

Constitution

PaySauce Limited



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CONSTITUTION OF PAYSAUCE LIMITED

1 Definitions and Interpretation

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

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

Companies Act means the Companies Act 1993.

Company means PaySauce Limited (company number 1719868).

Constitution means this constitution of the Company as amended from time to time.

Class means a class of equity securities in the Company having attached to them identical rights, privileges, limitations and conditions, and includes or excludes equity securities which NZX in its discretion deems to be, or not to be, of that class.

Director means a person appointed as a director of the Company.

Listed has the meaning given to it in the Rules.

Minimum Holding means for so long as the Company is Listed, the same meaning as given to the term in the Rules or otherwise such level of equity security holding as unanimously approved by the Board.

NZX means NZX Limited and includes its successors and assignees and as the context permits any duly authorised delegate of NZX (including the NZ Markets Disciplinary Tribunal and its successors).

Ordinary Resolution is a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

Personal Representative means:

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

Rules means the NZX Listing Rules in force from time to time except to the extent of any Ruling relevant to the Company.

Ruling has the meaning given to it in the Rules.

Share means a share in the capital of the Company issued, or to be issued, by the Company, as the case may require.

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

Special Resolution means a resolution approved by a 75% majority of the votes of those Shareholders entitled to vote and voting on the question.

1.2 Construction – In this Constitution, unless the context otherwise requires:

- (a) any expression not defined in this Constitution but defined in either the Companies Act or the Rules shall bear the same meaning in this Constitution as in the Companies Act or in the Rules;
- (b) words importing the singular number shall include the plural, and vice versa;
- (c) words importing persons include firms and corporations and firm includes partnership;

- (d) headings shall not affect the interpretation of this Constitution;
- (e) if there is any conflict between a provision in this Constitution and a provision in the Companies Act which is expressly permitted to be altered by this Constitution, the provision, word or expression in this Constitution prevails;
- (f) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (g) a reference to a Rule includes that Rule as from time to time amended or substituted; and
- (h) the words “written” and “writing” include electronic communications and any other means of communication resulting in permanent visible reproduction.

2 General

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

2.2 **Powers of Shareholders** – Unless otherwise specified in the Companies Act or this Constitution, any power reserved to Shareholders may be exercised, and any approval of Shareholders may be given, by Ordinary Resolution.

2.3 **Purpose** – The purpose of the Company is to deliver returns to Shareholders whilst having an overall positive impact on society and the environment.

2.4 **Directors Considerations** – In discharging their duties under this Constitution, the Companies Act and applicable company legislation, and the general law, the directors of the Company:

- (a) will include in their consideration the following factors:
 - (i) the likely consequences of any decision or act of the Company in the long term; and
 - (ii) the interests of the Company’s employees; and
 - (iii) the need to foster the Company’s business relationships with suppliers, customers and others; and
 - (iv) the impact of the Company’s operations on the community and the environment; and
 - (v) the desirability of the Company maintaining a reputation for high standards of business conduct; and
 - (vi) the interests of the Shareholders; and
 - (vii) the ability of the Company to create an overall positive impact on society and the environment; and
- (b) need not give priority to a particular factor referred to in paragraph (a) above over any other factor (included in paragraph (a) above or otherwise).

3 Relationship between Constitution and Rules

3.1 **Incorporation of Rules** – For so long as the Company is Listed:

- (a) this Constitution is deemed to incorporate all provisions of the Rules required under the Rules to be contained or incorporated by reference in this Constitution;
- (b) a security holder must not cast a vote if prohibited from doing so by the Rules; and

(c) Directors must not cast a vote if prohibited from doing so by the Rules.

- 3.2 **Compliance with Rules** – For so long as the Company is Listed, the Company must comply with the Rules. If this Constitution contains any provision inconsistent with the Rules, then the Rules prevail and that provision will be deemed to be amended or deleted to the extent necessary to make that provision consistent with the Rules.
- 3.3 **Rulings** – If NZX has granted 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, unless a contrary intention appears in this Constitution, that act or omission will be deemed to be authorised by the Rules and this Constitution.
- 3.4 **Failure to comply with Rules** – Any failure to comply with the Rules while the Company is Listed does not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of equity security holders, or other matter entered into by, or affecting the Company. However, a party to a transaction or contract who knew of the failure to comply with the Rules is not entitled to enforce that transaction or contract. This clause does not limit the rights of equity security holders against the Company or the Directors arising from the failure to comply with the Rules.
- 3.5 **Amendments to the Rules** – If the Rules are changed so that any act or omission by the Company which was formerly prohibited by the Rules, is subsequently required or permitted by the change, the act or omission is deemed to be authorised by this Constitution with effect from the date of the change.

