

Constitution of PaySauce Limited

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Constitution of PaySauce Limited

1. INTERPRETATION

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

"**Act**" means the Companies Act 1993;

"**ASX**" means ASX Limited ACN 008 624 691 or the Australian Securities Exchange operated by it (as the context requires);

"**ASX Listed**" means, in respect of the Company, while the Company is admitted to the official list of ASX;

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

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

"**Class**" means a class of Financial Products having identical rights, privileges, limitations and conditions and includes or excludes Financial Products which NZX in its discretion deems to be of or not of that Class;

"**Company**" means PaySauce Limited (company number 1719868);

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

"**Director**" means a person appointed as a director of the Company;

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

"**Equity Security**" means an Equity Security, as defined in the NZX Listing Rules, which has been issued, or is to be issued, by the Company, as the case may require;

"**Financial Product**" has the meaning given to that term in the NZX Listing Rules.

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

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

"**Listed**" has the meaning given in the NZX Listing Rules;

"**Main Board**" means the main board financial product market operated by NZX;

"**Minimum Holding**" has the meaning given in the NZX Listing Rules;

"**NZX Listing Rules**" means the listing rules of the Main Board, in force from time to time;

"**NZX**" means NZX Limited, its predecessors, successors and assigns and as the context permits includes any duly authorised delegate of NZX (including the Tribunal);

"Ordinary Resolution" means a resolution passed by a simple majority of the votes of shareholders of the Company entitled to vote and voting on the resolution;

"Personal Representative" means:

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

"Representative" means a person appointed as a proxy or representative under clause 17 or a Personal Representative;

"Ruling" has the meaning given in the NZX Listing Rules;

"Share" means a share 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;

"Share Register" means the share register for the Company kept in accordance with the Act;

"Share Registrar" means an agent appointed by the Company to maintain the Share Register;

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

"Tribunal" has the meaning given in the NZX Listing Rules.

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

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

- (e) the singular includes the plural and vice versa and one gender includes the other genders;
- (f) the words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (g) the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (h) references to the Company's previous constitution include that constitution as amended from time to time; and
- (i) words or expressions defined in the Act or the NZX Listing Rules have the same meaning in this Constitution except as otherwise expressly provided in this Constitution.

1.3 Constitution to prevail over Act: If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which can be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

1.4 Powers of Shareholders: Unless otherwise specified in the Act or this Constitution any power reserved to Shareholders may be exercised and any approval of Shareholders may be given by Ordinary Resolution.

2. THE COMPANIES ACT AND NZX LISTING RULES

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

2.2 Incorporation of NZX Listing Rules: While the Company is Listed, those provisions of the NZX Listing Rules which are required by the NZX Listing Rules to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification.

2.3 NZX Listing Rules prevail: While the Company is Listed, if there is any provision in this Constitution that is inconsistent with the NZX Listing Rules relevant to the Company, the NZX Listing Rules shall prevail, and that provision shall be deemed to be amended or deleted to the extent necessary to make that provision consistent with the NZX Listing Rules. No provision in this Constitution will prohibit or restrict any action which is or may be permitted by the Listing Rules or the NZX to be taken by the Company, the Board, each Director or the Shareholders of the Company.

2.4 Compliance with NZX Listing Rules: Subject to:

- (a) the terms of any Ruling from time to time given by NZX; and
- (b) the requirements of the Act and any other applicable legislative or regulatory requirement,

the Company shall, for so long as it is Listed, comply with the NZX Listing Rules.

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

2.6 **ASX Listing Rules:** While the Company is listed on the ASX, it will comply with ASX Listing Rule 1.15 and all other ASX Listing Rules that apply to the Company that are in force from time to time, even if quotation of its Shares is deferred, suspended or subject to a trading halt. In the event there is a conflict between an ASX Listing Rule that applies to the Company and an applicable NZX Listing Rule, the directors will take all reasonable steps to seek and obtain a waiver of the inconsistent ASX Listing Rule from the ASX.

2.7 **Effect of failure to comply:** Failure to comply with:

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

shall not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of Shareholders, or other matter entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract. This clause does not limit the rights of any holder of Financial Products of the Company against the Company or the Directors arising from failure to comply with the NZX Listing Rules or those provisions of this Constitution.

2.8 **References to Listing Rules:** A reference in this Constitution to a specific NZX Listing Rule includes that NZX Listing Rule as it may be amended from time to time and any NZX Listing Rule which may be substituted for that Listing Rule.

2.9 **Cessation:** Clauses 2.2 to 2.7 apply only for so long as the Company is party to a listing agreement with NZX or ASX (as the case may be). If the Company ceases to be party to a listing agreement with NZX or ASX (as the case may be) those clauses shall cease to have effect in so far as they relate to the Company's Listing on the Main Board or ASX official list (as the case may be).

