Transferee and Associated Persons of each Transferee;
- (vi) the times within which the Transfers are intended to occur;
- (vii) how the Transfers are to be effected (for example, through the Exchange's order matching market, by widespread direct offer, private treaty etc); and
- (viii) the date the notice is given.

7.2 **Time for initial notice** - Each notice referred to in Clause 7.1 shall be given:

- (a) if any Transferee under the Transfer in question is an insider, at least fifteen Business Days before the Transfer; or
- (b) if no Transferee is an Insider, and subject to Clause 7.4, at least fifteen Business Days before the Transfer.

7.3 **Time for notice of change** - Any change in, or addition to, particulars notified under Clause 7.1 shall be made by giving a notice of change. Each such notice shall be given:



- (a) if any Transferee under the Transfer in question is an Insider, at least two Business Days before the change takes effect in the case of a change to price or other consideration, and at least fifteen Business Days before the change takes effect in the case of a change to any other particulars listed in Clause 7.1;
- (b) if no Transferee is an Insider, and subject to Clause 7.4, at least two Business Days before the change takes effect in the case of a change to price or other consideration, and at least fifteen Business Days before the change takes effect in the case of a change to any other particulars listed in Clause 7.1.

**7.4 Exchange transactions - if:**

- (a) a Restricted Transfer is effected solely by trades matched through the Exchange's order matching market;
- (b) no Transferee is an Insider; and
- (c) the conditions specified in the next sentence are satisfied,

then the period of notice referred to in Clause 7.2(b) shall be five Business Days, and the periods of notice referred to in Clause 7.3(b) shall be two Business Days and five Business Days, respectively. The conditions referred to above are:

- (i) before notice is given the Brokers instructed to make the offers must be satisfied that the entire offer in the notice has been the subject of instructions accepted by Brokers;
- (ii) the consideration must be readily capable of settlement through the FASTER system (as described in section 11 of the Rules);
- (iii) the Transferee must have previously undertaken to the Brokers through whom its orders are placed, for the benefit of relevant Securities, to complete the transaction in accordance with the notice given if offers, or acceptances are sufficient to enable it to do so;
- (iv) the instructions must be in terms that orders will be matched and completed by the Exchange's order matching system, even if the entire offer is not accepted completely; and
- (v) the period during which transactions will be effected does not end before one Business Day after it begins or until Transfers have been agreed to complete the maximum number of Securities to which the Transfer proposal relates, whichever is the earlier.

**7.5 Additional Requirements - Except with the sanction of resolutions passed by a simple majority of Votes of each Affected Group:**

- (a) all Transfers involved in a Restricted Transfer shall be pursuant to:
  - (i) an offer in writing to all holders of Equity Securities of any Class which is the subject of the proposed Restricted Transfer, on the same terms; or
  - (ii) orders placed through a Broker for execution in and through the Exchange's order matching market and in accordance with the requirements of Clause 7.4;
- (b) the Transfers must not result from Differential Offers, other than differences which arise from a change in the price of an on market offer authorised under Clause 7.5(a)(ii).

**7.6 Immediate response requirement-** If any Quoted Equity Securities are the subject of a notice under Clause 7.1 the Directors shall give notice as soon as can be achieved, and before the expiry of the notice periods referred to in Clauses 7.2 or 7.4:

- (a) whether any Director or Associated Person of a Director is expected by any Director to be a Transferee in the notified transaction;

- (b) whether there is any Relevant Information pertaining to the Company which any Director believes is likely to be available to any Transferee in the proposed transaction, which has not been made generally available to the market;
- (c) whether any Director considers there is any undisclosed Relevant Information which should materially affect the decision of a reasonably informed prospective Transferor in the proposed Transfer and, if so, an indication whether the Director would consider the Transfer to be made more or less desirable to the prospective Transferor by the Relevant Information; and
- (d) a statement as to the timing, and expected significance of any further action, investigation, report, or disclosure which the Directors or any of them intend to make in response to the relevant proposals for Transfers.

7.7 **General response requirement** - If any Quoted Equity Securities are the subject of a notice under Clause 7.1 or any of The Directors become aware that a Restricted Transfer proposal is more likely than not in the immediate future, the Directors shall:

- (a) take all steps necessary to ensure that they and the Company are in a position to respond to the offer as required by the Rules, including under Rule 10.1 of the Rules;
- (b) not be relieved of their disclosure obligations under the Rules by reason of a conflict of interest arising from involvement as or with a prospective Transferee or Transferor, but such Directors shall disclose in any notice or statement the nature of their possible conflict;
- (c) in the case of a conflict of interest or of views as to how to proceed, if necessary release separate statements or notices to inform the Exchange promptly, with appropriate explanation; and
- (d) ensure that holders of the relevant Equity Securities are well informed to consider competitive offers for the control of Votes attached to the Equity Securities where there is any reasonable prospect of competition emerging to the completion of a Restricted Transfer proposal.

7.8 **Report** - Upon the giving of a notice under Clause 7.1, (but not if that notice is given in respect of a Transfer complying with Clause 7.4) the Directors shall commission a report from an independent appropriately qualified person previously approved by the Exchange. That report shall:

- (a) be addressed to the holders of Securities of the Class or Classes the subject of the Restricted Transfer referred to in the notice;
- (b) express the opinion of the reporter as to the consideration and other terms of the proposed transaction; and
- (c) comply with the provisions of Rule 1.2.2(e), (f), (g) and (h) as if that report were an Appraisal Report.

The provisions of the last sentence of Clause 7.9 shall apply to the report as if it were an Appraisal Report required by that Clause.

7.9 **Appraisal Report** - If any Transferee under a Restricted Transfer is an Insider, then (subject to Clause 7.10) the Directors shall, forthwith upon a notice being given under Clause 7.1 in respect of that Restricted Transfer, commission an Appraisal Report in respect of that Restricted Transfer. That report may contain such reasonable qualifications and limitations as are needed to recognise the deadlines within which it is required to be produced. That report shall:

- (a) be delivered to the Exchange for release to the market at least two Business Days before expiration of the relevant notice, accompanied by a summary (approved by the reporter) suitable for release to the market; and
- (b) be copied to the Company and to any holder of Quoted Equity Securities of the Company upon request; and
- (c) be despatched to all holders of Securities to whom the offer may be made at least three Business Days before the expiration of the relevant notice; or

- (d) where the offer is a written offer made pursuant to section 4 of the Companies Amendment Act 1963, be despatched to all holders of Securities to whom the offer may be made no later than the despatch to those holders of the statement required by Section 5(2) of that Act.

7.10 **Exceptions** - The requirement for an Appraisal Report in Clause 7.9 shall not apply if:

- (a) all Transferors consent to waive the requirement; or
- (b) a majority of the Disinterested Directors certify that in their opinion the cost and difficulty of providing the Appraisal Report will outweigh the benefit, because prospective Transferors are not at an information disadvantage in relation to prospective Transferees and their Associated Persons or because the Appraisal Report would not materially remedy any such information prejudice.

For the purposes of this Clause, 'Disinterested Directors' means Directors who are not involved as prospective Transferors (in relation to a proposal for a Differential Offer) or as Transferees, and who are not Associated Persons of any such Transferors or Transferees.

7.11 **Restricted Transfer status report** - If a Restricted Transfer is not completed within three months of the notice required to be given under Clause 7.1, or any status report given under this Clause 7.11 then, before continuing with the Restricted Transfer, additional market information on the status of the Restricted Transfer must be provided to the Company and the Exchange in a manner complying with Rule 10.2.3 for release to the market. The additional market information shall include:

- (a) when the Restricted Transfer is intended to be completed; and
- (b) details of the Transfer(s) that comprise the Restricted Transfer which have not been completed.

7.12 **Company response to Restricted Transfer status report** - On receipt of the information provided under Clause 7.11, the Directors shall promptly advise the Exchange:

- (a) of any change in circumstances (and the implications of the change) which would affect the continuing relevance and currency of any Appraisal Report or the response initially provided under Clause 7.6; and
- (b) that they are complying with Rule 10.1.

7.13 **Enforcement provisions** - The Company may, following a Default, exercise a power described in Clause 7.14(a) or (b) in respect of all or any Quoted Equity Securities in which the Defaulter has a Relevant Interest ('Defaulter's Securities').

