

**CONSTITUTION**

**OF**

**LAYBUY GROUP HOLDINGS LIMITED**

As adopted by shareholders on 23 ~~July 2020~~ [February 2023](#)

## TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	4
2.	THE COMPANIES ACT AND <del>ASX LISTING</del> <u>THE CATALIST ISSUER</u> RULES .....	6
3.	RIGHTS ATTACHING TO SHARES .....	<del>7</del> <u>6</u>
4.	ISSUE OF NEW EQUITY SECURITIES .....	8
5.	ACQUISITION AND REDEMPTION OF EQUITY SECURITIES AND FINANCIAL ASSISTANCE .....	<del>9</del> <u>8</u>
6.	CALLS ON SHARES .....	9
7.	FORFEITURE OF SHARES.....	10
8.	LIEN ON SHARES.....	<del>11</del> <u>10</u>
9.	SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN .....	11
10.	TRANSFER OF SHARES.....	11
11.	TRANSMISSION OF SHARES .....	<del>16</del> <u>15</u>
12.	MEETINGS OF SHAREHOLDERS.....	16
13.	NOTICE OF MEETINGS OF SHAREHOLDERS .....	<del>17</del> <u>16</u>
14.	CHAIRPERSON OF MEETINGS OF SHAREHOLDERS.....	<del>18</del> <u>17</u>
15.	PROCEEDINGS AT MEETINGS OF SHAREHOLDERS .....	<del>18</del> <u>17</u>
16.	VOTING AT MEETINGS OF SHAREHOLDERS.....	<del>19</del> <u>18</u>
17.	PROXIES AND CORPORATE REPRESENTATIVES .....	21
18.	MINUTES OF SHAREHOLDER MEETINGS AND SHAREHOLDER PROPOSALS .....	<del>22</del> <u>21</u>
19.	APPOINTMENT AND REMOVAL OF DIRECTORS .....	22
20.	DIRECTORS' TENURE OF OFFICE .....	<del>24</del> <u>23</u>
21.	ALTERNATE DIRECTORS .....	24
22.	MANAGING DIRECTOR.....	25
23.	PROCEEDINGS OF THE BOARD.....	<del>26</del> <u>25</u>
24.	DIRECTORS' REMUNERATION .....	<del>28</del> <u>27</u>
25.	INDEMNITY AND INSURANCE .....	28
26.	DIVIDENDS.....	<del>29</del> <u>28</u>
27.	NOTICES.....	29

28. INSPECTION OF RECORDS .....29

29. LIQUIDATION.....~~30~~29

30. METHOD OF CONTRACTING .....30

## CONSTITUTION OF LAYBUY GROUP HOLDINGS LIMITED

### 1. DEFINITIONS AND INTERPRETATION

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

“**Act**” means the Companies Act 1993.

“**Alternate Director**” has the meaning in clause 21.1.

~~“**ASX**” means ASX Limited ACN 008 624 691 or the Australian Securities Exchange operated by it (as the context requires).~~

~~“**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.~~

“**Auction**” has the meaning given to it in the [Catalist Issuer Rules](#).

“**Auction Period**” has the meaning given to it in the [Catalist Issuer Rules](#).

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

~~“**ASX Settlement**” means ASX Settlement Pty Limited ACN 008 504 532.~~

~~“**ASX Settlement Operating Rules**” means the ASX Settlement Operating Rules of ASX Settlement.~~

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

“**Catalist**” means [Catalist Markets Limited](#) (and includes its successors and assignees as the context permits), the operator of the Catalist Public Market.

“**Catalist Issuer Rules**” means the [Catalist issuer rules described as ‘Issuer Rules’ published by Catalist on the Catalist.co.nz website in the form as in force from time to time](#).

“**Catalist Public Market**” means the [licensed financial products market operated by Catalist](#).

“**Class**” means a class of Securities having identical rights, privileges, limitations and conditions ~~(ignoring differences arising from the ASX Listing Rules relating to Restricted Securities) and includes or excludes Securities which ASX in its discretion deems to be of or not of that Class.~~

“**Company**” means Laybuy Group Holdings Limited.

“**Constitution**” means this constitution, as altered from time to time.

**“Director”** means a person appointed as a director of the Company.

~~“Dispose” has the meaning given to that term in the ASX Listing Rules; and “Disposal” has a corresponding meaning.~~

**“Equity Security”** means an “equity security”, as defined in [section 8 of the ASX Listing Rules FMC Act](#), which has been issued, or is to be issued, by the Company, as the case may require.

~~“Holding Lock” has the meaning in section 2 of the ASX Settlement Operating Rules.~~

**“FMC Act”** means [the Financial Markets Conduct Act 2013](#).

~~“Issuer Sponsored Subregister” has the meaning given to that term in the ASX Listing Rules.~~

**“Managing Director”** means a managing director appointed in accordance with clause 22.

~~“Official List” means the official list of entities that ASX has admitted and not removed.~~

**“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 of that shareholder under the Protection of Personal and Property Rights Act 1988 (or a person appointed under equivalent legislation in another jurisdiction to the satisfaction of the Board), a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act.