4 Shares

- 4.1 **Classes of Shares** – Different Classes of Shares may be issued by the Company. Without limiting the foregoing or the Classes listed in section 37(2) of the Companies Act which may be issued, any Share may be issued on the basis that it:
- (a) ranks equally with, or in priority to, any existing Shares;
 - (b) confers preferential rights to distributions of capital or income;
 - (c) confers special, limited or conditional voting rights;
 - (d) is convertible;
 - (e) is limited or restricted as to transfer;
 - (f) does not confer voting rights;
 - (g) is redeemable in accordance with section 68 of the Companies Act; or
 - (h) possesses any combination of two or more of the foregoing characteristics.
- 4.2 **Section 45 Negated** – Section 45 of the Companies Act will not apply to the Company.
- 4.3 **Issue of New Shares** – Subject to this Constitution, the Companies Act and the terms of issue of any existing Shares, the Board may issue Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares at any time, to any person, and in any number it determines.
- 4.4 **Alteration of Shareholders Rights** – For the purposes of section 117 of the Companies Act, the issue of equity securities ranking equally with, or in priority to, any existing Shares, whether as to voting rights, Distributions or otherwise, is permitted (subject to this clause 4) and is deemed to not be an action affecting the rights attached to existing shares of that Class.
- 4.5 **Consolidation and Subdivision** – The Board may:
- (a) consolidate and divide the Shares or any Class; and

(b) subdivide the Shares or any Class,

in each case in proportion to those Shares or the securities in that Class, as the case may be.

- 4.6 **Shares in lieu of dividends** – The Board may issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends under section 54 of the Companies Act.
- 4.7 **Share register may be divided** – The share register may be divided into two or more registers kept in different places.
- 4.8 **Redemption of Shares** – The Company may redeem any Share which is issued as redeemable pursuant to its terms of issue and in accordance with the Companies Act (including under the procedure provided for by section 71 of the Companies Act).
- 4.9 **Company may acquire its own Shares** – The Company is permitted to purchase or otherwise acquire its own Shares from one or more Shareholders in any way permitted by the Companies Act.
- 4.10 **Company may hold its own Shares** – The Company is permitted to hold its own Shares as Treasury Stock in accordance with the Companies Act.

5 Call on Shares

- 5.1 **Power to call** – The Board may, from time to time, make calls upon the Shareholders in respect of all moneys unpaid on Shares held by them which are not payable at fixed times by the terms of issue of those Shares. The Board may revoke or postpone a call before payment is received.
- 5.2 **Timing of call** – A call shall be deemed to have been made at the time when the resolution of the Board making the call was passed.
- 5.3 **Payment of calls** – Each Shareholder will, subject to receiving at least 10 Working Days' written notice specifying the time or times, and place, of payment, pay to the Company or person appointed by the Board for the purpose at the time or times and place so specified by the Board, the amount called, and shall remain liable to do so notwithstanding the subsequent transfer of the relevant Shares. The Company is not required to give notice and particulars of a call to a subsequent holder of those Shares. A call may be made payable by instalments and may be revoked, reduced or postponed as the Board may determine.
- 5.4 **Fixed instalments deemed calls** – An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.
- 5.5 **Differential calls** – The Board may, on the issue of Shares, differentiate between the Shareholders as to the amounts to be paid in respect of the Shares and the times of payment of such amounts.
- 5.6 **Joint Shareholders** – The joint holders of a Share are jointly and severally liable to pay all calls in respect of Shares registered in their names.
- 5.7 **Default interest** – If a call in respect of a Share is not paid on or before the due date, the Shareholder from whom the call is payable will pay interest on the call from the day specified for payment by the Board to the date of actual payment at such rate as the Board may reasonably determine or as set out in the terms of issue of the Share, and will pay all expenses incurred by the Company (including reasonable legal fees) by reason of the delay in payment or non-payment. The Board may waive payment of that interest wholly or in part.
- 5.8 **Proceedings for recovery of call** – In any proceeding for recovery of a call it is sufficient to prove that:
- (a) the name of the relevant Shareholder is entered in the Share Register as the holder, or one of the holders, of the Shares to which the call relates; and

- (b) except in relation to any amount which, by the terms of issue of a share, is payable on allotment or at a fixed date, the resolution making the call is entered in the Records; and
- (c) notice of the call has been duly given,

and proof of the matters mentioned in this clause 5.8 is conclusive evidence of the debt. It is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.