7.14 **Default consequences** - In the event of a Default:

- (a) no Vote may be cast on a poll, and if it is cast shall be disregarded, on Defaulter's Securities while the Default is unremedied;
- (b) a Defaulter's Securities may be sold by the Company. This power may not be exercised until one month after the Company has given notice to the Defaulter of its intention to exercise this power. It shall not be exercised if, during that month:
  - (i) the Defaulter has remedied the Default (where it can be remedied); or
  - (ii) the Defaulter has transferred its Relevant Interest in the Securities to a person who is not a Defaulter.

If the power to sell is exercised, the Company shall sell the Defaulter's Securities through the Exchange, or in some other manner approved by the Exchange, and shall account to the holder of those Securities for the proceeds of sale after deduction of all sale expenses. The Company shall be deemed to be authorised to take all steps, and sign all documents, necessary to effect the sale of the Defaulter's Securities;

- (c) neither the Company nor its Directors shall be liable to a Defaulter or apparent Defaulter for or in connection with the exercise or purported exercise of the powers permitted by Clauses 7.13 to 7.19;
- (d) the Company shall have a lien on the Defaulter's Securities for, and deduct from the proceeds of sale pursuant to Clause 7.14(b), any costs to the Company of determining whether a person is a Defaulter and exercising powers permitted by Clauses 7.13 to 7.19;
- (e) the Company may treat as its costs for the purposes of Clause 7.14(d), reimbursement by it of expenses of members of any Affected Group acting pursuant to Clause 7.15; and
- (f) if the Exchange (or the Panel or any delegate of the Panel) makes a Ruling dealing with the matters dealt with by section 4 of the Rules, or with the provisions of this Constitution required or permitted by the said section 4, that Ruling shall be binding upon the Company and all holders of Securities of the Company, and shall take effect as if that Ruling were itself incorporated in this Constitution.

7.15 **Powers of Affected Group** - The Directors shall, if so directed by a resolution of an Affected Group (passed by a simple majority of Votes) exercise the power referred to in Clause 7.14(b), if that power has become exercisable. The holders of 5% or more of the Securities of an Affected Group may by notice to the Directors require the Directors to convene a meeting of the Affected Group for the purpose of considering such a resolution.

7.16 **Voting restrictions** - The Company shall use reasonable endeavours to ascertain for the purposes of Clause 7.14(a) whether any Securities are Defaulter's Securities, and accordingly whether a holder of those Securities is entitled to vote. If any holder of Securities of the Company, or the Exchange, alleges that any Securities are Defaulter's Securities, the Company shall properly consider and investigate that allegation.

7.17 **Proceedings at meetings** - The ruling of the chairperson of any meeting as to whether any holder of Securities is or is not entitled to vote at that meeting pursuant to Clause 7.14(a) shall, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting shall not be impugned by reason of a breach of Clause 7.14(a). This Clause shall not prejudice any action which any person may have against the holder of any Securities by reason of that holder having cast a Vote at any meeting in breach of Clause 7.14(a).

7.18 **Limitation of remedies** - Subject to Clause 7.19, the sole remedy of the Company, a holder of Securities of the Company, a Director, or any other person, in respect of a breach or alleged breach of section 4 of the Rules, or of the provisions in this Part VII required or permitted by section 4 of the Rules, shall be to exercise, or require the Company or its Directors to exercise, the powers referred to in Clauses 7.14(a) and (b). Without limiting the preceding sentence, no person shall be entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of the provisions referred to in that sentence.

7.19 **Exception** - Nothing in Clause 7.18 shall affect the remedies of a holder of Securities of the Company against the Directors in respect of a breach of section 4 of the Rules, or the provisions of the Clauses referred to in Clause 7.18, by that Director.

7.20 **Procedure for meetings pursuant to Part VII** - Any meeting or meetings of each Relevant Group required for the approval by a Special Resolution of:

- (a) the deletion of Minority Veto Provisions (pursuant to Rule 4.4.3); or
- (b) the modification of the Notice and Pause Provisions so that those provisions apply only to Restricted Transfers in which the Transferees are Insiders, or cancellation of such modification (pursuant to Rules 4.4.2 and 4.4.3); or
- (c) the inclusion of Minority Veto Provisions (pursuant to Rule 4.4.1),

shall be subject to the same procedures as are set out in Part IX of this Constitution with any necessary modifications except that, if the Board so elects, for the purposes of voting by Relevant Groups pursuant to this Clause 7.20, one meeting may be held of holders constituting both Relevant Groups, so long as voting is by way of poll, and proper arrangements are made to distinguish between the Votes of members of the different Relevant Groups.

- 7.21 **Meeting on request** - The Directors may at any time, and shall upon receipt of a request of the nature referred to in the next sentence, submit for the consideration of the holders of Securities of the Company a change to this Part VII to include or exclude Minority Veto Provisions, to modify this Part VII in accordance with Rule 4.4.2, or to cancel any such modification. A request to the Directors shall:
- (a) be in writing, and be signed by or on behalf of the holders of Quoted Equity Securities of the Company carrying 5% or more of the Votes attaching to all Quoted Equity Securities of the Company; and
  - (b) specify in general terms the change to the Constitution which is proposed.
- 7.22 **Procedure** - If the Directors wish, or are required in accordance with Clause 7.21, to submit for consideration a change to this Part VII, the Directors shall without delay:
- (a) cause draft amendments to this Constitution to be prepared, and approved by the Exchange in accordance with Rule 6.1; and
  - (b) cause those amendments to be submitted for the approval by Special Resolutions of the Relevant Groups, and by such other resolutions as may be necessary to effect an amendment to this Constitution.
- 7.23 **Compulsory acquisition provisions**
- 7.23.1 **Acquisition Notice** - If a person, or a group of Associated Persons, acquires beneficial ownership of 90% or more of a Class of Quoted Equity Securities of the Company, that person or group of persons (the 'Majority Holder') shall, within 20 Business Days after that circumstance arises, give notice (the 'Acquisition Notice') to all other holders (the 'Remaining Holders') of Securities of that Class (Affected Securities') and to the Company and to the Exchange, provided that when calculating the total number of Quoted Equity Securities in that Class, Treasury Stock shall not be regarded as part of that Class.
- 7.23.2 **Contents of Notice** - The Acquisition Notice shall specify:
- (a) that the Majority Holder has beneficial ownership of 90% or more of the Affected Securities;
  - (b) either:
    - (i) that the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders; or
    - (ii) that any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
  - (c) the consideration to be provided by the Majority Holder for Affected Securities.
- 7.23.3 **Obligation of Majority Holder** - Upon giving an Acquisition Notice, the Majority Holder shall be entitled and bound:
- (a) if the Acquisition Notice contains the statement in Clause 7.23.2(b)(i), to acquire all Affected Securities held by the Remaining Holders; or
  - (b) if the Acquisition Notice contains the statement in Clause 7.23.2(b)(ii), to acquire all Affected Securities held by Remaining Holders in respect of which the holder, within one month after the date of the Acquisition Notice, gives notice requiring the Majority Holder to acquire.
- 7.23.4 **Consideration** - The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire shall be determined as follows.
- (a) the Acquisition Notice shall specify the consideration which the Majority Holder is prepared to provide. The Majority Holder shall, before giving the Acquisition Notice, provide to the Exchange a report from an independent appropriately qualified person, previously approved

by the Exchange, confirming that that consideration is fair and reasonable to the Remaining Holders, using the same criteria set out in clause 7.23.4(c)(iv);

- (b) if, within 10 Business Days after the date of the Acquisition Notice, the Company receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders then the consideration shall be determined in accordance with Clauses 7.23.4(c) and (d). If such objections are received, the Company shall forthwith notify the Majority Holder and the Exchange of that fact. If such objections are not received, the consideration shall be as specified in the Acquisition Notice;
- (c) if objections of the nature referred to in Clause 7.23.4(b) are received by the Company the consideration shall be determined by an independent appropriately qualified person. That person shall:
  - (i) be a different person from the person referred to in sub-paragraph (a); and
  - (ii) act as an expert and not as an arbitrator, and
  - (iii) be directed to provide a decision within 20 Business Days after his or her appointment; and
  - (iv) be directed to determine the consideration on the basis that it is fair to the Remaining Holders and is the pro-rated value of the Affected Securities based on the value of the Company as a whole and the rights and obligations attached to those Securities without taking into account any strategic or hold out value of the Affected Securities or any other factors relating to the Remaining Holders, the Majority Holder, their respective holdings in the Company or the relative extent of those holdings; and
  - (v) be appointed by the Disinterested Directors (as defined in Clause 7.10) of the Company (if any, and otherwise by the Directors of the Company) after approval by the Exchange;
- (d) if the consideration determined by the person appointed in accordance with Clause 7.23.4(c):
  - (i) is less than, or the same as, the consideration specified in the Acquisition Notice the fee and expenses of that person shall be borne by the Remaining Holders who made the objections referred to in Clause 7.23.4(b); or
  - (ii) is more than the consideration specified in the Acquisition Notice, the fee and expenses of that person shall be borne by the Majority Holder.