**“Quoted”** means [shares in the Company that have been approved for trading on the Catalist Public Market in accordance with rule 3.5 of the Catalist Issuer Rules](#).

**“Representative”** means a person appointed as a proxy or representative under clause 17 or a Personal Representative.

~~“Restricted Securities” has the meaning given to that term in the ASX Listing Rules.~~

~~“Restriction Deed” has the meaning given to that term in the ASX Listing Rules.~~

~~“Restriction Instrument” means a Restriction Deed or a restriction notice in the form set out in the ASX Listing Rules or otherwise approved by ASX.~~

“**Security**” has the meaning given in the ~~ASX Listing Rules~~ FMC Act and includes Equity Securities and renounceable and non-renounceable rights to subscribe for securities.

“**Special Resolution**” means a resolution approved by a majority of 75% or more of the votes of those shareholders of the Company entitled to vote and voting on the resolution.

“**Subsidiary**” means:

- (a) a subsidiary within the meaning of section 5 of the Act (read together with sections 7 and 8 of the Act); and
- (b) an entity treated as a subsidiary within the meaning of any financial reporting standard approved in terms of section 19 of the Financial Reporting Act 2013.

“**Takeover**” means a takeover offer made under the Takeovers Code provided for in the Takeovers Regulations 2000.

1.2 **Interpretation:** 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 clauses or paragraphs are to 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 ASX Listing Rule, an ASX Operating Rule or an ASX Settlement Operating Rule includes that ASX Listing Rule, ASX Operating Rule or an ASX Settlement Operating Rule as from time to time amended, consolidated or substituted and is to be taken to be subject to any applicable waiver or exemption;~~
- (d) ~~(e)~~ the singular includes the plural and vice versa and one gender includes the other genders;
- (e) ~~(f)~~ the words “written” and “writing” include ~~facsimile~~ email communications and any other means of communication resulting in permanent visible reproduction;
- (f) ~~(g)~~ the word “person” includes any association of persons whether corporate or unincorporated, and any state or government or department or agency thereof, whether or not having separate legal personality; ~~and~~
- (g) ~~(h)~~ words or expressions defined in the Act ~~and the ASX Listing Rules~~ have the same meaning in this Constitution except as otherwise expressly provided in this Constitution; and
- (h) a reference to a Catalist Issuer Rule, includes that Catalist Issuer Rule as amended, replaced or substituted from time to time.

1.3 **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 ~~ASX LISTING~~ THE CATALIST ISSUER 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 ASX Listing Rules while listed on ASX:** If the Company is admitted to the Official List of ASX, the following clauses apply:~~

~~(a) notwithstanding anything contained in this Constitution, if the ASX Listing Rules prohibit an act being done, the act shall not be done;~~

2.2 **Application of Catalyst Issuer Rules:** For so long as any shares in the Company are Quoted:

(a) the Company must comply with the Catalyst Issuer Rules;

~~(b) nothing contained in this Constitution prevents an act being done that the ASX Listing Rules require to be done;~~

~~(c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);~~

~~(d) if the ASX Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;~~

~~(e) if the ASX Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and~~

(b) (f) if any provision of this Constitution is or becomes if this Constitution contains any provision inconsistent with the ASX Listing Rules, ~~this Constitution is deemed not to contain that provision~~ Catalist Issuer Rules, then the Catalyst Issuer Rules prevail to the extent of the inconsistency; and

(c) if Catalist has made any ruling or given any direction that is binding on the Company and which authorises any act or omission which, in the absence of that ruling or direction, would be in contravention of the Catalyst Issuer Rules or this Constitution, that act or omission will (unless an express contrary intention appears in this Constitution) be deemed to be authorised by the Catalyst Issuer Rules and this Constitution and the Company and each Director must and is authorised to give effect to that ruling or direction.

2.3 **Failure to comply with Catalyst Issuer Rules:** Any failure to comply with the Catalyst Issuer Rules, while any shares in the Company are Quoted, does not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of shareholders of the Company, 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 Catalist Issuer Rules is not entitled to enforce that transaction or contract.

2.4 **Amendments to the Catalist Issuer Rules:** If the Catalist Issuer Rules are changed so that any act or omission by the Company which was formerly prohibited by the Catalist Issuer 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.

~~2.3 **References to ASX rules:** A reference to the ASX Listing Rules, the ASX Operating Rules, ASX Settlement Operating Rules, the ASX or related matters in this Constitution has effect if, and only if, at the relevant time the Company is listed on the ASX.~~

### **3. RIGHTS ATTACHING TO SHARES**

3.1 **Existing shares:** Each ordinary share in the Company at the date of adoption of this Constitution confers on the holder the following rights (in addition to the rights set out elsewhere in this Constitution):

- (a) the right to one vote on a poll at a meeting of the Company on any resolution including any resolution to:
  - (i) appoint or remove a director or auditor;
  - (ii) adopt a constitution;
  - (iii) alter the Company's constitution, if it has one;
  - (iv) approve a major transaction;
  - (v) approve an amalgamation of the Company under section 221 of the Act; and
  - (vi) put the Company into liquidation;
- (b) subject to the rights of holders of any shares or other Equity Securities which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board; and
- (c) subject to the rights of holders of any shares or other Equity Securities which confer special rights as to surplus assets, the right to an equal share in the distribution of surplus assets of the Company.