6 Forfeiture of Shares

- 6.1 **Notice requiring payment of call** – If a Shareholder fails to pay any call or instalment, or any other sum that, by the terms of issue of a Share, becomes payable at a fixed time, on the due date the Board may by written notice to that Shareholder at any time after such non-payment require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.
- 6.2 **Contents of notice** – Any notice to a Shareholder under clause 6.1 must specify a further date (not earlier than 10 Working Days after the date of service of the notice) on or before which the payment is to be made, and must state that, in the event of non-payment by the specified date, the Shares in respect of which the call, instalment or other amount relates are liable to be forfeited.
- 6.3 **Forfeiture for non-payment** – If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture will include any Distribution declared in respect of the forfeited Share and not paid before the forfeiture.
- 6.4 **Cancellation of forfeiture** – A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.
- 6.5 **Effect of forfeiture** – The holder of Shares which have been forfeited ceases to be a Shareholder in respect of the forfeited Shares and have any rights in respected of the forfeited Shares, but remains liable to the Company for all money payable in respect of the forfeited Shares, until the Company receives payment in full of all outstanding amounts in respect of those forfeited Shares.
- 6.6 **Evidence of forfeiture** – An entry in the Share Register that a Share has been forfeited on a date stated in the Share Register shall be conclusive evidence of those facts as against all persons claiming to be entitled to the Share.
- 6.7 **Right of set off** – The Board may deduct from any Distribution payable to any Shareholder all sums of money as may be due from that Shareholder to the Company on account of calls, instalments on the specific Shares in respect of which the Distribution is declared, and amounts that the Company may be called on to pay under any statute or legislative enactment in respect of the Shares of a deceased holder or other holder.
- 6.8 **Disposal** – Forfeited Shares may be sold or otherwise be disposed of in such a manner as the Board determines.
- 6.9 **Proceeds of forfeited Shares** – If Shares are forfeited and sold the proceeds of sale shall first be applied in payment of all costs and expenses of such sale and any attempted sale and then in satisfaction of unpaid calls, instalments or interest. The residue, if any, will be paid to the holder of the Share at the time of its forfeiture.
- 6.10 **Disposal procedure** – Any Director may execute a transfer of the forfeited Shares in favour of the person to whom the Shares are disposed of, and the Company may receive consideration for such disposal. Upon registration of such transfer the transferee shall be the Shareholder of such Shares discharged from all calls due prior to transfer. The transferee shall not be bound to see to the application of the purchase money nor shall the transferee's title to the Shares be affected by any irregularity or invalidity in the forfeiture or disposal. The remedy of the former Shareholder, and of any

person claiming under or through the former Shareholder, shall be against the Company exclusively and in damages only.

7 Lien on Shares

7.1 Lien on Shares – The Company has a first and paramount lien on each Share registered in the name of each Shareholder (whether solely or jointly), the proceeds of sale of the Share, and all Distributions declared in respect of the Share, for:

- (a) all unpaid calls and instalments and any interest payable on such amounts, in respect of those Shares;
- (b) any amount which the Company may be called upon to pay by law in respect of those Shares, including withholding and other taxes, whether or not the due date for payment of such amounts has arrived; and
- (c) sales costs and expenses owing to the Company in respect of such Shares.

7.2 Waiver of lien – Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share will operate as a waiver of any lien which the Company may have on that share, except as provided in clause 8.

7.3 Company may sell Shares – The Company may sell any Share on which the Company has a lien, in such manner as the Board thinks fit if:

- (a) a sum in respect of which the lien exists is due and payable; and
- (b) the sum remains due and payable after the expiry of 10 Working Days after written notice demanding payment of the amount owing was given to the person entitled to receive notice of meetings of Shareholders in respect of the Shares.