If the fee and expenses of that person is to be borne by the objectors in terms of sub-paragraph (i), the Majority Holder shall deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash).

**7.23.5 Default consequences** -If a Majority Holder fails to give an Acquisition Notice, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this Clause 7.23, fails to do so, then the provisions of Clauses 7.13 to 7.17 shall apply with the following modifications:

- (a) the Affected Securities held by the Majority Holder shall be deemed to be Defaulters Securities;
- (b) the failure to comply with this Clause 7.23 shall be deemed to be a Default; and
- (c) the Remaining Holders shall be deemed to be an Affected Group.

**7.23.6 Further provisions -**

- (a) Within twelve Business Days after the Majority Holder becomes bound to acquire the Affected Securities of that Remaining Holder, or if consideration is required to be determined pursuant

to Clause 7.23.4, within two Business Days after consideration is determined, the Majority Holder shall pay or provide the consideration to each Remaining Holder.

- (b) The consideration payable to Remaining Holders who cannot be found shall be paid to the Company and held in trust by the Company for those holders for at least five years.
- (c) Upon payment or provision of the consideration, the Company shall execute transfers on behalf of the Remaining Holders, and take all other steps necessary to transfer to the Majority Holder the Affected Securities of the Remaining Holders.

7.24 **Takeovers Code** - If a takeovers code comes into force under the Takeovers Act 1993 then subject to:

- (a) any applicable provisions of that code;
- (b) the Company first obtaining the approval of the Exchange and complying with any conditions of that approval; and
- (c) such conditions as the Exchange may from time to time impose;

the whole or any part of this Part VII (as determined by the Exchange) shall cease to apply and be deemed to be cancelled with effect from the date upon which that code comes into force, provided that the necessary provisions of this Part VII shall nevertheless continue to apply in respect of any Default which may have occurred prior to such takeovers code coming into force.

## PART VIII

### 8. DISTRIBUTIONS TO SHAREHOLDERS

8.1 **Satisfaction of Solvency Test** - The Board, if it is satisfied on reasonable grounds that the Company will immediately after a Distribution satisfy the Solvency Test, may (subject to this Part VIII and to Clauses 4.6 and 4.7) authorise a Distribution at a time, and of an amount, and in such form and to any Shareholders as it determines.

#### 8.2 **Restriction on certain Dividends -**

- (a) Subject to Clause 8.12, the Board must not authorise a Dividend:
  - (i) in respect of some but not all the Shares in a Class; or
  - (ii) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class;

except as provided in Clause 8.2(b).

- (b) Subject to Clause 8.12, all Dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid, other than in advance of calls, on the relevant Shares during any portion or portions of the period in respect of which the Dividend is paid. If any Share is issued on terms providing that it shall rank for Dividend as from a particular date, that Share shall rank for Dividend accordingly.

8.3 **Persons to whom Distribution payable** - A Distribution shall be payable to the person who is, on the Record Date, the registered holder of the Securities in respect of which the Distribution is made.

8.4 **Dividends may be paid by automatic payment or by cheque** - Unless otherwise directed by the Shareholder any Dividend may be paid by automatic payment to any bank nominated in writing by the Shareholder or person entitled or by cheque sent through the Registered Address of the Shareholder or person entitled, or in the case of joint holders to the bank nominated by or the Registered Address of that one whose name stands first on the Register in respect of the joint holding or to the person nominated in writing by all the joint holders. The Company shall not be liable for any loss arising from any mode of payment referred to in this Clause.

- 8.5 **No interest on Distribution** - No Distribution shall bear interest against the Company.
- 8.6 **Deductions from Distribution** - The Board may deduct from any Distribution payable to a Shareholder all such money as may be due from that Shareholder to the Company on account of:
- (a) unpaid calls and instalments and any interest payable on such amounts, in respect of the Shares for which the Distribution is being paid; and
  - (b) such amounts as the Company may be called upon by legislation to pay in respect of those Shares, including withholding and other taxes.
- 8.7 **Unclaimed Distribution** -
- (a) A Distribution unclaimed for one year after having become payable may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the Distribution with other money of the Company and shall not be required to hold it or regard it as being impressed with any trust.
  - (b) A Distribution unclaimed for five years after having become payable shall at the expiry of such period be forfeited by the Board for the benefit of the Company, provided always that the Board shall at any time after such forfeiture annul the same and pay such Distribution to the person producing evidence of entitlement. Any other moneys payable to any Shareholder or former Shareholder shall be disposed of in accordance with the Unclaimed Money Act 1971.
- 8.8 **Shares in lieu of Dividends** - The Board may establish, operate, vary, suspend and terminate a plan whereby Shareholders may elect to receive Shares in lieu of Dividends on such terms and conditions as the Board determines.
- 8.9 **Calls in advance do not carry right to participate** - Where any Security is fully paid up in advance of calls, such payment, whether or not carrying interest, shall not confer a right to participate in Distributions to Shareholders.
- 8.10 **Authorisation of Dividend** - Subject to this Clause 8, the Board may from time to time authorise interim Dividends and may authorise a final Dividend and the Board may pay any preferential Dividends on Securities issued upon terms that the preferential Dividends thereon shall be paid on fixed dates. Provided the Board acts bona fide it shall not incur any liability to the holders of preference shares for any damage they may suffer by reason of the payment or satisfaction of a Dividend.
- 8.11 **Transfer does not pass right to any Distribution declared after such transfer** - A transfer of Securities shall not pass the right to any Distribution declared thereon after such transfer and before the registration of the transfer.
- 8.12 **Foreign currency dividend election scheme**
- 8.12.1 **Establishment** - The Board may at its discretion establish or continue with the scheme existing at the date of the adoption of this Constitution and from time to time vary or revoke such scheme (known as and herein referred to as a 'foreign currency dividend election scheme') permitting Shareholders to elect to waive their entitlement to Dividends otherwise payable on Shares held by them in consideration of the Company undertaking to procure that a Dividend be paid to such Shareholders by a Subsidiary of the Company.
- 8.12.2 **Currency** - Dividends by any subsidiary company of the Company under a foreign currency dividend election scheme may be paid in such currency, country and by such means as the Directors may from time to time resolve.
- 8.12.3 **Election** - Each Shareholder wishing to participate in a foreign currency dividend election scheme shall complete and deliver to the Company an election notice which may be in such form and contain such conditions as the Board requires.
- 8.12.4 **Personal right** - An election to participate in a foreign currency dividend election scheme shall not attach to the Shares in respect of which the election has been given but shall be personal to the Shareholder concerned and shall be automatically revoked upon the registration of a transfer of such Shares.



- 8.12.5 **Non-application** - Notwithstanding anything contained elsewhere in this Constitution but subject to Clauses 8.12.6 and 8.12.7 below, where a Dividend is declared by the Company, that Dividend shall not apply to those of its Shares which under a foreign currency dividend election scheme the Shareholders thereof pursuant to the election are, by virtue of the declaration of the Dividend, entitled to receive a Dividend from a Subsidiary of the Company.
- 8.12.6 **Non-fulfilment** - In the event that the Company does not procure that a Dividend be paid by a Subsidiary to a participant in accordance with the foreign currency dividend election scheme the Company shall notwithstanding any election under the scheme and without further resolution of the Shareholders pay to Shareholders participating therein the Dividend which they had elected to forego.
- 8.12.7 **Determination** - Notwithstanding the waiver by a Shareholder to receive Dividends the Board may in regard to each Dividend that is declared or paid by the Company determine whether the foreign currency dividend election scheme will be applied to that Dividend and as between participants in the scheme which participants in the scheme will be entitled to participate.