3.2 **New shares:** Subject to clause 4, further shares in the Company (including different Classes of shares) may be issued which have any one or more of the following features:

- (a) rank equally with, or in priority to, existing shares in the Company;
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise;
- (c) confer preferential rights to distributions of capital or income;
- (d) confer special, limited or conditional voting rights;



- (e) do not confer voting rights;
- (f) are redeemable in accordance with section 68 of the Act; or
- (g) are convertible.

3.3 **Alteration of rights:** 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:

- (a) be permitted (subject to clause 4); and
- (b) 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 Power of Board to issue:

(a) ~~4.1 Power of Board to issue: The~~ Subject to the Act, this Constitution and, while any shares in the Company are Quoted, the Catalist Issuer Rules, the Board may issue shares or other Equity Securities of the Company to any person and in any number it thinks fit, ~~provided that while the Company is admitted to the Official List the issue is made in compliance with the ASX Listing Rules.~~

(b) 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:** The Board may:

- (a) consolidate and divide the Equity Securities or any Class of the Equity Securities; and/or
- (b) subdivide the Equity Securities or any Class of the Equity Securities,

~~in accordance with the ASX Listing Rules (if the Company is admitted to the Official List) and otherwise~~ in proportion to those Equity Securities or the Equity Securities 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 Securities of the Company to be issued credited as fully paid to:
  - (i) the shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
  - (ii) if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of those Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the shareholders, or at some later time, in accordance with their respective entitlements; or

- (b) in paying up any amount which is unpaid on any shares or other Securities held by the shareholders or holders 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, ~~and this Constitution and the ASX Listing Rules.~~ and this Constitution

### 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.

## 6. CALLS ON SHARES

### 6.1 Board may make calls: The Board may, from time to time, make such calls as it thinks fit upon the shareholders in respect of any amounts unpaid on any shares held by them which are not made payable at fixed times by the terms of issue of those shares. A call may be made payable by instalments. The Board may revoke or postpone any call.

### 6.2 Time of call: A call is deemed to be made at the time when the resolution of the Board making the call is passed.

### 6.3 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.

### 6.4 Notice of call: At least 14 days' notice of any call shall be given to the holder of the share in respect of which the call is made, specifying the time and place of payment.

### 6.5 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.

### 6.6 Manner of payment: A shareholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.

### 6.7 Joint shareholders: Joint shareholders are jointly and severally liable to pay all calls in respect of shares registered in their names.

6.8 **Default interest:** If a call in respect of a share is not paid on or before the due date, the shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board determines, unless the Board waives payment of interest wholly or in part.

6.9 **Proceedings for recovery of call:** In any proceedings for recovery of a call:

(a) it is sufficient to prove that:

(i) the name of the relevant shareholder is entered in the share register of the Company as the holder, or one of the holders, of the shares to which the call relates; and

(ii) 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 of the Company and notice of the call has been duly given,

and proof of the matters mentioned in this clause 6.9(a) is conclusive evidence of the debt; and

(b) it is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.

6.10 **Payment in advance of calls:** The Company may receive from any shareholder in advance any amount uncalled and unpaid upon any shares held by that shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the Board and the shareholder agree.

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

## 7. FORFEITURE OF SHARES

7.1 **Notice requiring payment of call:** If a shareholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.

7.2 **Contents of notice:** The notice shall specify a further date (not earlier than 14 days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the share in respect of which the call or instalment of a call is due, is liable to be forfeited.

7.3 **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 shall include all distributions declared in respect of the forfeited share and not paid before the forfeiture.

7.4 **Notice of forfeiture:** When a share has been forfeited, the Company shall give notice of the resolution to the shareholder in whose name the share stood immediately prior to the forfeiture, and shall enter in the share register of the Company details of the forfeiture.

7.5 **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.

7.6 **Effect of forfeiture:** The holder of a share which has been forfeited ceases to be a shareholder in respect of the forfeited share, but remains liable to the Company for all money payable in respect of the forfeited share.

## 8. LIEN ON SHARES

8.1 **Lien on shares:** The Company has a first and paramount lien upon each share, the proceeds of sale of the share, and all distributions made in respect of the share, for:

- (a) all unpaid calls owing in respect of the share and interest thereon (if any); and
- (b) any amount which the Company may be called upon to pay under any legislation in respect of the share, whether or not the due date for payment thereof has arrived.

8.2 **Waiver of lien:** Unless otherwise agreed between the Company and the relevant shareholder, the registration of a transfer of a share shall operate as a waiver of any lien which the Company may have on that share, except as provided in clause 11.2.