3. RIGHTS ATTACHING TO SHARES

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

- (a) the right on a poll at a meeting of Shareholders to one vote on each resolution (subject to clause 16.4 in the case of Shares which are not fully paid);
- (b) the right to an equal share in dividends authorised by the Board; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company.

3.2 **New Shares:** Different Classes of Shares may be issued by the Company. Without limiting the Classes which may be issued, any Share may be issued upon the basis that it:

- (a) ranks equally with, or in priority to, existing Shares in the Company;
- (b) confers preferential rights to distributions of capital or income;
- (c) confers special, limited or conditional voting rights;
- (d) does not confer voting rights;
- (e) is redeemable in accordance with section 68 of the Act; or
- (f) are convertible.

3.3 **Alteration of rights:**

- (a) The Company shall, before taking action affecting the rights attached to any Shares, comply with the provisions of sections 116 and 117 of the Act.
- (b) The issue by the Company of any further Shares or Equity Securities which rank equally with, or in priority to, any existing Shares or Equity Securities, whether as to voting rights or distributions, shall not be deemed to be an action affecting the rights attached to those existing Shares or other Equity Securities.

4. ISSUE OF NEW EQUITY SECURITIES

4.1 **Issue of new Equity Securities:** The Board may issue Shares or other Equity Securities to any person and in any number it thinks fit provided that while the Company is Listed, the issue is made in compliance with the NZX Listing Rules and, where relevant, the ASX Listing Rules. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Shares by the Company.

4.2 **Consolidation and subdivision of Equity Securities:** 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 Shares in that Class, as the case may be.

4.3 **Bonus issues:** Subject to any applicable provisions of this Constitution, the Board may resolve to apply any amount which is available for distribution to shareholders either:

- (a) in paying up in full Shares or other Financial Products of the Company to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) if applicable, the holders of any other Financial Products of the Company who are entitled by the terms of issue of those Financial Products to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in clause 4.3(a)(i),

or partly in one way and partly in the other.

5. ACQUISITION AND REDEMPTION OF EQUITY SECURITIES AND FINANCIAL ASSISTANCE

5.1 **Powers:** The Company may:

- (a) purchase or otherwise acquire Shares issued by it from one or more Shareholders;
- (b) purchase or otherwise acquire other Equity Securities from one or more holders;
- (c) hold any Shares or other Equity Securities so purchased or acquired; and
- (d) redeem any redeemable Shares or other Equity Securities held by one or more holders,

in accordance with the provisions, and subject to the restrictions, of the Act, this Constitution, the NZX Listing Rules and, where relevant, the ASX Listing Rules.

5.2 **Financial assistance:** The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of any Shares or other Equity Securities issued, or to be issued, by the Company unless the giving of that assistance is in accordance with the provisions of the Act, the NZX Listing Rules and, where relevant, the ASX Listing Rules.

6. CALLS ON SHARES

6.1 **Board's power:** The Board may, by notice in writing to a Shareholder or Shareholders, make calls in respect of all moneys unpaid on Shares and which are not, by the terms applicable to the Shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.

6.2 **Liability to pay:** Each relevant Shareholder shall be liable (jointly and severally in the case of joint Shareholders) to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant Shares.

- 6.3 **Differential calls:** Calls may be made in respect of certain Shares and not others and for different amounts in respect of certain Shares from others. The Board may, at the time of issue of any Shares, differentiate between the holders as to the amount of calls to be paid and the time of payment.
- 6.4 **Instalments:** The Board may determine that a call is payable by instalments.
- 6.5 **Time call is made:** A call shall be deemed to have been made at the time the resolution of the Board authorising the call was passed.
- 6.6 **Interest on overdue amounts:** A call not paid when due shall bear interest from the due date to the date of actual receipt by the Company at the rate fixed in the notice of call or the terms applicable to the relevant Shares or, if there is no such rate, as the Board determines. The Board may waive payment of interest wholly or in part.
- 6.7 **Unpaid instalments:** Any amount payable on issue of a Share or on any fixed date or as an instalment of a call shall be deemed to be a call and if not paid, the provisions of this clause 6 and clauses 7 and 8 shall apply as if that sum had become payable by the making of a call.
- 6.8 **Calls in advance:** The Board may, in its discretion, receive any moneys uncalled and unpaid upon any Shares in advance of its due date and, may pay interest on the amount received at such rate (if any) and on such terms as the Board determines.
- 6.9 **Evidence:** In any proceedings for the recovery of moneys due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:
- (a) the name of the Shareholder is entered in the Share Register as the holder (or one of the holders) of the relevant Shares;
 - (b) the resolution making the call is recorded in the records of the Company; and
 - (c) notice of the call was sent to the Shareholder,
- shall be conclusive evidence of the indebtedness of the Shareholder to the Company in respect of the call.