## PART IX

### 9. MEETINGS OF SHAREHOLDERS

- 9.1 **First Schedule** - The provisions of the First Schedule of the Act shall apply, except where modified by this Clause 9.
- 9.2 **Annual meeting** - The Board must call an annual meeting of Shareholders to be held:
- (a) not later than six months after the balance date of the Company; and
  - (b) not later than fifteen months after the previous annual meeting.
- The Company must hold the annual meeting on the date on which it is called to be held.
- 9.3 **Special meetings** - A special meeting of Shareholders entitled to vote on an issue:
- (a) may be called at any time by the Board, or
  - (b) must be called by the Board on the written request of Shareholders holding shares carrying together not less than 5% of the Votes entitled to be cast on the issue.
- 9.4 **Shareholders entitled to notice of meeting**
- 9.4.1 **Right to attend meetings and receive notices** - Equity Security holders of all Classes shall be entitled to attend meetings of Shareholders, and to receive copies of all notices, reports and financial statements issued generally by the Company to holders of Securities carrying Votes.
- 9.4.2 **Equity Security holders entitled to receive notice** - The Equity Security holders entitled to receive notice of a meeting of Shareholders are those Equity Security holders:
- (a) if the Board has fixed a date for the purpose of establishing an entitlement to receive the notice of meeting, whose names are registered in the Register on that date; or
  - (b) if the Board does not fix a date for the purpose of establishing an entitlement to receive the notice of meeting, whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.
- 9.4.3 **Notice** - A date fixed by the Board under Clause 9.4.2(a) must not be more than 30 nor less than ten Working Days before the date on which the meeting is to be held.
- 9.5 **Notice of meeting** - Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting, and to every Director and the Auditor, not less than ten Working Days before the meeting.

## 9.6 Notice provisions

### 9.6.1 Contents - The notice referred to in Clause 9.5 must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it and must contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the proposed resolutions; and
- (b) the text of any Special Resolution to be submitted to the meeting.

9.6.2 **Shareholders not entitled to notices unless address given** - If a Shareholder has not supplied to the Company an address within or outside New Zealand for the giving of notices to such Shareholder, such Shareholder shall not be entitled to receive any notices from the Company and all proceedings taken without notice to any such Shareholder shall be as valid as if such Shareholder had due notice thereof.

9.6.3 **Service of notices outside New Zealand** - If a Shareholder has no Registered Address within New Zealand and has not supplied the Company with an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to the Shareholder at such address and shall be deemed to have been received by the Shareholder 24 hours after the time of the posting.

9.6.4 **Service of notice on joint holders of Shares** - All notices shall, with respect to any Shares to which persons are jointly entitled, be given to whichever of such persons is named first in the Register, or that person who is nominated in writing by all joint holders, and notice so given shall be sufficient notice to all the holders of such Shares.

9.6.5 **Service of notice on deceased or bankrupt Shareholders** - A notice may be given by the Company to the persons entitled to a Share as a consequence of the death or bankruptcy of a Shareholder by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the bankrupt or by any like description, at the address, if any, supplied for that purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

## 9.7 Irregularities in notice

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

9.7.2 **Waiver** - An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting, attend the meeting without protest as to the irregularity or if all such Shareholders agree to the waiver.

## 9.8 Proxies

### 9.8.1 Form of proxy

- (a) A proxy form shall be sent with each notice of meeting of Shareholders and:
  - (i) shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting On all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote; and
  - (ii) shall not be sent with any name or office (such as Chairperson) filled in as proxy holder.

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

- (b) Subject to Clause 9.8.1(a), an instrument appointing a proxy may be in the following form or any other form which the Board shall approve:

**"Nufarm Finance (NZ) Limited**

I, [name] of [address] being a Shareholder of the abovenamed Company, hereby appoint [name] of [address] (or failing such person, of ) as my proxy to vote for me on my behalf at the annual or special (as the case may be) meeting of the Company to be held on the [day] day of [month] 20 [year] and at any adjournment thereof.

Signed this [day] day of [month] 20 [year]

I/We direct my/our proxy to vote in the following manner (vote with a tick ✓)

<u>Resolutions</u>	<u>For</u>	<u>Against</u>
1.		
2.		
3.		

and to vote on any resolutions to amend any of the resolutions, on any resolution so amended, and on any other resolution proposed at the meeting (or any adjournment thereof).

Unless otherwise instructed as above, the proxy will vote or abstain from voting on each such resolution.

The proxy is appointed [only in respect of the above meeting or any adjournment thereon [for a term not exceeding twelve months]].

The following persons or officers are willing to act as proxy If a Shareholder wishes to appoint them:

Name(s)"

- 9.8.2 **Proxy may vote** - A proxy is entitled to attend and be heard at a meeting of Shareholders for which he or she is appointed as if the proxy were the Shareholder and may vote on all procedural matters including any resolution to amend any of the resolutions and to adjourn the meeting and vote on any resolution as amended.
- 9.8.3 **Proxy may demand a poll** - The instrument appointing a proxy shall be deemed to confer authority on that proxy to demand or join in demanding a poll.
- 9.8.4 **Instrument appointing proxy to be in writing and left at the Office** - The instrument appointing a proxy shall be in writing, signed by the Shareholder or by the Shareholder's attorney duly authorised in writing, or, if such Shareholder is a corporation, signed by its attorney or other person lawfully entitled to bind such corporation. The instrument shall state whether the proxy is appointed for a particular meeting or for a period of time not exceeding twelve months.
- 9.8.5 **Time of deposit** - The instrument appointing a proxy and the power of attorney (if any) under which it is signed, or any office copy or notorially certified copy thereof, shall be deposited at the Office not less than 46 hours before the start of the meeting. The instrument shall be deemed to be deposited when it is delivered, whether by hand, mail or courier.
- 9.8.6 **When vote by proxy valid though authority revoked** - A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the Shareholder, or revocation of the proxy, or transfer of the Share in respect of which the vote is given provided no intimation in writing of the death, insanity, revocation or transfer shall have been received at the Office or by the Chairperson of the meeting before the vote is given.
- 9.8.7 **Holders of other Securities** - The provisions of this Clause 9.8 shall also apply to meetings of holders of Securities other than Shares, with any necessary modifications.

- 9.9 **Method of holding meeting** - A meeting of Shareholders may be held either.
- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

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

- (a) five Shareholders are present in person or by proxy or (being a corporation) by representative; or
- (b) Shareholders or their proxies or representatives are present who are between them able to exercise 1% or more of the votes to be cast on the business to be transacted at the meeting.

Subject as hereinafter provided no business shall be transacted at any meeting of Shareholders unless the requisite quorum is present when the meeting proceeds to business.

9.11 **Adjournments**

9.11.1 **Meeting adjourned or dissolved if quorum not present** - If within 30 minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders shall be dissolved; but in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day, time and place as the Board may appoint. If at such adjourned meeting a quorum is not present, the Shareholders who are present in person or by proxy shall be a quorum and may transact the business for which the meeting was called. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting other than by announcement at the adjourned meeting.

9.11.2 **Chairperson has power to adjourn meeting** - The Chairperson of a meeting of Shareholders may, in his or her sole discretion, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

9.12 **Chairperson of meetings of Shareholders**

9.12.1 **Chairperson** - If the Directors have elected a Chairperson and that Chairperson is present at a meeting of Shareholders, he or she must chair the meeting. If the Chairperson is not present, the deputy Chairperson (if any) shall be entitled to take the chair.

9.12.2 **Absence** - If there is no Chairperson or deputy Chairperson present or if at any meeting such person is not present within fifteen minutes after the appointed time for holding such meeting or is unwilling to act, and no Director is present and willing to take the chair, the Shareholders present may choose a Chairperson from one of their number.

9.12.3 **Chairperson to regulate proceedings** - Subject to this Clause 9, the Chairperson of the meeting in his or her sole discretion shall have the right to determine and regulate the proceedings of any meeting of Shareholders.

9.13 **Minutes**

9.13.1 **To be kept** - The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

9.13.2 **Evidence** - Minutes which have been signed correct by the Chairperson of the meeting are prima fade evidence of the proceedings.