## 9. SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN

9.1 **Company may sell shares:** The Company may sell any forfeited share, or any share on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any share:

- (a) unless the amount in respect of which a lien exists is due and payable; and
- (b) until the expiry of 14 days after written notice demanding payment of the amount has been given to the person entitled to receive notice of meetings of shareholders in respect of the share.

9.2 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of a forfeited share or of any share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the share at the time of its forfeiture or, in the case of a share sold for the purpose of enforcing a lien, the holder immediately prior to the sale or, if applicable in either case, to the Personal Representative of the holder.

9.3 **Evidence:** A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.

9.4 **Sale procedure:** For giving effect to any sale after forfeiture of any share or for enforcing a lien over any share, the Board may authorise any person to transfer any share to the

purchaser. The purchaser shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.

## **10. TRANSFER OF SHARES**

**10.1 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.

**10.2 Right to transfer:** Subject to any restrictions under law, ~~or~~ contained in this Constitution, ~~the ASX Listing Rules or the ASX Settlement Operating Rules,~~ shares may be transferred:

- (a) under a system of transfer approved under ~~sections 376 to 387 of the Financial Markets Conduct the FMC Act 2013~~ and which is applicable to the Company;
- (b) under any other share transfer system which operates in relation to the trading of securities 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.

~~**10.3 Prevent, delay or interfere:** Subject to clauses 10.6 and 10.7, the Company and the Directors must not in any way prevent, delay or interfere with the generation of a proper ASX Settlement transfer or the registration of a paper-based transfer in registrable form of any Securities.~~

10.3 ~~**10.4 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 10.2(a) or 10.2(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 FMC 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.

10.4 ~~**10.5 Forms of transfers:**~~ An instrument of transfer to which the provisions of clause ~~10.4 10.3~~ 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.

10.5 ~~**10.6 Power to refuse to register and Holding Locks:**~~ ~~Subject to the ASX Listing Rules and the ASX Settlement Operating Rules, the The~~ Board may decline to register any ~~paper-based transfer of shares or may ask ASX Settlement to apply a Holding Lock to prevent a proper ASX Settlement transfer,~~ where:

- (a) the Company has a lien on any of the shares;
- (b) while any shares in the Company are Quoted, the transfer of the relevant shares occurs during an Auction Period and not through the Auction process as required by the Catalist Issuer Rules;
- (c) ~~(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;
- (d) ~~(e)~~ the Company is served with a court order that restricts the holder's capacity to transfer the shares;
- (e) ~~(d)~~ registration of the transfer may break any ~~law;~~ applicable law, this Constitution or, while the shares in the Company are Quoted, the Catalist Issuer Rules; or
- ~~(e) — during the escrow period of Restricted Securities;~~
- ~~(f) — if the transfer is paper-based, a law relating to stamp duty prohibits the Company from registering it;~~
- (f) ~~(g)~~ the transfer does not comply with the terms of an incentive scheme or plan of the Company;
- ~~(h) — the holder has agreed in writing to the application of a Holding Lock (the application of the Holding Lock must not breach an ASX Settlement Operating Rule);~~
- ~~(i) — the Company is otherwise permitted to do so by the ASX Listing Rules; or~~
- ~~(j) — the transfer is in breach of the ASX Listing Rules or a Restriction Instrument;~~

provided that the Board resolves to exercise its powers under this clause ~~10.6 (including resolving to ask ASX Settlement to apply a Holding Lock on shares)~~ 10.5 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, together with reasons for the refusal to register the transfer.

~~10.7 — **Restricted Securities:** For so long as the Company is admitted to the Official List, subject to clause 2.2, but otherwise despite any other provision in this Constitution:~~

- ~~(a) — A holder of Restricted Securities must not Dispose of, or agree or offer to Dispose of, the Securities during the escrow period applicable to those Securities except as permitted by the ASX Listing Rules or ASX.~~
- ~~(b) — If the Restricted Securities are in the same Class as quoted Securities, the holder will be taken to have agreed in writing that the Restricted Securities are to be kept on the Company's Issuer Sponsored Subregister and are to have a Holding Lock applied for the duration of the escrow period applicable to those Securities.~~
- ~~(c) — The Company will refuse to acknowledge any Disposal (including, without limitation, to register any transfer) of Restricted Securities during the escrow~~

~~period applicable to those Securities except as permitted by the ASX Listing Rules or ASX.~~

~~(d) A holder of Restricted Securities will not be entitled to participate in any return of capital on those securities during the escrow period applicable to those Securities except as permitted by the ASX Listing Rules or ASX.~~

~~(e) If a holder of Restricted Securities breaches a Restriction Deed or a provision of this Constitution restricting a Disposal of those Securities, the holder will not be entitled to any dividend or distribution, or to exercise any voting rights, in respect of those Securities for so long as the breach continues.~~

10.6 ~~10.8~~ **Trusts not to be entered on registers:** The Company must not enter any notice of a trust on the share register of the Company, or any other register of equity securities, whether that trust is express, implied or constructive.