7.4 Proceeds of sale – If Shares are sold pursuant to clause 7.3, the proceeds of sale shall first be applied in payment of all costs and expenses of such sale and any attempted sale and then in satisfaction of unpaid calls, instalments, interest or other amount in respect of which any lien exists. The residue, if any, will be paid to the holder of the Share immediately prior to the sale or, if applicable, to the Personal Representative of the holder. The registration of a transfer of Shares shall operate as a waiver of the lien by the Company but not as a release of any outstanding liability owed by any holder of the Share immediately prior to the sale.

7.5 Evidence – A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution will be conclusive evidence of those facts.

7.6 Sale procedure – For giving effect to any sale under clause 7.3, the Board may execute a transfer of the Shares to the transferee. The transferee will be registered as the holder of the Share discharged from all calls due prior to sale. The transferee shall not be bound to see the application of the purchase money nor shall the transferees' title to the Share be affected by any irregularity or invalidity on the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.

8 Transfer of Shares

8.1 Transferor to remain holder until registration - The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the Share Register.

8.2 Power to refuse or delay – The Board may refuse or delay the registration of a transfer of Shares if:

- (a) the Company has a lien over the Shares;

- (b) a Share certificate has not been issued in respect of the Shares, unless the form of transfer required by this clause 8 is accompanied by the Share certificate, or by evidence as to its loss or destruction and, if required, an indemnity in a form prescribed by the Board; or
- (c) registration, together with the registration of any further transfer then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than a Minimum Holding,

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

- 8.3 **Transmission on death of Shareholder** – If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, will be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder, but nothing in this clause will release the estate of a deceased joint Shareholder from any liability in respect of any Share, or constitute a release of any lien which the Company may have in respect of any Share.
- 8.4 **Joint Personal Representatives** – Where a Share is subject to the control of two or more persons as Personal Representatives, they will, for the purposes of this Constitution, be deemed to be joint holders of the Share.

9 Compulsory Sale of Less than Minimum Holdings

- 9.1 **Notice of compulsory sale** – The Company may at any time give notice to an equity security holder holding less than a Minimum Holding that if, at the expiration of 3 months after the date the notice is given, equity securities then registered in the name of the holder are less than a Minimum Holding the Company may sell those securities (including through a broker acting on the Company's behalf).
- 9.2 **Sale procedure** – The Board may authorise the transfer of equity securities sold by the Company under this clause 9 and the Shareholder is deemed to have authorised the Company to act on behalf of the holder and to sign all necessary documents relating to the sale. The purchaser of Shares sold by the Company under this clause 9 shall have no obligation to ensure the proceeds of the sale of those Shares is applied in accordance with this clause 9 nor shall the title to the Shares be affected by any irregularity or invalidity in the procedures under this Constitution in relation to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.
- 9.3 **Proceeds of sale** – The proceeds of any equity securities sold under this clause must be applied as follows:
 - (a) first, in payment of any reasonable sale expenses;
 - (b) second, in satisfaction of any unpaid calls or other amounts owing to the Company in respect of the equity securities; and
 - (c) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.
- 9.4 **Director's certificate** – A certificate, signed by a Director that records that a power of sale under this clause has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

10 Distributions

- 10.1 **Form of Distribution** – Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit, but except as provided in clause 10.2 shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.
- 10.2 **Currency of payment** – The Board, if it thinks fit, may differentiate between Shareholders as to the currency in which any Distribution is to be paid. In exercising its discretion the Board may have regard

to the registered address of a Shareholder, the register on which a Shareholder's Shares are registered and such other matters (if any) as the Board considers appropriate. If the Board determines to pay a Distribution in a currency other than New Zealand dollars, the amount payable shall be converted from New Zealand dollars in such manner, at such time, and at such exchange rate, as the Board thinks fit.

10.3 **Deductions from Distribution** – The Board may deduct from a Distribution payable to a Shareholder all such sums of money as may be due from him or her 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 to pay under law in respect of the Shares.

10.4 **Manner of payment** – A Distribution payable in cash may be paid in such manner as the Board considers fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first on the Share Register, or to such other person and in such manner as the Shareholder(s) may direct in writing.

10.5 **No interest on Distributions** – The Company is not liable to pay interest in respect of any Distribution.