9.14 **Voting**

9.14.1 **How Votes may be given** - Votes may be given either personally or by proxy.

- 9.14.2 **Method of voting** - At a meeting of Shareholders, unless a poll is demanded, voting at the meeting shall be by either of the following methods, as determined by the Chairperson of the meeting:
- (a) Shareholders signifying individually their assent or dissent by voice; or
  - (b) Shareholders voting by a show of hands.
- 9.14.3 **Declaration by Chairperson of result** - Unless a poll is so demanded, a declaration by the Chairperson that a resolution has been carried by the requisite majority, or lost, and an entry to that effect made in the minutes, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 9.14.4 **Votes of Shareholders** - Subject to Clause 9.15 and to any rights or restrictions for the time being attached to any Class or Classes of Share every Shareholder shall be entitled, in respect of those Shares on which no call is in arrears or on which no lien or right of forfeiture has been exercised:
- (a) on a vote by voices or on a show of hands, to one vote; and
  - (b) on a poll, in respect of each Share which is:
    - (i) fully paid, to one vote: or
    - (ii) not fully paid, to a proportion of the vote which would be exercisable if such Share were fully paid, equivalent to the proportion of the total issue price of that Share which has been paid (disregarding any payment in advance).
- 9.14.5 **No voting in respect of Shares on which calls are unpaid** - No Shareholder shall be entitled to vote at any meeting of Shareholders in respect of Shares in the Company on which any calls or other sums are due and unpaid except that Shareholder may vote at an interest group meeting.
- 9.15 **Voting restrictions**
- 9.15.1 **Restrictions** - Notwithstanding anything to the contrary in this Constitution, the Act or the Rules, on any resolution of the holders of Securities of the nature referred to in each of the sub-clauses of this Clause, no Vote in favour of any such resolution shall be cast on any Securities held by a person of the nature referred to in each such sub-clause, or by any Associated Person of such a person:
- (a) on a resolution under Clause 10.15.5, the Director intended to receive a payment:
  - (b) subject to Clause 9.15.2, on a resolution under Clause 3.4.1:
    - (i) any person to whom it is proposed to issue the new Securities referred to in the resolution, or
    - (ii) if the resolution does not specify the persons to whom it is proposed to issue Securities, any Director who is not excluded by the terms of the resolution from participation in the issue;
  - (c) on a resolution under Clause 3.4.1 to approve a rights issue of Equity Securities which is not Renounceable, any Director and any Associated Person of the Company;
  - (d) on a resolution under Clause 3.4.5(b)(iii), any person who has been issued, or has acquired, Securities the subject of ratification by that resolution;
  - (e) on a resolution under Clause 3.4.6, any Director intended or likely to benefit from the issue referred to in the resolution;
  - (f) on a resolution under Clause 3.4.10, any person whose effective control of the Company would be materially increased;
  - (g) on a resolution under Clause 4.2.8, any person who is intended to benefit from the reduction, deferral, or cancellation, unless the reduction, deferral, or cancellation benefits all holders of Equity Securities of the Company on the same basis; and

- (h) on a resolution under Clause 6.3, any person referred to in Clause 6.5 who is a party or beneficiary (in terms of Clause 6.3(a) or (b)) to or of the transactions the subject of the resolution.
- 9.15.2 **Exception** - On a resolution under Clause 3.4.1 a person to whom it is proposed to issue the new Securities referred to in that resolution is not disqualified from voting if the new Securities are to be offered or the same basis to all holders of Securities of the same Class as the Securities held by that person.
- 9.15.3 **Disqualified person may act as proxy or representative** - Clause 9.15.1 shall not prevent a person disqualified from Voting under that Clause, who has been appointed as a proxy or representative by another person who is not disqualified from Voting under that Clause, from Voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.
- 9.15.4 **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 9.15.1, the identity of holders of Securities who are disqualified from voting on that resolution pursuant to Clause 9.15.1, and on request shall supply a list of such holders of Securities to the Exchange and to any holder of Equity Securities of the Company.
- 9.15.5 **Deadline for challenge** - Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of Clause 9.15.1, no resolution of or proceeding at, that meeting shall be impugned on the basis of a breach of Clause 9.15.1. Any objection by a holder of Securities to the accuracy or completeness of any list provided pursuant to Clause 9.15.4 shall be disregarded by the Company and the Chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.
- 9.16 **Corporations acting by representatives at meetings** - Any corporation which is a Shareholder of the Company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Shareholders of the Company or at all such meetings and shall give notice of such appointment to the Company. Until notice of revocation of such authority shall have been given to the Company any person so authorised shall be entitled to exercise the same powers on behalf of the corporation as that corporation could exercise if it were an individual Shareholder of the Company.
- 9.17 Votes of Shareholders of unsound mind, deceased, bankrupt or joint holders**
- 9.17.1 **Votes of Shareholders of unsound mind** -A Shareholder who is subject to the Mental Health (Compulsory Assessment and Treatment) Act 1992 and is a mentally defective person within the meaning of that Act may vote by such Shareholder's committee or other person having authority to administer such Shareholder's estate. Subject to any provisions of a protection order made under the Protection of Personal and Property Rights Act 1988, a Shareholder may vote in respect of any Shares that are subject to such protection order by the manager appointed in that protection order. Any such committee, manager or other person as aforesaid may vote either on a show of hands or on a poll, and, on a poll, may vote by proxy.
- 9.17.2 **Votes of Shareholders of unsound mind not subject to New Zealand jurisdiction** - A Shareholder not being subject to the statutes referred to in Clause 9.17.1 but in respect of whom an order has been made by any court having jurisdiction in relation to persons of unsound mind, may vote whether on a vote on a show of hands or on a poll by such Shareholder's committee, curator bonis or other person in the nature of a committee or curator bonis appointed by that court.
- 9.18 **Votes of representatives of deceased or bankrupt Shareholders** - Any person entitled under Clause 5.13 to a transfer of any Shares may vote at any meeting of Shareholders in the same manner as if such person were the registered Shareholder provided that at least 48 hours before the time of holding the meeting or adjourned meeting, as the case may be, at which such person proposes to vote such person shall satisfy the Board of such person's right to vote, unless the Board shall have previously admitted such person's right to vote at such meeting in respect thereof.
- 9.19 **Votes of joint holders** - Where there are joint registered holders of any Share, any one of such persons may vote at any meeting, either personally or by proxy, in respect of such Share as if such person were solely entitled thereto. If more than one of such joint holders is present at any meeting, personally or by proxy, that one of the said persons so present whose name stands first on the

Register in respect of such Share shall alone be entitled to vote in respect thereof. Several executors or administrators of a deceased Shareholder in whose sole name any Shares stand shall for the purposes of this Clause be deemed joint holders thereof.

## 9.20 **Polls**

9.20.1 **Poll may be demanded** - At a meeting of Shareholders, a poll may be demanded (before or on the declaration of the result of the vote):

- (a) by at least five Shareholders present in person or by proxy having the right to vote at the meeting; or
- (b) by a Shareholder or Shareholders present in person or by proxy and representing not less than one-tenth of the total voting rights of all the Shareholders having the right to vote at the meeting; or
- (c) by a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which an aggregate amount paid up is not less than one-tenth of the total amount paid up on all Shares that confer that right; or
- (d) by the Chairperson of the meeting.

9.20.2 **When poll to be taken** - If a poll is demanded pursuant to Clause 9.20.1, it shall be taken in such manner and at such time and place as the Chairperson of the meeting directs and either at once or after an interval or adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand of a poll may be withdrawn. In case of any dispute as to admission or rejection of a vote, the Chairperson shall determine the same, and such determination made in good faith shall be final and conclusive.

9.20.3 **Effect of poll on other business** - The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. No poll shall be demanded on the election of a Chairperson of a meeting, and a poll demanded on a question of adjournment shall be taken forthwith unless in the opinion of the Chairperson the taking of a poll is impracticable in which case the meeting shall proceed or be adjourned as directed by the Chairperson.

9.20.4 **Equality of votes** - In the case of an equality of votes whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second and casting vote.

9.21 **No postal voting** - No postal voting in respect of any meeting of Shareholders is permitted, whether by Shareholders or their proxies unless the Board resolves otherwise whether generally or for any particular meeting or matter.