10.7 ~~10.9~~ **Unmarketable parcels:**

(a) In this clause ~~10.9~~10.7:

(i) “**Marketable Parcel**” of the ~~relevant Securities~~ has the meaning given by the ASX Listing Rules; shares in the Company means:

(A) for so long as the shares are approved for trading on Catalist, a parcel of shares of not less than NZ\$500 in value based on the closing price of shares at the end of the most recently completed Auction on Catalist; and

(B) if the shares are not approved for trading on Catalist, the minimum number of shares as determined by the Board from time to time;

(ii) “**Minority Member**” means the holder of less than a Marketable Parcel of shares in the ~~relevant Securities~~ Company;

(iii) “**Notice**” means the written notice given to Minority Members in accordance with clause ~~10.9(b)~~10.7(b);

(iv) “**Notice Date**” means the date of the Notice sent by the Company to a Minority Member advising that the Company intends to sell that Minority Member’s ~~Securities~~ shares in the Company on that member’s behalf under clause ~~10.9(b)~~10.7(b);

(v) “**Purchaser**” means the person or persons (including a member or members) to whom the ~~relevant Securities~~ shares in the Company are disposed or sold in accordance with clause ~~10.9(b)~~10.7(b); and

(vi) “**Sale Consideration**” means the proceeds of any sale or other disposal of the ~~relevant Securities~~ shares in the Company of a Minority Member under this clause ~~10.9~~10.7.

- (b) Subject to the ~~ASX Listing Rules and the ASX Operating~~ Catalist Issuer Rules, the Company is entitled to sell ~~Securities~~ the shares in the Company of a Minority Member on the following conditions:
- (i) the Company must give to the Minority Member a Notice that the Company intends to invoke the power of sale contained in this clause ~~10.9~~10.7;
  - (ii) the Minority Member must be given at least six weeks from the Notice Date in which to advise the Company that the member wishes to retain the member's ~~Security~~ holding of shares;
  - (iii) if the Minority Member advises the Company under clause ~~10.9(b)(ii)~~10.7(b)(ii) that the Minority Member wishes to retain their ~~Security~~ holding of shares, the provisions of this clause ~~10.9~~10.7 will not apply; and
  - (iv) subject to clause ~~10.9(b)(iii)~~10.7(b)(iii), at the expiry of the six week period, the Company is entitled to sell any ~~Security~~ holding of shares of the Minority Member which is, at the date of sale, less than a Marketable Parcel.
- (c) For the purposes of the sale of ~~Securities~~ shares in the Company under this clause ~~10.9~~10.7, each Minority Member:
- (i) appoints the Company as the Minority Member's agent to sell all of the Minority Member's ~~relevant Securities~~ shares in the Company; and
  - (ii) appoints the Company and each of its Directors jointly and severally as the Minority Member's attorneys in that member's name and on that member's behalf to effect all transfer documents, deeds or other documents or instruments necessary to transfer the ~~relevant Securities~~ shares in the Company from the Minority Member to the Purchaser.
- (d) A sale of shares under this clause ~~10.9~~10.7 includes all dividends payable on and other rights attaching to them. The Company must bear all costs of and incidental to the sale of ~~Securities~~ shares under this clause ~~10.9~~10.7. Otherwise, the Board may decide the manner, time and terms of sale.
- (e) Subject to this clause ~~10.9~~10.7, with respect to the receipt and payment of the Sale Consideration:
- (i) the Sale Consideration must be received by the Company and paid by the Company to the Minority Member or as that Minority Member may direct;
  - (ii) the Sale Consideration received by the Company must be paid into a bank account opened and maintained by the Company for that purpose only;
  - (iii) the Company must hold the Sale Consideration in trust for the Minority Members whose ~~securities~~ shares are sold under this clause ~~10.9~~10.7 pending distribution of the Sale Consideration;



- (iv) the Company must as soon as practicable after the sale of **Securities shares** of Minority Members, and to the extent that it may reasonably do so, distribute the Sale Consideration; and
- (v) any Sale Consideration payable to a Minority Member under this **rule clause** which is unclaimed for one year after receipt by the Company may be invested or otherwise made use of by the ~~directors~~ **Directors** for the benefit of the Company until claimed or otherwise disposed of according to law. No money payable under this ~~rule clause~~ by the Company to Minority Members bears interest against the Company.
- (f) The Sale Consideration must not be sent to a Minority Member until the Company receives any certificate relating to the ~~Securities shares~~ which have been sold (or is satisfied that the certificate has been lost or destroyed).
- (g) This clause ~~10.9-10.7~~ may be invoked only once in any 12 month period.
- (h) The power to sell in this clause ~~10.9-10.7~~ lapses following the announcement of a Takeover. However, despite clause ~~10.9(g)10.7(g)~~, the procedure provided in this clause ~~10.9-10.7~~ may be started again after the close of the offers made under the Takeover.
- (i) The title of the new holder of a share sold under this clause ~~10.9-10.7~~ is not affected by any irregularity in the sale. The sole remedy of any person previously interested in the share is damages which may be recovered only from the Company.