10.6 **Payment of small Distribution amounts** – Where the net amount of a Distribution payable to a Shareholder is less than such minimum amount as may be determined from time to time by the Board for the purposes of this clause, the Company may, with the prior approval of that Shareholder, defer payment of the Distribution to that Shareholder until the earlier of:

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

10.7 **Unclaimed Distribution** – A Distribution unclaimed for one year after having become payable may be 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. A Distribution unclaimed for five years after having become payable, may, at the expiry of such period be forfeited by the Board for the benefit of the Company, provided always that the Board may at any time after such forfeiture annul the same and pay such Distribution to the person producing evidence of entitlement.

11 Shareholder Meetings

11.1 **Proceedings at meetings** – The provisions of schedule 1 of the Companies Act as modified by schedule one of this Constitution governs proceedings at meetings of Shareholders. The same procedures also govern the proceedings of meetings of any interest group required to be held, with all necessary consequential modifications.

12 Appointment and Removal of Directors

12.1 **Existing Directors continue** – The Directors in office at the date of adoption of this Constitution shall continue in office subject to the provisions of this Constitution.

12.2 **Number** – The number of Directors must not at any time be more than ten nor less than three and subject to this limitation and the composition requirements of the NZX Listing Rules, the number of Directors to hold office shall be fixed from time to time by the Board.

12.3 **Comply with the Rules** – For so long as the Company is Listed:

- (a) the Company shall comply with the minimum Board composition requirements of the Rules; and
- (b) each Director shall retire from the office when required by the Rules but, subject to the Rules, shall be eligible for re-election.

12.4 **Appointment of Directors** – A Director may be appointed by:

- (a) Ordinary Resolution; or
- (b) a resolution of the Board,

and there is no shareholding qualification for Directors.

12.5 **Director ceasing to hold office** – The office of Director is vacated if the person holding that office:

- (a) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988;
- (b) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally;
- (c) has for more than six months been absent without permission of the Board from meetings of the Board held during that period;
- (d) resigns in accordance with the Companies Act;
- (e) is removed from office by Ordinary Resolution or otherwise in accordance with the Companies Act; or
- (f) becomes disqualified from being a Director pursuant to the Companies Act.

13 Remuneration of Directors

13.1 **Authorisation** – The Board may, subject to the Rules (where applicable), exercise the power conferred by section 161 of the Companies Act to authorise remuneration and other benefits to and for Directors.

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

13.3 **Special remuneration** – Without limiting clause 13.1, the Board may authorise special remuneration to any Director who is or has been engaged by the Company or a subsidiary to carry out any work or perform any services which is not in the capacity of a director of the Company or a subsidiary.

14 Alternate Directors

14.1 **Appointment** – Each Director may appoint, by notice to the Company, any person who:

- (a) is not already a Director;
- (b) is approved by a majority of the other Directors; and
- (c) is not disqualified under the Companies Act or this Constitution from being a Director,

to act as an alternate Director in his or her place.

14.2 **Alternate Director powers** – While acting in the place of the Director who appointed him or her, an alternate Director:

- (a) has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum, and participate in, a meeting of the Board, and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director); and

- (b) is also subject to the same terms and conditions of appointment as that Director, except that he or she is not entitled to receive remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointer as the appointer may direct by notice in writing to the Company.

14.3 Termination of appointment – The appointment of an alternate Director terminates automatically:

- (a) if the Director who appointed him or her ceases to be a Director;
- (b) on the occurrence of any event which would cause him or her to vacate office if he or she were a Director; or
- (c) on removal in accordance with clause 14.4.

A Director retiring by rotation and being re-elected is not to be treated as having ceased to be a Director for the purposes of this clause.

14.4 Removal of Alternate – The appointing Director or the Board by majority vote may at any time revoke the appointment of any alternate Director by written notice to that alternate Director.

15 Indemnity and Insurance

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

15.2 Other indemnities – The Company may, with the prior approval of the Board, indemnify a director or employee of 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 a director or employee; or
- (b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability,

not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Companies Act or, in the case of an employee, of any fiduciary duty owed to the Company or a related company.

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

16 Proceedings of Directors

16.1 Proceedings governed by Schedule Two – The provisions set out in schedule two to this Constitution govern the proceedings of the Board and, except to the extent the Board determines otherwise, govern the proceedings of any committee of Directors. Schedule 3 of the Companies Act shall not apply to the Company.