## 9.22 **Shareholder proposals**

9.22.1 **Notice to Board** - A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.

9.22.2 **20 Working Days' notice** - If the notice is received by the Board no less than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

9.22.3 **5-20 Working Days' notice** - If the notice is received by the Board not less than five Working Days and not more than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting

9.22.4 **Less than 5 Working Days' notice** - If the notice is received by the Board less than five Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice

of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

9.22.5 **Shareholders' statement** - If the Board intends that Shareholders may vote on the proposal by proxy or by postal vote, it must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

9.22.6 **Exception** - The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Board considers to be defamatory, frivolous, or vexatious.

9.22.7 **Deposit for costs** - Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

## PART X

### 10. DIRECTORS

10.1 **Directors' shareholding qualifications** - There shall be no shareholding qualification for a Director.

10.2 **Number of Directors** - The number of Directors (other than Alternate Directors) shall be determined by the Board from time to time, but shall not in any event be fewer than six (6) nor more than ten (10). At least two Directors shall be ordinarily resident in New Zealand.

10.3 **Continue in office** - The Directors in office on the date this Constitution comes into force shall continue to hold office under the provisions contained in this Constitution.

10.4 **Power of Directors to fill casual vacancy or appoint additional Directors** - The Directors shall have power at any time, to appoint any other qualified person as a Director, either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum number fixed pursuant to Clause 10.2. Any Director so appointed shall retire at the next annual meeting of the Company but shall be eligible for re-election at that meeting.

### 10.5 Rotation of Directors

10.5.1 **One third of Directors to retire at annual meeting** - Subject to Clauses 10.5.3 and 10.5.4 at the annual meeting in each year one third of the Directors for the time being, or if their number is not a multiple of three, then the number nearest one third shall retire from office.

10.5.2 **Senior Directors to retire** - The Directors to retire at the annual meeting shall be those who have been longest in office since they were last elected or deemed elected. A retiring Director shall be eligible for re-election and shall act as a Director throughout the meeting at which such person retires.

10.5.3 **Exceptions to rotation** - The following Directors shall be exempt from the obligation to retire pursuant to Clause 10.5.1:

- (a) Directors appointed by the Board, who are subject to re-election pursuant to clause 10.4; and
- (b) the Managing Director appointed from time to time under Clause 10.10.1 or, if there is no Managing Director in office, one executive Director.

10.5.4 **Calculation of number of Directors to rotate** - The Managing Director or executive Director (as the case may be) referred to in Clause 10.5.3(b) shall be included in the number of Directors upon which the calculation in Clause 10.5.1 is based. The Directors referred to in Clause 10.5.3(a) shall be excluded from that number.

10.6 **Directors may be removed by Ordinary Resolution** - The Company may by Ordinary Resolution remove any Director before the expiration of that Director's period of office and may by an Ordinary Resolution appoint another person to replace that Director. The person so appointed shall be



subject to retirement at the same time as if such person had become a Director on the date on which the Director in whose place such person is appointed was last elected a Director,

10.7 **Office of a Director vacated in certain cases** - The office of a Director shall be vacated, if the Director

- (a) becomes disqualified from being a Director by reason of section 151(2); or
- (b) becomes mentally disordered, or of unsound mind, or becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (c) resigns that person's office by notice in writing to the Company; or
- (d) (if a Director) is removed from office by a resolution passed under the provisions of Clause 10.6 or section 156; or
- (e) dies,

10.8 **Vacancies and reduction of numbers** - The Directors may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below the number fixed by Clause 10.2 as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Shareholders of the Company, but for no other purpose.

10.9 **Nominations and voting**

10.9.1 **Nomination of Director** - No person (other than a Director retiring at the meeting) shall be elected as a Director at a meeting of Shareholders of the Company unless that person has been nominated by a Shareholder entitled to attend and vote at the meeting. The opening date for nominations shall not be later than three months, and the closing date for nominations shall not be earlier than two months before the date of the meeting at which the election is to take place. Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.

10.9.2 **Appointment voted on individually** - No resolution to appoint or elect a Director (including a resolution to re-elect any Director appointed under Clause 10.4) shall be put to Shareholders unless:

- (a) the resolution is for the appointment of one Director, or
- (b) the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.

Nothing in this clause 10.9.2 shall prevent the election of two or more Directors by ballot or poll.

10.9.3 **More candidates than vacancies** - Notwithstanding Clause 10.9.2, where the number of persons standing for election as Directors exceeds the number of vacancies available, the Chairman may call for the election of the Directors to be conducted by way of a poll. The vacancies shall be filled by the persons obtaining the most votes.

10.9.4 **Consent to act** - The appointment to a Director shall not take effect until the consent so to act in writing of the person appointed is received by the Company.

10.10 **Managing Director(s)**

10.10.1 **Board may appoint Managing Director** - The Board may from time to time appoint one or more of their body to the office of Managing Director (by whatever name called) for a period exceeding five years as the Board may determine. The resolution to appoint a Managing Director and the terms and conditions of that appointment shall require the assent of a simple majority of the Board. The Board may enter into any agreement on behalf of the Company with any person who is, or is about to become, a Managing Director, with regard to the terms and conditions of such person's employment, but so that the remedy of any such person for any breach of the agreement shall be in damages only, and such person shall have no right to claim to continue in such office contrary to the

will of the Board. A Managing Director who is qualified to remain a Director under the provisions of this Constitution shall be eligible for reappointment as Managing Director at the expiry of his or her term as Managing Director.

- 10.10.2 **Termination of Managing Director's term** - Any Managing Director shall be liable to be dismissed or removed by a resolution passed by a simple majority of the Board. Any Managing Director shall immediately cease to be a Managing Director if he or she ceases to hold office as a Director for any reason.
- 10.10.3 **Remuneration of Managing Director(s)** -The remuneration of a Managing Director shall from time to time be fixed by the Board and notwithstanding Clause 10.13, may be by way of fixed salary or commission on profits of the Company or by participation in any such profits, or by any or all of those modes.
- 10.10.4 **Board may confer on Managing Director such powers as they think fit** - Subject to the Act, the Board may from time to time entrust to and confer upon the Managing Director for the time being such of the powers exercisable under this Constitution by the Board as they may think fit, and may confer such powers with such restrictions as they think expedient; and they may confer such powers, either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers of the Board in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.
- 10.11 **Alternate Directors**
- 10.11.1 **Appointment of Alternate Director** - Any Director may, subject first to approval by a majority of his or her co-Directors, at any time appoint any person not being a Director, as an Alternate Director of that Director. The Director appointing, or a majority of his or her co-Directors, may at any time remove from office any Alternate Director so appointed. No Director shall appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.
- 10.11.2 **Notice of appointment and removal to Company** - All appointments and removals of Alternate Directors shall be effected by notice in writing to the Company, such notice to be left at the Office, or delivered to a meeting of the Board.
- 10.11.3 **Alternate Director's rights with respect to meetings** - An Alternate Director shall (subject to such person giving to the Company an address within New Zealand at which notices may be served upon such person) be entitled to receive notices of all meetings of the Board, and, during the absence of his or her appointor, attend and vote at meetings of the Board and be counted in the quorum at such meetings, subject always to Clause 10.14.
- 10.11.4 **Other rights and powers of Alternate Director** - Unless otherwise provided by the terms of such person's appointment, an Alternate Director shall have the same rights, powers and privileges (excluding the right to be elected as Chairperson or Managing Director and the power to appoint an Alternate Director under this Clause 10.11) and shall discharge all the duties of, and be subject to the same provisions as, the Director in whose place such person acts.
- 10.11.5 **Remuneration of Alternate Director** - An Alternate Director may be repaid expenses and shall be entitled to be indemnified by the Company to the &erne extent and on the terms set out in Clause 10.13 (with such changes as the circumstances require) as if he or she was a Director. An Alternate Director shall not be entitled to receive from the Company any remuneration in respect of his or her appointment as Alternate Director except only such proportion (if the remuneration otherwise payable to his or her appointor (which shall be on the terms set out in Clause 10.13) as such appointor may direct by notice in writing to the Company.
- 10.11.6 **Cessation of Alternate Director** - An Alternate Director shall cease to be an Alternate Director if such person's appointor ceases for any reason to be a Director otherwise than by retiring and being re-elected at the same meeting.
- 10.12 **Powers and duties of Board**
- 10.12.1 **Business of Company to be managed by the Board** - Subject to this Constitution and the Rules, the Board may exercise all such powers and do all such acts and things as the Company is empowered to do, and which are not by this Constitution or by statute directed or required to be exercised or done by the Company at a meeting of Shareholders.