**10.8** ~~10.10~~ **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.

**10.9** ~~10.11~~ **Participation in share transfer systems:** The Company may participate in any share transfer system approved under the ~~Financial Markets Conduct FMC Act 2013~~ and under any share transfer system which operates in relation to trading in securities on any stock exchange on which the Company's shares are traded and, in so participating, it shall comply with the requirements of the relevant share transfer system. The Board may register any transfer of Securities 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.

**10.10** ~~10.12~~ **Power to divide share register:** The share register may be divided into two or more registers kept in different places.

**10.11** ~~10.13~~ **Transfer of Securities other than shares:** This clause 10 shall apply to transfers of Securities of the Company other than shares with any necessary modifications.

## **11. TRANSMISSION OF SHARES**

**11.1 Transmission on death of shareholder:** If a shareholder dies the survivor, if the deceased was a joint shareholder, or the 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 but nothing in this clause 11 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.

**11.2 Rights of Personal Representatives:** A Personal Representative of a shareholder:

- (a) is entitled to exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the shares held by that shareholder; and
- (b) is entitled to 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 sub-clause.

**11.3 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.

**12. MEETINGS OF SHAREHOLDERS**

**12.1 Methods of holding meetings:** A meeting of shareholders may be held ~~either:~~by a quorum of the shareholders:

- (a) ~~by a number of shareholders, who constitute a quorum,~~ being assembled together at the time and place, ~~date and time~~ appointed for the meeting; or
- (b) ~~if determined by the Board, by a number of shareholders, who constitute a quorum, being assembled together at the date and time appointed for the meeting and at one or more venues at which,~~ participating in the meeting by means of audio, or audio and visual, or electronic communication ~~all participating shareholders can simultaneously hear each other throughout the meeting;~~ or
- (c) by a combination of both of the methods described in clauses 12.1(a) and 12.1(b),

and, for the avoidance of doubt, a shareholder of the Company participating in a meeting by means of audio and visual, or electronic communication is present at the meeting and part of the quorum.

**12.2 Meetings of other groups:**

- (a) A meeting of the holders of Securities in an interest group may be called by the Board at any time, and shall be called on the written request of persons holding Securities carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the interest group in question.
- (b) All the provisions of this Constitution relating to meetings of shareholders apply, with all necessary modifications, to a meeting of an interest group of Security holders, except that:

- (i) the necessary quorum is two persons holding, or representing the holders of, Securities in the interest group;
- (ii) 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 interest group; and
- (iii) any holder of Securities in the interest 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:** 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 Securities carrying votes. Each Director who is not also a shareholder shall have the same rights.

13.3 **Contents of notice:** The notice 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 judgement in relation to it;
- (b) the text of any ~~special resolution~~ Special Resolution to be submitted to the meeting; and
- (c) in the case of ~~special resolutions~~ Special Resolutions required by section 106(1)(a) or (b) of the Act, the right of a shareholder under section 110 of the Act,

and the notice must be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed by the notice.

13.4 **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.

13.5 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.

13.6 **Notice of an adjournment:** If a meeting is adjourned for less than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place. If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

## **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.

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.

## **15. PROCEEDINGS AT 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:** Subject to clause 15.3, 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.

15.4 **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.

15.5 **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).

15.6 **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.

- 15.7 **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.
- 15.8 **Completion of unfinished business:** If any meeting is dissolved by the chairperson pursuant to clause 15.7, 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.

## 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 **Audio-visual meetings:** In the case of a meeting of shareholders held under clause 12.1(b) or 12.1(c), unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson of the meeting.
- 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. 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 First Schedule of the Act together with any other procedures determined by the Board. For the purposes of clause 7(4A) of the First Schedule of the Act, postal votes that are cast using electronic means must reach the person who is authorised to receive and count postal votes at the meeting not less than 48 hours before the start of the meeting.
- 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 (and 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)).
- 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 other than at a meeting of an interest group.
- 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,and 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, provided that a poll may not be demanded if the chairperson declares a resolution has passed. 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.
- 16.11 **Scrutineers:** If a poll is taken the scrutineers (if any) 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 scrutineers setting out the maximum number of votes which could be cast at the meeting and that sufficient votes to determine the result of the resolution have been counted. The scrutineers' 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 does not have 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 of the Company 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,

and 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 16.16, such electronic appointments may be made or electronic votes cast notwithstanding any other provision of this Constitution.

## 17. PROXIES AND CORPORATE REPRESENTATIVES

- 17.1 **Right to appoint:** 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 **Notice of appointment:** 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) provide for two-way voting (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 or on behalf of the Company at any place specified for the purpose in the notice of meeting. The notice of meeting may provide for different matters for different

kinds of proxies (for example, a different specified time for the receipt of a proxy by electronic means). In any case, the time or times specified may not be more than 48 hours before the start of the meeting. If the written notice appointing a proxy is signed under a power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of ~~non~~-non-revocation of the power of attorney must accompany the notice.