7. LIEN ON EQUITY SECURITIES

- 7.1 **Lien on unpaid and partly paid Shares:** The Company shall have a first and paramount lien on every Equity Security which is not a fully paid Equity Security (and any dividends or other distributions in respect of that Equity Security) for:
- (a) all unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to such amounts, relating to the specific Equity Security;
 - (b) any amounts the Company may be called upon to pay under any legislation in respect of the specific Equity Security, whether or not the due date for the payment has passed; and
 - (c) sales expenses owing to the Company in respect of any such Equity Security.

7.2 **Power of sale:** If any amount due in respect of a Share on which the Company has a lien is unpaid for more than 10 working days after notice in writing demanding payment has been given to the Shareholder or the person entitled to receive notices in respect of that Share:

- (a) the Company may sell the Share on such terms as the Board determines; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Share to, or at the direction of, the purchaser.

7.3 **Absolute title of purchaser:** The title of a purchaser of any Shares sold pursuant to clause 7.2 shall not be affected by any irregularity or invalidity in any sale.

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

8. FORFEITURE OF EQUITY SECURITIES

8.1 **Notice:** If a call on an Equity Security is not paid when due, the Board may give 10 working days notice to the holder of Equity Securities requiring payment of the call, together with interest on the amount of the call and any accrued expenses incurred by the Company by reason of non-payment. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Equity Security will be liable to be forfeited.

8.2 **Forfeiture:** If the notice is not complied with the Equity Security may, before payment of the overdue amount has been made, be forfeited by resolution of the Board. Such forfeiture will include all dividends and any other distributions declared in respect of the forfeited Equity Security and not paid or satisfied before forfeiture.

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

8.4 **Application of sale proceeds:** The net proceeds of sale of any forfeited Share shall be applied in the same manner as set out in clause 7.4.

8.5 **Absolute title of purchaser:** The title of a purchaser of a forfeited Share shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Share.

8.6 **Consequences of forfeiture:** A person whose Shares have been forfeited shall cease to be a Shareholder in respect of those Shares and shall surrender the share certificate (if any) for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon until the Company receives payment in full of all money owing for those Shares.

8.7 **Evidence of forfeiture:** A certificate by a Director or any other person authorised by the Board that a Share has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

8.8 **Right of set off:** The Board may deduct from the dividends payable to any Shareholder, all sums of money as may be due from that holder to the Company on account of calls, instalments upon the specific Shares in respect of which the dividend is declared, and on account of amounts that the Company may be called upon to pay under any statute or legislative enactment in respect of the Shares of a deceased or other holder.

9. TRANSFER OF SHARES

9.1 **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.

9.2 **Right to transfer:** Subject to any restrictions contained in this Constitution, Shares may be transferred:

- (a) under a system of transfer approved under subpart 9 of Part 5 of the Financial Markets Conduct Act 2013 or pursuant to a "designated settlement system" within the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989, which is applicable to the Company;
- (b) under any other share transfer system which operates in relation to the trading of financial products on any stock exchange outside New Zealand on which Shares are listed and which is applicable to the Company; or
- (c) by an instrument of transfer which complies with this Constitution.

9.3 **Method of transfer:** A Share which is disposed of in a transaction which complies with the requirements of a system of transfer referred to in clause 9.2(a) or 9.2(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer would have complied with the provisions of the Financial Markets Conduct Act 2013 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the Company's Share Registrar.

9.4 **Forms of transfers:** An instrument of transfer to which the provisions of clause 9.3 are not applicable shall comply with the following provisions:

- (a) the form of the instrument of transfer shall be any usual or common form or any other form which the Board or the Company's Share Registrar may approve;
- (b) the instrument of transfer must be signed or executed by or on behalf of the transferor; and
- (c) where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

9.5 **Power to refuse to register:** The Board may decline to register any transfer of Shares where:

- (a) the Company has a lien on any of the Shares;

- (b) the transfer is not accompanied by the certificate (if any) for the Shares to which it relates or other evidence as the Board or the Company's Share Registrar may reasonably require to show the right of the transferor to make the transfer; 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 powers under this clause 9.5 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.

9.6 **Trusts not to be entered on registers:** The Company must not enter any notice of a trust on the Share Register, or any other register of equity securities, whether that trust is express, implied or constructive.

