



CONSTITUTION

BRISCOE GROUP LIMITED

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COMPANIES ACT 1993

CONSTITUTION OF

BRISCOE GROUP LIMITED

PART 1 - PRELIMINARY

1 INTERPRETATION

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

"**Act**" means the Companies Act 1993 and any statutory modification or re-enactment thereof;

"**Alternate Director**" means an Individual appointed as an alternate director under clause 19 (Alternate Directors);

"**Appoint**" includes re-appoint and "**elect**" includes "**re-elect**";

"**Attorney**" means a Person appointed as an attorney of a Shareholder in accordance with clause 15.4 (Appointment of Attorney);

"**Auditor**" means any Person or Persons appointed pursuant to the Act to perform the duties of auditor of the Company;

"**Board**" means the Directors for the time being of the Company acting together as the Board of Directors of the Company, and includes a quorum of Directors so acting;

"**Business Day**" has the meaning given to that term in the Listing Rules;

"**Capital**" means the total aggregate amounts received in respect of any issue of Shares from time to time;

"**Chairperson**" means the Director who has been elected as chairperson of the Board pursuant to clause 19.2.4 (Chairperson);

"**Class**" has the meaning given to that term in the Listing Rules;

"**Company**" means Briscoe Group Limited;

"**Constitution**" means this constitution as amended from time to time;

"**Debt Security**" has the meaning given to that term in the Listing Rules;

"**Deputy Chairperson**" means the Director who has been elected as deputy chairperson of the Board pursuant to clause 19.2.4 (Chairperson);

"Director" means any person occupying the position of director of the Company, by whatever name called, and, except in clause 17 (Alternate Directors) and clause 19.3 (Resolution in Writing Assented to by all Directors), includes an Alternate Director acting in the place of a Director;

"Distribution" has the meaning given to that term in section 2(1) of the Act;

"Dividend" has the meaning given to that term in section 53 of the Act;

"Employee" has the meaning given to that term in rule 7.3.6 of the Listing Rules and for the purposes of clause 23 (Indemnity and Insurance) has the additional meaning given to it in section 162(9) of the Act;

"Equity Security" has the meaning given to that term in the Listing Rules;

"Executive Director" has the meaning given to that term in the Listing Rules;

"Holding Company" has the meaning given to that term in section 5 of the Act;

"Individual" means a natural person;

"Interests Register" means the register to be kept under section 189(1)(c) of the Act;

"Listing Rules" means the listing rules (by whatever name called) applying to the NZSX market (or any successor to that market) as amended from time to time by NZX;

"Major Transaction" has the meaning given to that term in section 129(2) of the Act;

"Managing Director" means an Individual appointed as managing director of the Company pursuant to clause 22 (Managing Director);

"Minimum Holding" has the meaning given to that term in the Listing Rules;

"Month" means a calendar month;

"NZX" has the meaning given to that term in the Listing Rules;

"Office" means the registered office for the time being of the Company;

"Option" has the meaning given to that term in the Listing Rules;

"Ordinary Resolution" has the meaning given to the term "Ordinary Resolution of the Issuer" in rule 1.1.2 of the Listing Rules except where the context necessarily refers to a resolution of a meeting of a particular Class or Classes of Securities;

"Person" includes an Individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, any combination or association of individuals or corporate or unincorporated bodies and any state or agency of state or government department and local or municipal authority in each case whether or not having a separate legal identity;

"Proxy" means an Individual appointed as a proxy of a Shareholder in accordance with clause 15.2 (Proxies);

"Quotation" has the meaning given to that term in the Listing Rules and **"Quote"** and **"Quoted"** have corresponding meanings;

"Register" means the register of Shareholders to be kept under section 189(1)G) of the Act;

"Related Company" has the meaning given to that term in the Listing Rules;

"Representative" means an Individual authorised by a corporation in accordance with clause 15.3 (Corporations Acting by Representatives at Meeting) to act as its representative at a meeting of the Company;

"Security" has the meaning given to that term in the Listing Rules;

"Share" means a share in the Company;

"Shareholder" means a Person whose name is entered in the Register as being the holder of Shares;

"Solvency Test" has the meaning given to that term in section 4 of the Act;

"Special Resolution" means a resolution approved by a majority of at least 75% of the valid Votes cast on the resolution by the Shareholders entitled to vote and voting on the question, and refers to a resolution of a meeting of the holders of Shares which carry Votes except where the context necessarily refers to a resolution of a meeting of a particular Class or Classes of Securities;

"Subsidiary" has the meaning given to that term in the Listing Rules;

"Terms of Issue" means the terms or conditions attaching to a Security by agreement on or before issue whether by reference to this Constitution or as expressly set out or as implied by law or otherwise as they may be duly modified from time to time, and which determine the rights, privileges and obligations of a holder of that Security;

"Treasury Stock" has the meaning given to that term in the Listing Rules; and

"Vote" has the meaning given to that term in the Listing Rules.