17 Method of Contracting

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

- (a) two or more Directors;
- (b) any Director or another person authorised by the Board, whose signature must be witnessed; or

(c) one or more attorneys appointed by the Company in accordance with this Constitution.

17.2 **Attorneys** – The Company may, by deed, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney within the powers of the appointing deed binds the Company.

18 Notices

18.1 **Joint Shareholders** – A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share.

18.2 **Shareholder deceased or bankrupt** – If a Shareholder dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Companies Act to the Personal Representative of the Shareholder at the address supplied to the Company for that purpose.

19 Liquidation

19.1 **Division of surplus assets** – Subject to the Companies Act and in particular the satisfaction of the claims of creditors of the Company under section 312 of the Companies Act, the liquidator may divide among the Shareholders in kind the whole or any part of the surplus assets of the Company (whether they consist of property of the same kind or not). The liquidator may for that purpose set such value as he or she deems fair upon any property to be divided and may determine how the division shall be carried out as between the Shareholders or different Classes of Shareholders. The liquidator shall divide the surplus assets of the Company so as to ensure that each Shareholder receives his or her right to share in the distribution of the surplus assets of the Company pro rata according to the Shares held by the Shareholder.

19.2 **Distribution in kind** – With the approval of an Ordinary Resolution, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the surplus assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

(a) attribute values to assets as the liquidator considers appropriate; and

(b) determine how the division will be carried out between the Shareholders or different Classes of Shareholders.

19.3 **Trusts** – With the approval of an Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of Shareholders. The liquidator may determine the terms of the trust.

SCHEDULE ONE

Proceedings at Meetings of Shareholders

1 Chairperson

1.1 **Chairperson** – Subject to clause 1.2(c) of this Schedule One, if the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she must chair the meeting.

1.2 **Directors may appoint chairperson** – If:

- (a) no chairperson of the Board has been elected;
- (b) at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting; or
- (c) the chairperson of the Board considers it not proper or desirable to act as chairperson, (either in relation to the entire meeting or in relation to any particular business to be considered at the meeting),

the Directors present may elect one of their number to chair the entire meeting or that part of the meeting which relates to particular business.

2 Notice of Meetings

2.1 **Written notice** - Written notice of the time and place of a meeting of Shareholders must be sent or electronically delivered to every Shareholder entitled to receive notice of the meeting and to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting.

2.2 **Contents of notice** - A notice of meeting 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;
- (b) the text of any Special Resolution to be submitted to the meeting;
- (c) the text of any resolution for the purposes of section 207I or 207J of the Companies Act to be submitted to the meeting;
- (d) in the case of Special Resolution required by section 106(1)(a) or (b) of the Companies Act, the right of a Shareholder under section 110 of the Companies Act; and
- (e) that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder.

2.3 **Waiver of notice irregularity** - 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.

2.4 **Accidental omission** - 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.

2.5 **Notice of adjourned meeting** - If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

3 **Methods of holding meetings**

3.1 **Methods** - A meeting of Shareholders may be held by a quorum of the Shareholders:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) participating in the meeting by means of audio, audio and visual, or electronic communication; or
- (c) by a combination of such methods.

4 **Quorum**

4.1 **Requirement for quorum** - No business may be transacted at a meeting of Shareholders if a quorum is not present.

4.2 **Quorum** - Subject to clause 4.3 of this schedule, a quorum for a meeting of Shareholders shall be three Shareholders present either in person, by proxy or by corporate representative. To avoid doubt, a shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

4.3 **Lack of quorum** - If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called by the Board on the request of Shareholders under section 121(b) of the Companies Act, the meeting is dissolved; and
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time, and place as the Directors may appoint. If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies and their corporate representatives present are a quorum.

5 **Adjourned and Dissolved Meetings**

5.1 **Chairperson's discretion** – The chairperson at the meeting may, at any time during a meeting at which a quorum is present, adjourn the meeting (including to a later time at the same meeting or to an adjourned meeting).

5.2 **Adjourned meetings** – No business can be transacted at an adjourned meeting other than the unfinished business from the original meeting. A notice of meeting need not be prepared for the adjourned meeting provided that the adjourned meeting is held within 30 days of the original meeting.