9.7 **Sale of less than Minimum Holding:** The Board may at any time give notice to any Shareholder holding less than a Minimum Holding of Shares of any Class that if at the expiration of three months after the date the notice is given the Shareholder still holds Shares which are less than a Minimum Holding, the Board may exercise the power of sale of those Shares set out in this clause 9.7. If that power of sale becomes exercisable the:

- (a) Board may arrange for the sale of those Shares through NZX or ASX or in some other manner approved by NZX or ASX;
- (b) Shareholder shall be deemed to have authorised the Company to act on the Shareholder's behalf and to execute all necessary documents for the purposes of that sale;
- (c) Company shall account to the Shareholder for the net proceeds of sale of the Shares (after deduction of reasonable sale expenses), which shall be held on trust for the Shareholder by the Company and paid to the Shareholder on surrender of any certificates for the Shares sold; and
- (d) title of a purchaser of any Shares sold pursuant to this clause 9.7 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

9.8 **Registration of transfers:** Every instrument of transfer shall be delivered to the Company's Share Registrar, together with such evidence as the Board or the Company's Share Registrar may reasonably require to show the right of the transferor to make the transfer.

9.9 **Participation in share transfer systems:** The Company may participate in any share transfer system approved under the Financial Markets Conduct Act 2013 and implemented by NZX or in any share transfer system which operates in relation to trading in financial products on any other stock exchange on which Shares are listed and, in so participating, it shall comply with the requirements of NZX or of the relevant share transfer system. The Board may register any transfer of Financial Products presented for registration in accordance with the requirements of any such system and will not be obliged to enquire as to the due execution of any transfer effected by reason of such system.

- 9.10 **Power to divide Share Register:** The Share Register may be divided into two or more registers kept in different places.
- 9.11 **Transfer of financial products other than Shares:** This clause 9 shall apply to transfers of Financial Products of the Company other than Shares with any necessary modifications.
- 9.12 **Untraced Shareholders:**
- (a) **Entitlement to sell:** The Board will be entitled to transfer to a trust (the **Trust**) set up for that purpose, the Shares of any person where three or more dividends paid in respect of the Shares in question have remained unclaimed for at least one year after having been authorised and 10 working days' prior notice to the intention of transfer the Shares to the Trust has been given.
 - (b) **Further financial products:** If any further Shares have been issued in respect of the Shares referred to in paragraph (a) above, the Board may also transfer the further Shares to the Trust notwithstanding that the requirement that three dividends remain unclaimed for at least one year after having been authorised may not have been satisfied with respect to such further Shares.
 - (c) **Sale by Trust:** If at the end of a three year period commencing on the date of transfer of the Shares to the Trust, and after 10 working days' prior notice of the intention to sell has been given, no person has claimed ownership of the Shares, the Board may arrange for the sale of those Shares through the NZX or ASX (as the case may be).
 - (d) **Sale procedures:** To give effect to any transfers or sale under paragraphs (a) to (c) of this clause, the Board may authorise some person to execute an instrument of transfer of the Shares sold to, or in accordance with the directions of, the transferee and an instrument of transfer executed by that person will be as effective as if it had been executed by the holder of, or person entitled by transmission to, the shares. The transferee will not be bound to see to the application of the purchase monies nor will title to the Shares be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.
 - (e) **Proceeds:** Upon any sale of the Shares by the Trust, the net proceeds of sale (after deduction of reasonable sale expenses) will belong to the Company. The Board will, nevertheless, agree to pay the net proceeds of sale to a claimant who produces satisfactory evidence of entitlement but the Board will have no requirement to account for any money earned on the net proceeds, which may be employed in the business of the Company or invested in such investments as determined by the Board.

10. TRANSMISSION OF SHARES

- 10.1 **Transmission on death of Shareholder:** If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Shareholder's Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder. Nothing in this clause 10.1 shall 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.

10.2 **Rights of Personal Representatives:** A Shareholder's Personal Representative is entitled to:

- (a) exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and
- (b) be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this clause 10.2(b).

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

11. DISTRIBUTIONS

11.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test may, subject to the Act and this Constitution, authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

11.2 **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 11.3 shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.

11.3 **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.

11.4 **Entitlement to dividends:** The Board shall not authorise a dividend:

- (a) in respect of some but not all the Shares in a Class; or
- (b) 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,

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

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

- 11.6 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct.
- 11.7 **No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.
- 11.8 **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.
- 11.9 **Unclaimed Distributions:** Dividends or other monetary Distributions unclaimed for more than one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for more than five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board shall nevertheless, at any time after such forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement.

12. MEETINGS OF SHAREHOLDERS

- 12.1 **Methods of holding meetings:** A meeting of Shareholders may be held by a number of Shareholders, who constitute a quorum:
- (a) being assembled together at the place, date and time appointed for the meeting; or
 - (b) participating in the meeting by means of audio, audio and visual, or electronic communication; or
 - (c) by a combination of both of the methods described in paragraphs (a) and (b).
- For the avoidance of 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.
- 12.2 **Participation by electronic means:** A Shareholder, or the Shareholder's proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if:
- (a) the Board approves those means; and
 - (b) the Shareholder, proxy or representative complies with any conditions imposed by the Board in relation to the use of these means including, for example, conditions relating to the identity of the shareholder, proxy, or representative and that person's approval or authentication (including electronic authentication).