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 AND SHAREHOLDER PROPOSALS

18.1 **Meeting minutes:** 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.

18.2 **Shareholder proposals:** 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 the First Schedule of the Act apply to any notice given pursuant to this clause 18.2.

## 19. APPOINTMENT AND REMOVAL OF DIRECTORS

19.1 **Number:** ~~The~~Subject to clause 19.8, the number of Directors must not at any time be less than three and subject to this limitation the number of Directors to hold office shall be fixed from time to time by the Board.

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

19.3 **Appointment and removal by Ordinary Resolution:** A Director may be appointed by Ordinary Resolution. All Directors shall be subject to removal from office as director by Ordinary Resolution.

19.4 **Appointment by Board:** The Board may at any time appoint additional Directors to fill a casual vacancy or as an addition to existing directors. A director appointed to fill a casual vacancy or as an addition to the Board must not hold office (without re-election) past the next annual meeting of the Company and is then eligible for election, but must not be taken into account in determining the Directors who are to retire by rotation at that meeting.



19.5 **Appointment of Directors to be voted on individually:** No resolution to appoint or elect a Director shall be put to the holders of Securities unless:

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

but nothing in this clause 19.5 prevents the election of two or more Directors by ballot or poll.

19.6 **No shareholder qualification for Directors:** There is no shareholding qualification for Directors.

19.7 **Vacation of office:** A Director shall cease to hold office as a Director if the Director:

- (a) dies;
- (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;
- (f) becomes of unsound mind or a person whose person or estate is liable to be dealt with under the laws relating to mental health;
- (g) is an executive director under an employment or services agreement with the Company and that agreement terminates, unless the Board determines otherwise; or
- (h) has for more than six months been absent without permission of the Board from meetings of the Board held during that period.

19.8 **Compliance with Catalyst Issuer Rules:** For so long as any shares in the Company are Quoted, the Company shall ensure that it complies with any Catalyst Issuer Rules relating to the appointment, composition and/or removal of Directors.

19.9 ~~19.8~~ **Timing of retirement and appointment:** If:

- (a) a Director retires at a meeting of shareholders and is not re-elected, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting or any adjournment of that meeting;
- (b) 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 or any adjournment of that meeting; and

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

## 20. DIRECTORS' TENURE OF OFFICE

20.1 **Directors' tenure of office:** Subject to clause 20.3, ~~while the Company is admitted to the Official List~~, a Director must not hold office without re-election:

- (a) following the third annual meeting after that Director's last appointment or re-election; or
- (b) for more than three years,

whichever is longer.

20.2 **Retirement by rotation:**

- (a) ~~While the Company is admitted to the Official List~~, at At least one Director must retire from office at each annual meeting.
- (b) Subject to clause 20.3, if no Director is required to retire at an annual meeting under clause 20.1, then the Director to retire under clause 20.2(a) will be the one who has been longest in office since that Director's last election.
- (c) As between those who became Directors on the same day, those to retire will, unless they otherwise agree among themselves, be determined by lot.
- (d) A retiring Director continues to hold office as a Director throughout the meeting at which that Director retires and at any adjournment.

20.3 **Managing Director:** Clauses 20.1 to 20.2(d) do not apply to the Managing Director. If there is more than one Managing Director, only the first appointed does not have to comply with the requirement to retire from office or seek re-election in accordance with clauses 20.1 and 20.2.

20.4 **Retiring Director eligible for re-election:** A Director who retires from office or whose office is vacated under this Constitution will be eligible for election or re-election to the Board at the meeting at which that Director retires from office.

20.5 **Removal of Director by the Company:** The Company may by Ordinary Resolution remove any Director at any time.

## 21. ALTERNATE DIRECTORS

21.1 **Appointment:** Each Director may from time to time appoint any person who is not disqualified by the Act or this Constitution from being a Director and 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.

21.2 **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.

21.3 **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 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 (including the right to receive notice of, be counted as part of the quorum of, 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).

21.4 **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.

21.5 **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.

## 22. **MANAGING DIRECTOR**

22.1 **Appointment and removal:** The Board may, from time to time, appoint one of the Directors to be the Managing Director, either for a fixed term (but not exceeding five years) and on such other terms (including remuneration) as the Board determines. A Managing Director may be re-appointed for a further period not exceeding five years, and may be re-appointed for a further term of five years in the same manner. 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.

- 22.2 **Remuneration of Managing Director:** A Managing Director will receive in addition to remuneration for services as a Director such remuneration and benefits as the Board may determine.
- 22.3 **Resignation:** A Managing Director shall, subject to 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.
- 22.4 **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. PROCEEDINGS OF THE BOARD

- 23.1 **Methods of holding meetings:** A meeting of the Board may be held ~~either by:~~ by a quorum of the Board:
- (a) ~~a number of the Directors who constitute a quorum,~~ being assembled together at the time and place, ~~date and time,~~ appointed for the meeting; or
  - (b) participating in the meeting by means of audio, or audio and visual, or electronic communication ~~by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting;~~ or
  - (c) by a combination of both of the methods described in clauses 23.1(a) and 23.1(b).
- 23.2 **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 23.2 and clause 23.3. 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;
  - (b) by delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered;
  - (c) 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
  - (d) by sending by electronic means from time to time for such purpose.