5.3 **Unruly meetings** – The chairperson at the meeting may adjourn or dissolve the meeting if in their opinion the meeting has become so unruly, disorderly or protracted that the business of the meeting cannot be conducted in a proper and orderly manner. Such decision is at the sole discretion of the chairperson of the meeting and reasons for the decision need not be given.

5.4 **Unfinished business** – If a meeting is to be dissolved and there is an item of unfinished business which is yet to be voted on, then the chairperson of the meeting may direct that such item(s) be put to the vote by a poll without further discussion.

6 **Voting**

6.1 **Number of votes** - Subject to any applicable voting restrictions or rights or restrictions for the time being attached to any Class:

- (a) on a poll every Shareholder has one vote in respect of each Share held; or
- (b) in any other case, every Shareholder has one vote.

- 6.2 **Poll** – For so long as the Company is Listed voting at a meeting of Shareholders must be undertaken by way of a poll.
- 6.3 **Voting at meeting** – If clause 6.2 of this Schedule One does not apply, then unless a poll is demanded, voting at the meeting will be by whichever of the following methods is determined by the chairperson of the meeting:
- (a) voting by voice;
 - (b) voting by show of hands;
 - (c) voting by digital means; or
 - (d) an appropriate combination of the above which in all cases gives each Shareholder forming part of the quorum the opportunity to clearly indicate their assent or dissent.
- 6.4 **Declaration by chairperson** – Except where voting has been undertaken by a poll, a declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact.
- 6.5 **Right to demand poll** - At a meeting of Shareholders a poll may be demanded by:
- (a) the chairperson of the meeting;
 - (b) not less than five Shareholders having the right to vote at the meeting;
 - (c) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (d) a Shareholder or Shareholders holding Shares that confer a right to vote on the resolution and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.
- 6.6 **When poll may be demanded** - A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 6.7 **Poll result** - The chairperson of the meeting may declare the result of a poll either at or after the meeting when the outcome is known (regardless of whether all votes have been counted).
- 6.8 **Joint Shareholders** - Where two or more persons are registered as joint Shareholders, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- 6.9 **Chairperson's casting vote** - The chairperson of the meeting of Shareholders is not entitled to a casting vote.
- 6.10 **Record date for voting** – The Board may determine in a notice of meeting for the purpose of voting at that meeting that only those Shareholders as at 5pm on a day not more than two Working Days before the date of the meeting may vote at the meeting and only in respect of the Shares held in their name at that time.
- 7 Proxies**
- 7.1 **Right to vote** - A Shareholder may exercise the right to vote at a meeting either by being present in person or by proxy.
- 7.2 **Rights of proxy** – A proxy for a Shareholder is entitled to attend and be heard at the meeting and to demand or join in demanding a poll, as if the proxy were the Shareholder.

- 7.3 **Notice of appointment** - A proxy must be appointed by notice in writing signed by the appointing Shareholder or, in the case of an electronic notice, sent or submitted by the Shareholder. The notice must state whether the appointment is for a particular meeting or for a specified term.
- 7.4 **Multiple proxies** - A Shareholder may appoint more than 1 proxy for a particular meeting, provided that more than one proxy is not appointed to exercise the rights attached to a particular Share held by the Shareholder.
- 7.5 **Production of notice** - No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or at such other address, and by such time period, as is specified for that purpose in the notice convening the meeting. The notice of meeting may provide for different matters for different kinds of proxies (for example, a different specified time for the production of a proxy by electronic means).
- 7.6 **Proxy form with notice of meeting** – A proxy form must be sent by the Company with each notice of meeting.
- 8 Postal Votes**
- 8.1 **Board discretion** – The Board may at its discretion determine that Shareholders may exercise the right to vote at a meeting by casting postal votes. Where postal votes are permitted, clause 7 of the first schedule of the Companies Act shall apply together with any other procedures determined by the Board. Postal votes (whether submitted electronically or not) must be received by the Company at least 48 hours prior to the meeting.
- 9 Minutes**
- 9.1 **Minutes must be kept** – The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 9.2 **Minutes are evidence** – Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.
- 10 Shareholder Proposals**
- 10.1 **Shareholder proposals** - A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Companies Act apply to any notice given pursuant to this clause.
- 11 Corporate Representative**
- 11.1 **Appointment of representative** - A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.
- 12 Other proceedings**
- 12.1 **Chairperson may regulate** – Except as provided in this Schedule One, and subject to this Constitution, the chairperson of a meeting of Shareholders may regulate the proceedings at the meeting.