12.3 **Meetings of other groups:** A meeting of the holders of Financial Products in an interest group may be called by the Board at any time, and shall be called on the written request of persons holding Financial Products carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the group in question. All the provisions of this Constitution relating to meetings of Shareholders apply, with all necessary modifications, to a meeting of a group of Financial Product holders, except that:

- (a) the necessary quorum is two persons holding, or representing the holders of, Financial Products in the interest group;
- (b) if the Board so elects, one meeting may be held of holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
- (c) any holder of Financial Products in the group, present in person or by Representative, may demand a poll.

13. NOTICE OF MEETINGS OF SHAREHOLDERS

13.1 **Written notice:** Written notice of the time, date 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 of the Company not less than 10 working days before the meeting. A proxy form must be sent with each notice of meeting.

13.2 **Rights of Equity Security holders and Directors:** Subject to the rights attached to any Equity Securities, 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 to holders of Financial Products carrying votes entitled to vote at meetings of Shareholders. Each Director who is not also a Shareholder shall have the same rights.

13.3 **Contents of notice:** The notice must state the:

- (a) 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) text of any Special Resolution to be submitted to the meeting and be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed by the notice;
- (c) the text of any resolution to be submitted to the meeting for the purposes of section 207I or 207J of the Act;
- (d) in the case of Special Resolutions required by sections 106(1)(a) to 106(1)(c) of the Act, the right of a Shareholder under section 110 of the 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.

13.4 **Irregularity in notice:** 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. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.

13.5 **Adjourned meetings:** If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time, date and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 13.1.

14. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

14.1 **Chairperson of the Board to act:** Subject to clause 14.2, if the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, that Director must chair the meeting unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.

14.2 **Other chairperson:** If no chairperson of the Board has been elected or if at any meeting of Shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting, or the chairperson is unwilling or unable to act for all or part of the meeting, the Directors present, if any, may elect one of their number to be chairperson of the meeting or such part of the meeting. If no Director is willing or able to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to be chairperson.

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

15. QUORUM FOR MEETINGS OF SHAREHOLDERS

15.1 **Quorum required:** Subject to clause 15.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

15.2 **Size of quorum:** A quorum for a meeting of Shareholders is present if three Shareholders having the right to vote at the meeting are present in person or by Representative.

15.3 **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 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 and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the

meeting, the Shareholders or their Representatives present will constitute a quorum.

16. VOTING AT MEETINGS OF SHAREHOLDERS

16.1 **Meetings in one place:** In the case of a meeting of Shareholders held under clause 12.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:

- (a) voting by voice; or
- (b) voting by show of hands.

16.2 **Voting by electronic means:** To the extent permitted by the Act, and if applicable, the NZX Listing Rules, the Company may allow Shareholders to vote by signifying their assent or dissent by electronic means (including, for the avoidance of doubt, voting on a personal computer, with such vote being transmitted to the meeting), instead of the Shareholder voting by another method permitted by the Act or this Constitution.

16.3 **Postal votes:** Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting a postal vote, whether on a show of hands, voice, vote or on a poll. If the Board determines that Shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the Schedule 1 of the Act together with any other procedures determined by the Board.

16.4 **Number of votes:** Subject to the provisions of clause 16.5 and subject to any rights or restrictions attached to any Share:

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

A Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

16.5 **Voting restrictions:** No Shareholder shall be entitled to vote at any meeting in respect of Shares on which any call or other moneys are due and unpaid.

16.6 **Declaration of chairperson conclusive:** A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 16.7.

- 16.7 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:
- (a) not less than five Shareholders having the right to vote at the meeting;
 - (b) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting;
 - (c) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right; or
 - (d) the chairperson.

For the purposes of this clause 16.7, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

- 16.8 **Time of demand for poll:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 16.9 **Timing of poll:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. The chairperson may determine the time and manner in which a poll on any other question is to be taken and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.
- 16.10 **Counting of votes on poll:** If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting, or exercising its right to vote by casting a postal vote, if applicable.
- 16.11 **Scrutineers:** If a poll is taken the scrutineers shall be the auditors of the Company for the time being unless they are unable or unwilling to act or unless the chairperson directs to the contrary in which case the scrutineers shall be appointed by the chairperson.
- 16.12 **Declaration of result:** The chairperson shall be entitled to declare the result of a poll upon the receipt of a certificate from the auditors setting out the maximum number of votes which could be cast at the meeting and upon receipt of notice from the scrutineers that, in the light of the auditors' certificate, sufficient votes to determine the result of the resolution have been counted. The auditors' certificate may set out the maximum number of votes which could be cast at the meeting if all persons entitled to attend and vote at the meeting did so, or it may set out the maximum number of votes which could be cast at the meeting if all persons at the meeting who are entitled to vote did vote.
- 16.13 **Chairperson not allowed casting vote:** The chairperson of a meeting is not entitled to a casting vote.
- 16.14 **Votes of joint holders:** Where two or more persons are registered as the holder of a Share, 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.
- 16.15 **Validity of votes:** In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination made in good faith shall be conclusive.