- 1.2 "In writing" and "Written":** Any references to "in writing" or "written" include references to words type written, printed lithographed, photocopied, telexed, copied by facsimile, or represented or reproduced in any other mode in a permanently visible form, or partly in one and partly another.
- 1.3 Defined Terms:** Any expression not defined in this Constitution but defined in the Act or the Listing Rules shall, unless the context otherwise requires, bear the same meaning in this Constitution as in the Act or in the Listing Rules as the case may be. In the event of any conflict between any expressions defined in both the Act and the Listing Rules, the Listing Rules definition shall prevail.
- 1.4 Plural and Singular and Gender:** In this Constitution, if not inconsistent with the context, words importing the singular number include the plural, and vice versa, and words importing any gender also include all other genders.
- 1.5 Headings:** Headings and marginal notes contained in this Constitution are aids to interpretation only and do not form part of this Constitution.
- 1.6 Statutes:** Unless the context otherwise requires, references to a statute mean any statute, act, regulation, ordinance, rule, by-law or order-in-council of New Zealand and include:
- 1.6.1 Amendments:** amendments to that statute;
 - 1.6.2 Substitutions:** a statute passed in substitution for that statute; and
 - 1.6.3 Regulations:** regulations passed under that statute or any of its amendments or under a statute passed in substitution for that statute.
- 1.7 Listing Rules:** Unless the context otherwise requires, references to any rule of the Listing Rules include:
- 1.7.1 Amendments:** amendments to that rule;
 - 1.7.2 Substitutions:** any rule promulgated in substitution for that rule; and
 - 1.7.3 Modifications:** any modification to that rule by any ruling or waiver relevant to the Company.
- 1.8 Incorporation by Reference:** If the Listing Rules require this constitution to incorporate by reference or contain provisions consistent with, and having the same effect as any provisions of the Listing Rules, then this constitution is deemed to contain such provisions and such provisions are hereby incorporated by reference into this constitution except to the extent that this constitution contains provisions consistent with and having the same effect as those provisions of the Listing Rules.

As at the date of adoption of this constitution, matters that the Listing Rules require to be incorporated into this constitution (and which are thereby incorporated by reference in accordance with this clause 1.8) include:

- (a) independence of directors;
- (b) nomination of new directors;
- (c) confirmation of appointment of directors;
- (d) rotation of directors and exceptions;
- (e) appointment of directors to be voted on individually;
- (f) voting by interested directors and exceptions;
- (g) directors' remuneration;
- (h) issue of new equity securities;
- (i) entitlements to third party securities;
- (j) issues and buybacks of securities affecting control;
- (k) buy backs of equity securities and financial assistance;
- (l) Audit Committee;
- (m) modification of rights of security holders;
- (n) disposal or acquisition of assets;
- (o) transactions with related parties; and
- (p) voting restrictions.

1.9 Compliance with Listing Rules: Subject to any enactment or rule of law, and to any ruling given by NZX, the Company shall at all times comply with the Listing Rules, provided that this clause 1.9 shall apply only as long as the Company is (by reason of being party to a listing agreement with NZX) listed on NZX.

1.10 Constitution Subject to Waiver from NZX: To the extent that NZX has granted or made or, from time to time, grants or makes any decision, determination, ruling, waiver or dispensation authorising an act or omission which in the absence of the decision, determination, ruling, waiver or dispensation would be in contravention of the Listing Rules or this Constitution, the act or omission shall, unless a contrary intention appears in this Constitution, be deemed to be authorised by the Listing Rules and this Constitution.

- 1.11 Effect Of Failure To Comply:** Any failure to comply with the Listing Rules does not affect the validity or enforceability of any transaction, contract, action or matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules is not entitled to enforce that transaction or contract. This clause
- 1.11** shall not affect the rights of any holder of Securities issued by the Company against the Company or the directors arising from a failure to comply with the Listing Rules.
- 1.12 Constitution Subject to Act:** The provisions of this Constitution shall apply to all the Company's business and affairs, except to the extent (if any) that such provisions contravene or are inconsistent with the Act.
- 1.13 Constitution to Prevail in Some Instances:** Subject to clause 1.12, if there is any conflict between:
- 1.13.1 Provisions:** a provision of this Constitution and a provision which is expressly permitted by the Act to be altered by this Constitution; or
- 1.13.2 Words/Expressions:** a word or expression defined or explained in the Act and a word or expression defined or explained by this Constitution;
- the provision, word or expression in this Constitution prevails.
- 1.14 Listing Rules to Prevail:** If a provision of this Constitution is inconsistent with the Listing Rules, the Listing Rules shall prevail.
- 1.15 Permitted by Act or Listing Rules:** A reference to "permitted by the Act" or "permitted by the Listing Rules" means not prohibited by the Act or not prohibited by the Listing Rules.
- 1.16 Name:** The name of the Company is Briscoe Group Limited.
- 1.17 Change of Name:** A Director with approval of the Board may apply to change the name of the Company.