- 23.3 **Contents of notice:** A notice of a meeting must specify the date, time and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, 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.
- 23.4 **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.
- 23.5 **Quorum:** Unless otherwise determined by the Board, a quorum for a meeting of the Board is a majority of the Directors. No business may be transacted at a meeting of the Board unless a quorum is present.
- 23.6 **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.
- 23.7 **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 19.1, 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.
- 23.8 **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.
- 23.9 **Votes:** Every Director has one vote. In the case of an equality of votes the chairperson will not 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. A Director must not vote where that Director is not permitted to vote by this Constitution.
- 23.10 **Resolutions in writing:** A resolution in writing, signed or assented to by a majority 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~~ [electronic communication such as email](#) or other similar means of communication ~~including electronic communication such as email~~) in similar form, each signed or assented to by one or more Directors (whose assent may be given by electronic communication including email). A copy of any such resolution must be entered in or kept with the records of Board proceedings.

- 23.11 **Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.
- 23.12 **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;
  - (b) that they or any of them were disqualified; or
  - (c) any irregularity in a notice of meeting.
- 23.13 **Other procedures:** Except as set out in this clause 23, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

## 24. DIRECTORS' REMUNERATION

- 24.1 **Authorisation:** The Board may, ~~subject to the ASX Listing Rules,~~ exercise the power conferred by section 161 of the Act to authorise remuneration and other benefits to and for Directors.
- 24.2 **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.
- 24.3 **Special remuneration:** Without limiting clause 24.1, 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.

## 25. INDEMNITY AND INSURANCE

- 25.1 **Indemnity for Directors:** Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act. The Board may determine the amounts and terms and conditions of such an indemnity.
- 25.2 **Other indemnities and insurance:** In addition to the indemnity set out in clause 25.1, the Company may:
- (a) indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act and the Board may determine the amounts and terms and conditions of any such indemnity;
  - (b) indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act and the Board may determine the amounts and terms and conditions of any such indemnity; and

- (c) with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act and the Board may determine the amounts and terms and conditions of any such insurance.
- 25.3 **Interpretation:** Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 25.
- 26. DIVIDENDS**
- 26.1 **Method of payment:** Any dividend or other money payable to a holder of Securities may be paid ~~by cheque sent through the post to the registered address of the holder or in any other in any~~ manner determined by the Board and directed by the person entitled to the payment. In the case of joint holders, ~~cheques payment~~ may be ~~sent to the registered address of~~ made to the person first named on the register.
- 26.2 **Currency of payment:** The Board may, in its discretion, differentiate between shareholders as to the currency in which dividends are to be paid. In exercising that discretion the Board may have regard to the registered address of a shareholder, the register on which a shareholder's shares are registered or any other matter the Board considers appropriate. In any case where a dividend is to be paid in a currency other than New Zealand currency, the amount payable will be converted from New Zealand currency in a manner, at a time and at an exchange rate determined by the Board.
- 26.3 **Deductions:** The Board may deduct from dividends payable to any shareholder in respect of any shares any:
- (a) unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific shares in respect of which the Company has a lien; and
  - (b) amounts the Company may be called upon to pay under any legislation in respect of the specific shares.
- 26.4 **Unclaimed dividends:** Dividends or other monetary distributions unclaimed for one year after the due date for payment may be used 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 to regard it as being impressed with any trust. All dividends or other monetary distributions unclaimed for five years or more after the due date for payment may be forfeited by the Board for the benefit of the Company. The Company shall, nevertheless, annul the forfeiture and subject to compliance with the solvency test, shall pay the dividend or other monetary distribution to the person producing evidence of entitlement.
- 27. NOTICES**
- 27.1 **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.
- 27.2 **Service of notices outside New Zealand:** If a Security 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, then notices shall be posted to the holder at that address and shall be deemed to have been received by the holder 24 hours after the time of the posting.

27.3 **Joint holders:** A notice may be given by the Company to the joint holders of a Security by giving the notice to the joint holder named first in the register in respect of the Security.

## 28. INSPECTION OF RECORDS

28.1 **Inspection of records:** Except as provided in the Act or unless the Board determines otherwise in any particular case, no holder of Securities 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.

## 29. LIQUIDATION

29.1 **Distribution of surplus:** Subject to the rights of the holders of any Securities in the Company and to clauses 29.2 and 29.3, 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.

29.2 **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.

29.3 **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.

## 30. METHOD OF CONTRACTING

30.1 **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.

30.2 **Company may appoint attorneys:** The Company may, by an instrument in writing executed in accordance with clause 30.1, 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.