- 16.16 **Electronic voting:** The Board may permit, in relation to a particular meeting or generally:
- (a) the appointment of proxies or Representatives to be made by electronic means;
 - (b) postal votes to be cast by electronic means; and
 - (c) to the extent permitted by law, votes to be cast on resolutions at meetings of Shareholders (or of other groups) by electronic means.

The procedures in relation to such electronic appointment or electronic voting shall be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic appointment of proxies or Representatives or electronic voting in accordance with this clause, such electronic appointments may be made or electronic votes cast notwithstanding any other provision of this Constitution.

17. PROXIES AND CORPORATE REPRESENTATIVES

- 17.1 **Proxies permitted:** A Shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder. A proxy need not be a Shareholder of the Company.
- 17.2 **Form of proxy:** A proxy must be appointed by notice in writing in the form directed by the Board signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term. The proxy form must, as a minimum (so far as the subject matter and form of the resolutions reasonably permit) be framed in a manner which facilitates binary voting instructions (for and against) on all resolutions, enabling the Shareholder to instruct the proxy as to casting of the vote, and must not be sent with any name or office (e.g., "chairperson of directors") filled in as a proxy holder.
- 17.3 **Lodging proxy:** No proxy is effective in relation to a meeting unless the proxy form is received by such person (such as the Company or by the Share Registrar) at any place and by such time period specified for the purpose in the notice of meeting referred to in clause 17.2. 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).
- 17.4 **Validity of proxy vote:** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 17.5 **Corporate representatives:** 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. A representative shall have the same rights and powers as if the representative were a proxy.

18. MINUTES OF SHAREHOLDER MEETINGS

- 18.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings unless they are shown to be inaccurate.

19. SHAREHOLDER PROPOSALS

- 19.1 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. The provisions of clause 9 of Schedule 1 of the Act apply to any notice given pursuant to this clause.

20. ADJOURNED MEETINGS AND DISORDERLY MEETINGS

- 20.1 **Chairperson's discretion to adjourn meetings:** The chairperson at any time during a meeting at which a quorum is present may adjourn the meeting (including either to a later time at the same meeting or to an adjourned meeting).
- 20.2 **Provisions relating to adjourned meetings:** No business can be transacted at any adjourned meeting other than the unfinished business at the original meeting. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as the original meeting. Otherwise, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 20.3 **Adjournment of disorderly meetings:** If any meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving reasons, either adjourn or dissolve the meeting.
- 20.4 **Completion of unfinished business:** If any meeting is dissolved by the chairperson pursuant to clause 20.3, the unfinished business of the meeting shall be dealt with as follows:
- (a) in respect of any resolution concerning the approval or authorisation of a distribution, the Board may, in the exercise of the powers conferred on it by the Act, authorise the distribution;
 - (b) in respect of any resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors; and
 - (c) the chairperson may direct that any item of business which is uncompleted at the meeting, and which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion in accordance with clauses 16.9 to 16.15.

21. APPOINTMENT AND REMOVAL OF DIRECTORS

- 21.1 **Composition of the Board:** The Company shall comply with the minimum Board composition requirements of the NZX Listing Rules.
- 21.2 **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.
- 21.3 **Existing Directors to continue in office:** The Directors in office at the date of adoption of this Constitution shall continue in office subject to the provisions of this Constitution.
- 21.4 **Appointment and removal by Ordinary Resolution:** Subject to the NZX Listing Rules and, where relevant, the ASX Listing Rules, a Director may be appointed by Ordinary Resolution. All Directors shall be subject to removal from office as director by Ordinary Resolution.
- 21.5 **Appointment by Board:** Subject to the NZX Listing Rules and, where relevant, the ASX Listing Rules, the Board may at any time appoint additional Directors to fill a casual vacancy or as an addition to existing directors.
- 21.6 **Appointment of Directors to be voted on individually:** Each resolution to appoint, elect or re-elect a Director must be for the appointment, election or re-election of one Director only. Nothing in this clause **Error! Reference source not found.** shall prevent the election of two or more Directors by ballot or poll.
- 21.7 **No shareholder qualification for Directors:** There is no shareholding qualification for Directors.
- 21.8 **Vacation of office:** A Director shall cease to hold office as a Director if the Director:
- (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) becomes disqualified from being a Director pursuant to section 151 of the Act;
 - (d) resigns from office by notice in writing to the Company;
 - (e) is removed from office pursuant to this Constitution or the Act; or
 - (f) has for more than six months been absent without permission of the Board from meetings of the Board held during that period.
- 21.9 **Timing of retirement and appointment:**
- (a) A retiring Director continues to hold office:
 - (i) until he or she is re-elected at a meeting of Shareholders at which he or she retires and offers himself or herself up for re-election; or