10.12.2 **Local boards** - The Board may from time to time establish any local boards or agencies for managing any of the affairs of the Company in any specified locality and may appoint any persons to be members of such local board, or any managers or agents, and may fix their remuneration. Subject to the Act, the Board may from time to time delegate to any person so appointed any of the powers, authorities, and discretions for the time being vested in the Board, other than the power of making calls, and may authorise the members for the time being of any such local board, or any of them, to fill any vacancies therein, and to act notwithstanding vacancies. Any such appointment or delegation may be made on such terms and subject to such conditions as the Board may think fit, and the Board may at any time remove any person so appointed, and may annul or vary any such delegation.

10.12.3 **Powers of attorney** - The Board may at any time and from time to time by power of attorney executed in accordance with the Act appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution and subject always to the Act) and for such period and subject to such conditions as the Board may from time to time think fit. Any such appointment may, if the Board thinks fit, be made in favour of the members of any local board established as aforesaid, or in favour of any company, or of the members, directors, nominees, or managers of any company or firm, or in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Board. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorney or attorneys as the Board may think fit.

10.12.4 **General power to delegate** -The Board may otherwise delegate its powers in accordance with the Act.

### 10.13 **Directors' remuneration**

10.13.1 **Authorisation** - No remuneration shall be paid to a Director in his or her capacity as a Director unless that remuneration has been authorised by an Ordinary Resolution. Each such resolution shall express Directors' remuneration as either:

- (a) a monetary sum per annum payable to all Directors taken together; or
- (b) a monetary sum per annum payable to any person who from time to time holds office as a Director.

If remuneration is expressed in accordance with sub-paragraph (a) of this Clause, then in the event of an increase in the total number of Directors holding office, the Directors may, without the authorisation of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the Chairperson) of the Company. Any determination made by the Company shall apply to the year for which the same is passed and to all subsequent years until the Company by Ordinary Resolution shall alter the same. The remuneration of Directors, unless otherwise expressly determined, shall accrue from day to day.

10.13.2 **Increases** - No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a meeting of Shareholders of the Company unless notice of the amount of increase has been given in the notice of meeting.

10.13.3 **Executives** - Nothing in Clauses 10.13.1 and 10.13.2 shall affect the approval by the Directors of the remuneration of executive Directors in their capacity as executive Directors subject to Rule 9.2 (if applicable).

10.13.4 **Payments upon cessation of office** - The Company may make a payment to a Director or former Director, or his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of the office of that Director, only if:

- (a) the total amount of the payment (or the base for the pension) does not exceed the total remuneration of the Director in his or her capacity as a Director in any three years chosen by the Company; or
- (b) the payment is authorised by an Ordinary Resolution.

Nothing in this Clause 10.13.4 shall affect any amount paid to an executive Director upon or in connection with the termination of his or her employment with the Company or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

**10.14 Transactions involving Directors' self Interest**

**10.14.1 'Interested'** - For the purposes of Clauses 10.14.2 to 10.14.6 inclusive, the term 'interested' bears the meaning assigned to that term in section 139 on the basis that the reference to the 'company' in that section shall be read as a reference to the Company.

**10.14.2 Disclosure** - A Director who is in any way interested in a transaction or proposed transaction with the Company shall forthwith after becoming aware of that fact cause to be entered in the interests register and disclose to the Board:

- (a) if the monetary value of the Directors interest is able to be quantified, the nature and monetary value of that interest; or
- (b) if the monetary value of the Directors interest cannot be quantified, the nature and extent of that interest.

For the purposes of this Clause 10.14.2, a general notice entered in the interests register or disclosed to the Board to the effect that a Director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction. A failure by a Director to comply with the provisions of this Clause 10.14.2 does not affect the validity of a transaction entered into by the Company or the Director.

**10.14.3 No voting by interested Director** - A Director shall not vote in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum in any meeting to consider the matter, except that a Director may vote in respect of and be counted in the quorum for the purposes of a matter in which he or she is interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162.

**10.14.4 Exceptions** - Nothing in clauses 10.14.2 and 10.14.3 applies in relation to the matters referred to in section 162.

**10.14.5 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 contract 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 contact or arrangement by reason of the Director holding that office or of the fiduciary relationship thereby established.

**10.14.6 Appointment** - Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices of employment with the Company or any company in which the Company is interested, such proposals may be divided and considered in relation to each Director separately and in such cases each of the Directors concerned shall be entitled to vote (and be counted in the quorum) in respect of each resolution, except that concerning his or her own appointment.

**10.14.7 Professional capacity** - Any Director may act personally or as a member of a firm in a professional capacity for the Company and such Director or such Director's firm shall be entitled to remuneration for professional services as if such person were not a Director provided that nothing herein contained shall authorise a Director or firm to act as Auditor of the Company.

**10.14.8 Wholly-owned subsidiary** - If the Company is at any time a wholly-owned subsidiary of another company, any Director may, when exercising powers or performing duties as a Director, act in a

Passed by special resolution of shareholder on 10/12/2010
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manner which he or she believes is in the best interests of the Company's holding company, even though it may not be in the best interests' of the Company.

10.15 **Proceedings of Directors**

10.15.1 **Meetings of Directors and quorum** - The Directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit, and may determine the quorum necessary for the transaction of business. Unless otherwise determined, the quorum shall be three (3) Directors. No business shall be transacted at a meeting of Directors unless a quorum is present.

10.15.2 **Directors may call meeting of Board** - A Director may at any time, and the Secretary upon the request of the Director shall convene a meeting of the Board. It shall not be necessary to give notice of any such meeting to any Director for the time being absent from New Zealand but if the Director has appointed an Alternate Director under Clause 10.11, notice shall be given to such Alternate Director. The validity of proceedings at any meeting of the Board shall not be called into question if any such notice was not in fact received by any Director or Alternate Director.

10.15.3 **Voting at Board meeting** - Questions arising at any Board meeting shall be decided by a majority of votes. In case of an equality of votes, the Chairperson of such meeting shall have a second or casting vote, except that where two Directors form a quorum, the Chairperson at a meeting at which only two Directors are present shall not have a casting vote.

10.15.4 **Board may elect Chairperson and deputy Chairperson** - The Board may elect a Chairperson and, if thought fit, a deputy Chairperson of its meetings and may determine the periods for which they are to hold office. The Chairperson shall preside at meetings of the Board and failing the Chairperson, the deputy Chairperson shall so preside (with all the rights, powers and privileges of the Chairperson in so doing) but if no such Chairperson or deputy Chairperson is elected or if at any meeting neither the Chairperson nor the deputy Chairperson is present within five minutes of the time appointed for holding any meeting, the Directors present shall choose someone of their number to be Chairperson at such meeting.

10.15.5 **Board may delegate powers to committees** - Subject to section 130(2), the Board may delegate any of its powers to committees consisting of such Director or Directors as it thinks fit and may from time to time revoke such delegation. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed upon it by the Board. The meetings and proceedings of any such committee consisting of two or more Directors shall be governed by the provisions of this Constitution regulating the meetings and proceedings of the Board, so far as the same are applicable thereto. The chairperson of any meeting of a committee of Directors shall not have a second or casting vote.

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

10.15.7 **Resolution In writing** - A resolution in writing signed by all the Directors or their duly appointed Alternate Directors entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a Board meeting duly convened and held. Any such resolution may consist of several documents (including telegram or facsimile or other similar means of communication) in like form each signed by one or more Directors and signed copies of the resolution shall be entered in the Minute Book. Any such document sent by a Director by telegram, facsimile, or other similar means of communications shall be deemed to be in writing and signed by such Director.