SCHEDULE TWO

Proceedings at meetings of Board

1 Chairperson

- 1.1 **Chairperson** - The Directors may elect one of their number as chairperson of the Board.
- 1.2 **Term of office** - The Director elected as chairperson holds that office until he or she dies or resigns or a new chairperson is elected by the Board.
- 1.3 **Election for particular meetings** - If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

2 Notice of Meeting

- 2.1 **Convening of a meeting** - A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause.
- 2.2 **Notice of meeting** – The notice of meeting must be a written notice that includes the date, time and place of the meeting and the matters to be discussed. The notice of meeting may be:
- (a) delivered by hand to a Director;
 - (b) sent to the address of a Director; or
 - (c) emailed to the email address of a Director.

The address or email address of a Director that is to be used is the most recent address or email address which the Director has previously provided to the Company for communication purposes. If an address or email address has not previously been provided, the notice of meeting may be sent to such Director's last place of employment or residence that is known to the Company.

- 2.3 **Period of notice** - Not less than two calendar days' notice of a meeting must be given to each Director. However, if the chairperson believes it is necessary to convene a meeting of the Board as a matter of urgency, such notice as is practicable in the circumstances (and ideally, but not necessarily, at least two hours' notice) may be given and a written notice of meeting may be dispensed with provided that all Directors are contacted by telephone as soon as reasonably practicable and advised of the time and place of the meeting and the matters to be discussed.
- 2.4 **Absent directors** – Notice need not be given to a Director who is ordinarily resident in New Zealand but at the time of the notice is absent from New Zealand. However, if such Director has an alternate Director, then notice must be given to that person.
- 2.5 **Waiver of notice irregularity** - An irregularity in the notice is waived if all Directors entitled to receive the notice attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice agree (whether before, during or after the meeting) to the waiver.

3 Forms of Meeting

- 3.1 **Methods of Meeting** - A meeting of the Board may be held by a number of the Directors who together constitute a quorum:
- (a) being assembled together at the place, date, and time appointed for the meeting;
 - (b) by means of audio, or audio and visual, communication by which all Directors can simultaneously hear each other throughout the meeting; or

(c) by a combination of the above methods.

3.2 **Written resolution in lieu of meeting** - A resolution in writing, signed or assented to by three quarters of the Directors then entitled to receive notice of a Board meeting and entitled to vote on the relevant resolution is as valid and effective as if it had been passed at a meeting of the Board duly convened and held provided those Directors would constitute a quorum for consideration of the resolution at a meeting of the Board. Any such resolution may consist of several documents (including PDF counterparts) in similar form, each signed by one or more Directors. A copy of any such resolution must be entered in the records of the Company. The Company will within seven days after any resolution is passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.

4 **Quorum**

4.1 **Quorum** - A quorum for a meeting of the Board is three Directors. No business may be transacted at a meeting of Directors if a quorum is not present.

4.2 **Alternate Director may be included** – In accordance with this Constitution an alternate Director present at a meeting may be included for the purposes of establishing a quorum.

4.3 **Lack of a quorum** - If a quorum is not present within 30 minutes after the time appointed for the meeting, the chairperson will adjourn the meeting automatically until the following day at the same time and place. Directors present at the adjourned meeting are deemed to constitute a quorum.

5 **Voting**

5.1 **Voting** - Every Director has one vote. A Director must not vote where that Director is not permitted to vote.

5.2 **Chairperson** – In the case of an equality of votes, the chairperson will have a casting vote.

5.3 **Majority** - A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of the resolution. Any Director who abstains from voting shall not be deemed to have voted for or against the matter being voted on and accordingly shall not be required to execute any Directors' certificates required under the Companies Act.

6 **Minutes**

6.1 **Minutes** - The Board must ensure that minutes are kept of all proceedings at meetings of the Board. Minutes that have been signed correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings.

7 **Other Proceedings**

7.1 **Procedure** - Except as provided in this Schedule Two, the Board may regulate its own procedure.