- (ii) if he or she is not re-elected or does not offer himself or herself up for re-election, until the conclusion of the meeting of Shareholders.
- (b) If a Director is removed from office at a meeting of Shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting.
- (c) If a person who is not already a Director is appointed or elected as a Director at a meeting of Shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

22. ALTERNATE DIRECTORS

22.1 **Appointment:** Each Director may from time to time appoint any person who is not already a Director and who is approved by a majority of the other Directors to be the Director's alternate director (an **Alternate Director**). No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.

22.2 **Form of appointment and removal:** Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.

22.3 **Rights of Alternate Director:** Each Alternate Director will be entitled to:

- (a) receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
- (b) attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
- (c) in the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.

Each Alternate Director will be subject to the same duties and obligations as the Director who appointed the Alternate Director.

22.4 **Remuneration and expenses:** Each Alternate Director's:

- (a) remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
- (b) expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

22.5 **Cessation of appointment:** An Alternate Director will cease to be an Alternate Director:

- (a) if the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment;
- (b) on the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director; or

- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

23. MANAGING DIRECTOR

- 23.1 **Appointment and removal:** The Board may from time to time appoint one of the Directors to be the managing Director and on such other terms (including remuneration) as the Board determines. The Board may from time to time remove any such managing Director and appoint another or others in his or her place. Any managing Director who is removed by resolution of the Board shall have no right or claim to continue in office and his or her only remedy against the Company (if any) shall be in damages. Any Director holding the office of managing Director at the date of adoption of this Constitution shall continue in office.
- 23.2 **Resignation:** A managing Director shall, subject to the NZX Listing Rules and the provisions of any contract between him or her and the Company, be subject to the same provisions concerning resignation, removal and disqualification as the other Directors. If a managing Director ceases to hold the office of Director from any cause, he or she immediately ceases to be managing Director.
- 23.3 **No alternate managing Director:** The power to appoint alternate Directors conferred on Directors by this Constitution does not confer on any managing Director the power to appoint an alternate managing Director.
- 23.4 **Remuneration for managing Director:** A managing Director is entitled to receive such remuneration for his or her services as an employee (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Board may determine.

24. PROCEEDINGS OF THE BOARD

- 24.1 **Methods of holding meetings:** A meeting of the Board may be held either by:
- (a) a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.
- 24.2 **Notice of meeting:** A Director or, if requested by a Director to do so, an employee of the Company or a subsidiary of the Company approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause 24.2 and clause 24.3. Each Director must be given not less than two days' notice of a meeting of the Board, unless the Director waives that right or in the opinion of the chairperson or of Directors who would together constitute a quorum at the meeting, the meeting is necessary as a matter of urgency, in which event such notice as is practicable in the circumstances shall be given. Notice may be given to a Director in any of the following ways:
- (a) by telephone to the telephone number given by the Director to the Company for purposes of receiving notices, in which case the notice will be deemed to be given when the call is answered at that time;

- (b) by delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered;
- (c) by sending the notice by facsimile transmission to the facsimile number given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when sent;
- (d) by posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted; or
- (e) by sending by electronic means in accordance with any request made by the Director from time to time for such purpose, in which case the notice will be deemed to be given at the time of transmission.

- 24.3 **Contents of notice:** A notice of a meeting must specify the date, time and place of the meeting and, if the meeting is to be by means of audio or audio and visual communication, the manner in which the Director will be contacted to participate at the time of the meeting.
- 24.4 **Waiver of irregularity:** An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 24.5 **Quorum:** Unless otherwise determined by the Board, a quorum for a meeting of the Board is three Directors. No business may be transacted at a meeting of the Board unless a quorum is present.
- 24.6 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the following day at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the Directors present will constitute a quorum.
- 24.7 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the minimum number fixed by clause 21.1, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of Shareholders, but for no other purpose.
- 24.8 **Chairperson:** The Directors may elect one of their number as chairperson of the Board and determine the period for which the chairperson is to hold office. If no chairperson is elected, or if at any meeting 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.
- 24.9 **Votes:** Every Director has one vote. In the case of an equality of votes the chairperson will have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.