10.15.8 **Meetings of Board using an instantaneous communications device** - For the purpose of this Clause 10.15, the contemporaneous linking together by an instantaneous communication device of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Board or of a committee of Directors and all the provisions of this Clause 10.15 as to meetings of the Board shall apply to such meetings by an instantaneous communication device so long as the following conditions are met:

- (a) all the Directors for the time being entitled to receive notice of a Board meeting (including any Alternate Director) shall be entitled to notice of a meeting by an instantaneous communication

device and to be linked by that instantaneous communication device for the purposes of such meeting. Notice of any such meeting may be given on that instantaneous communication device;

- (b) each of the Directors taking part in the meeting by an instantaneous communication device must be able to hear each of the other Directors taking part at the commencement of the meeting;
- (c) at the commencement of the meeting each Director must acknowledge such person's presence for the purpose of a meeting of the Board to all the other Directors taking part;
- (d) a Director may not leave the meeting by disconnecting his or her instantaneous communication device unless he or she has previously obtained the express consent of the Chairperson and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by an instantaneous communication device unless he or she has previously obtained the express consent of the Chairperson to leave the meeting as aforesaid;
- (e) a minute of the proceedings at such meeting by instantaneous communication device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson; and
- (f) for the purposes of this Clause 10.15.8, an 'instantaneous communication device' shall include a telephone, television or any other audio or visual device which permits instantaneous communication.

10.15.9 **Minutes to be made and when signed by Chairperson prima facie evidence** -The Board shall cause minutes to be duly executed in Books provided for the purpose:

- (a) of all appointments, removals and resignations of the Directors, Alternate Directors and the Auditor of the Company;
- (b) of the names of the Directors present at each Board meeting and of any committee of Directors: and
- (c) of all resolutions passed by and the proceedings of the Board and committees of Directors.

Any such minutes of a meeting of the Board or of a committee of Directors, if purporting to be signed by the Chairperson of such meeting, or by the Chairperson of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes.

10.15.10 The provisions of the Third Schedule of the Act shall not apply to the proceedings of the Board.

10.16 **Appointment of Secretary** - The Board may appoint a person to undertake such secretarial duties in respect of the Company as the Board shall specify and the Board shall have power to terminate such appointment and to appoint another person in the place of the person whose appointment has been terminated.

## PART XI

### 11. INDEMNITY AND INSURANCE

11.1 **Indemnity of Directors and Employees for costs** - The Company may, with the prior approval of the Board, indemnify even), Director or Employee of the Company or any Related Company for any costs incurred by him or her in any proceeding:

- (a) that relates to liability for any act or omission in his or her capacity as a Director or Employee; and
- (b) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

11.2 **Indemnity of Directors for liability** - The Company may, with the prior approval of the Board, indemnify every Director of the Company or any Related Company in respect of:

- (a) liability to any person other than the Company or a Related Company for any act or omission in his or her capacity as a Director, or
- (b) costs incurred by that Director in defending or settling any claim or proceeding relating to any liability under Clause 11.2(a);

not being criminal liability or liability in respect of a breach of the duties specified in section 131.

**11.3 Indemnity of Employees for liability** - The Company may, with the prior approval of the Board, indemnify an Employee to the Company or a Related Company in respect of:

- (a) liability to any person other than the Company or a Related Company for any act or omission in his or her capacity as an Employee; or
- (b) costs incurred by the Employee in defending or settling any claim or proceeding relating to any liability under Clause 11.3(a);

not being criminal liability or liability in respect of a breach of any fiduciary duty owed to the Company or a Related Company.

**11.4 Insurance for Directors and Employees** - The Board may cause the Company to effect insurance for any Director or Employee of the Company or any Related Company in respect of,

- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or Employee; or
- (b) costs incurred by that Director or Employee in defending or settling any claim proceeding relating to any liability under Clause 11.4(a); or
- (c) costs incurred by that Director or Employee in defending any criminal proceeding in which he or she is acquitted.

The Directors who vote in favour of authorising the effecting of insurance under this Clause 11.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

**11.5 Definitions** - For the purposes of this Clause 11 only:

- (a) the term 'Director' includes a former director of the Company;
- (b) the term 'Employee' includes a former employee;
- (c) 'effect insurance' includes pay, whether directly or indirectly, the costs of the insurance; and
- (d) 'indemnify' includes relieve or excuse from liability, whether before or after the liability arises; and 'indemnity' has a corresponding meaning.

## PART XII

### **12. CONTRACTING BY THE COMPANY**

**12.1 Method of contracting** - The Company may enter into a contract or other enforceable obligation in any manner permitted by the Act. The Board may by resolution determine either generally or in any particular case that a contract or other enforceable obligation may be entered into on behalf of the Company by any person or class of persons.

**12.2 Seal** - Unless and until the Board otherwise resolves, the Company shall continue to have a Seal. The Board shall provide for the safe custody of the Seal which shall only be used by the authority of the Board or a committee of the Directors authorised by the Board to do so, and every instrument to which the Seal is affixed shall be signed by:-

- (a) two or more Directors of the Company; or

- (b) a Director and the Secretary whose signatures must be witnessed; or
- (c) any other person or persons authorised by the Directors in accordance with Clause 12.1, whose signature or signatures must be witnessed.

12.3 **Seal for use overseas** - The Company may have an official seal for use overseas, which use shall be regulated by the Board.

12.4 **Alternate Directors** - For the purposes of Clauses 12.1 and 12.2, any Alternate Director may execute a contract or other enforceable obligation or witness the affixing of the Seal, notwithstanding that the events necessary to enable that Alternate Director to act pursuant to Clause 10.13 have not occurred. Where, under Clause 12.1 and 12.2, two Directors are required to execute a contract or other enforceable obligation or witness the Seal, it shall not be permissible for both a Director and the Alternate Director of that Director to execute the contract or other enforceable obligation or witness the Seal.

### PART XIII

#### 13. ACCOUNTS; AUDITORS

13.1 **Accounts to be kept** - The Board shall cause accounting records to be kept which comply with the Act and the Financial Reporting Act 1993, The Books of account shall subject to the Act be kept at such place or places as the Board shall think fit, and shall always be open to the inspection of any of the Directors and, to the extent required by the Act or authorised by the Board, by the Company at a meeting of Shareholders.

13.2 **Financial statements etc to be made out yearly** - Once at least in every year the Board shall cause to be prepared and laid before the Company at a meeting of Shareholders such financial statements and reports as are required by law.

13.3 **Financial statements etc to be sent to persons entitled** - A copy of every financial statement (including every document required by law to be annexed thereto) which is to be laid before the Company at a meeting of Shareholders together with a copy of the Auditors report shall be sent to all persons entitled to receive notices of meetings of Shareholders of the Company in accordance with the Act and the Rules.

13.4 **Appointment of Auditor** - An Auditor shall be appointed and his duties regulated in accordance with the Act.

### PART XIV

#### 14. LIQUIDATION

Upon liquidation of the Company the following shall apply:

14.1 **Proportionate Distribution of assets** - Subject to:

- (a) the terms upon which any Class of Securities in the Company have been issued; and
- (b) Clauses 14.2, 14.3 and 14.4 below;

the surplus assets of the Company (if any) shall be distributed among the Shareholders in proportion to their shareholding.

14.2 **Distribution in kind** - The liquidator may with the approval of a Special Resolution of the Company:

- (a) divide amongst the Shareholders in kind the whole or any part of the surplus assets (whether they consist of property of the same kind or not);
- (b) vest the whole or any part of any surplus assets in trustees upon trust (in general terms set out in the resolution) for the benefit of the Shareholders of the Company;

provided that no Shareholder shall be compelled to accept any property whereon there is any liability.



14.3 **Liquidator's powers** - For the purposes of Clause 14.2 the liquidator may, as the liquidator considers fair:

- (a) attribute values to specific assets;
- (b) determine how the division of assets will be carried out as between the Shareholders or different Classes of Shareholders; and/or
- (c) determine the specific terms of any trust for Shareholders.

14.4 **Partly paid shares** - If any payment is due to the Company in respect of any Shares the liquidator may deduct or require such payment before making a Distribution of cash or asset to the holder of those Shares.

## PART XV

Passed by special resolutions of shareholder dated 28 Sep 2006.
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## 15. COMPLIANCE WITH ASX LISTING RULES

15.1 If and for so long as the Company is admitted to the official list of the ASX, the following shall apply:

- (a) notwithstanding anything contained in this Constitution, if the ASX Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require 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);
- (d) 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;
- (e) 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
- (f) 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.