- 24.10 **Resolutions in writing:** A resolution in writing, signed or assented to by at least three quarters of the Directors entitled to vote on that resolution, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Each Director must be given notice of the form of the proposed resolution. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings.
- 24.11 **Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of the Board.
- 24.12 **Validity of acts:** All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:
- (a) any defect in the appointment of any Director or person acting as a Director; or
 - (b) that they or any of them were disqualified; or
 - (c) any irregularity in a notice of meeting.
- 24.13 **Other procedures:** Except as set out in this clause 24, the Board may regulate its own procedure. The provisions of Schedule 3 of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

25. DIRECTORS' REMUNERATION

- 25.1 **Authorisation:** The Board may, subject to the NZX Listing Rules and, where relevant, the ASX Listing Rules, exercise the power conferred by section 161 of the Act to authorise remuneration and other benefits to and for Directors.
- 25.2 **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.
- 25.3 **Special remuneration:** Without limiting clause 25.1 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.

26. INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

- 26.1 **Indemnity for Directors:** Subject to clause 26.3, every Director shall be indemnified by the Company:
- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or a director of a subsidiary of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
 - (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in his or her capacity as a Director or a

director of a subsidiary of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability,

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

26.2 **Other indemnities and insurance:** Subject to clause 26.3 (and to any limitations contained in any deed or agreement relating to the indemnity), the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or a related company:

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

26.3 **Exceptions:** An indemnity conferred by clause 26.1(b), or given pursuant to clause 26.2(b), shall not apply in respect of:

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

An indemnity conferred by clause 26.1, or given pursuant to clause 26.2, shall not apply in respect of any liability or costs in respect of which an indemnity is prohibited by any legislation or law.

26.4 **Express Indemnity:** Without limiting the indemnity conferred by clause 26.1 the Company may, with the prior approval of the Board, by deed or agreement grant in favour of any Director an express indemnity to the same effect as that conferred by clause 26.1, but subject to the exceptions in clause 26.3.

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

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

- (c) costs incurred by him or her in defending any criminal proceedings that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee and in which he or she is acquitted.

26.6 **Interpretation:** In this clause 26:

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

27. INTERESTS OF DIRECTORS

27.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 27.4.

27.2 **No voting by Interested Directors:** Subject to clause 27.3 of this Constitution, a Director shall not vote on a Board resolution in respect of any matter in which that Director is Interested, nor shall the Director be counted in the quorum for the purposes of that matter.

27.3 **Exception to voting:** Notwithstanding clause 27.3, a Director may vote in respect of, and be counted in the quorum for the Board for the consideration of, a matter in which that Director is Interested if that matter is one in respect of which Directors are expressly required to sign a certificate under the Act or which relates to the grant of indemnity under section 162 of the Act.

27.4 **Personal Involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to the NZX Listing Rules and, where relevant, the ASX Listing Rules and to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 36(4) of the Financial Reporting Act 2013 (prohibiting a director from acting as auditor of a company), a Director may:

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

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

28. NOTICES

- 28.1 **Method of service:** All notices, reports, accounts or documents required to be sent to a Shareholder shall be sent in the manner set out in section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a Shareholder.
- 28.2 **Service of notices outside New Zealand:** If a Financial Product holder has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand or an electronic address, then notices shall be sent to that physical address or sent electronically to such electronic address.
- 28.3 **Joint holders:** A notice may be given by the Company to the joint holders of a Financial Product by giving the notice to the joint holder named first in the register in respect of the Financial Product.

29. INSPECTION OF RECORDS

- 29.1 Except as provided in the Act or unless the Board determines otherwise in any particular case, no holder of Financial Products shall be entitled to:
- (a) inspect any records, books, papers, correspondence or documents of the Company; or
 - (b) require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

30. LIQUIDATION

- 30.1 **Distribution of surplus:** Subject to the rights of the holders of any Financial Products in the Company and to clauses 30.2 and 30.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Shareholders in proportion to their Shareholding. If any Shareholder's Shares are not fully paid up the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.
- 30.2 **Distribution in kind:** With the approval of the Shareholders of the Company by 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 as between the Shareholders or different Classes of Shareholders.
- 30.3 **Trusts:** With the approval of the Shareholders of the Company by 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 of the Company. The liquidator may determine the terms of the trust.

31. METHOD OF CONTRACTING

31.1 **Manner of execution:** A contract or other enforceable obligation may be entered into by the Company as follows:

- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
 - (i) two or more Directors;
 - (ii) any Director or another person authorised by the Board, whose signature must be witnessed; or
 - (iii) one or more attorneys appointed by the Company in accordance with this constitution;
- (b) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

31.2 **Company may appoint attorneys:** The Company may, by an instrument in writing executed in accordance with clause 31.1, 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 in accordance with the instrument binds the Company.