PART II - CAPITAL

2. ISSUE OF SHARES

2.1 Board to Issue: Subject to any special rights previously conferred on the holders of any existing Shares or Class of Shares and subject to the Act and the Listing Rules, the Board may:

2.1.1 Shares: issue Shares at any time, to any Person and in any number on such terms and conditions, in such manner and for such consideration and on such payment terms as it thinks fit;

2.1.2 Shares with Preferential Rights or Privileges etc: issue Shares with any preferential, deferred, qualified or special rights, privileges or conditions attached thereto or subject to any restrictions or limitations including as to Distributions, Voting rights and ranking;

2.1.3 Convertible Securities: issue Convertible Securities;

2.1.4 Options: grant Options; and

2.1.5 Equity Securities: issue any other Equity Securities.

2.2 Board Need Not Comply with Statutory Pre-emptive Rights: Section 45 of the Act shall not apply to the Company and is hereby negated.

2.3 Modification of Rights and Interest Groups:

2.3.1 Modification of Rights: The Company shall comply with sections 116 and 117 of the Act in respect of Shares of the Company and shall also comply with those sections in respect of other Equity Securities on the basis that those sections shall be deemed to be modified so that:

- (a) references in those sections to "shares" shall (subject to clauses 2.3.3 and 2.3.4) be deemed to include references to all Equity Securities of the Company and references to "holders of shares" and "shareholders" are deemed to be modified accordingly; and
- (b) in respect of Equity Securities which are not Shares:
 - (i) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and

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

2.3.2 Notice of Meeting: Any notice calling a meeting of an interest group for the purpose of clause 2.3.1 shall comply with the provisions of this Constitution as to notices of meetings and the notice shall be approved by NZX.

2.3.3 Certain Issues Deemed Not to Modify: For the purpose of this clause 2.3 and section 117 of the Act, the issue of Equity Securities ranking equally with or in priority to, any existing Equity Securities shall not be deemed to be an action modifying, abrogating or altering the rights attached to existing Equity Securities, except where specifically provided by the Terms of Issue of any existing Equity Security.

2.3.4 Exception: Clause 2.3.1 shall not require the Company to comply with sections 116 and 117 of the Act in respect of actions that affect the rights attached to:

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

3. ACQUISITION OF OWN EQUITY SECURITIES

3.1 Company May Acquire Own Equity Securities: The Company may in accordance with the Act and the Listing Rules purchase or otherwise acquire its own Equity Securities.

3.2 Treasury Stock:

3.2.1 Company May Hold its Own Shares: The Company may in accordance with the Act and this Constitution hold any Shares acquired by it under clause 3.1 and, if the Board so resolves, any such Shares shall not be deemed cancelled on acquisition provided that the number of Shares acquired together with any Shares of the same Class held by the Company pursuant to this clause at the time of the acquisition does not exceed 5% of the Shares of that Class

previously issued (excluding any Shares of that Class previously acquired and deemed to be cancelled under section 66(1) of the Act).

- 3.2.2 Rights Attaching to Treasury Stock:** The rights attaching to any Share held by the Company under clause 3.2.1 shall not be exercised while the Company holds that Share.
- 3.2.3 Reissue of Treasury Stock:** Subject to the Act and the Listing Rules, the Company may reissue or transfer any Shares held by the Company under clause 3.2.1.
- 3.2.4 Notice to NZX:** Before disposing of any Treasury Stock to any Person the Company shall give notice to NZX as required by the Listing Rules.

4. TRUSTS

Except as required by law or as expressly authorised by this Constitution, no Person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or an interest in any fractional part of a Share or any other rights in respect of a Share except an absolute right to the entirety thereof in the registered holder.

5. SHARE CERTIFICATES

5.1 Issue of Share Certificates:

- 5.1.1 Issue of Certificates:** Subject to clauses 5.1.2 and 5.1.5 every Shareholder shall be entitled without payment to receive, within five Business Days after issue, or registration of a transfer, of Shares in the Company a share certificate stating:
 - (a) the name of the Company;
 - (b) the Class of Shares held by the Shareholder; and
 - (c) the number of Shares held by the Shareholder;and in all other respects complying with the Listing Rules.
- 5.1.2 Only One Certificate Required:** The Company shall not be bound to issue more than one certificate in respect of Shares held jointly by several Persons and delivery of a certificate for Shares to one of several joint holders shall be sufficient delivery to all such holders.
- 5.1.3 Defaced and Lost Certificates:** If a Share certificate is worn out or defaced, then on production thereof to the Board it may order the same to be cancelled and may issue a new certificate in lieu

thereof and if any certificate is lost or destroyed then upon proof thereof to the satisfaction of the Board, and on such indemnity as the Board deems adequate being given, a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate.

5.1.4 Cancellation of Certificate: Upon any change in the amount paid up or credited as paid up *on* any Shares, or any change in the name of the Company, the Company may by resolution of the Board deem the certificates issued *in* respect of those Shares to be cancelled.

5.1.5 No Certificate Required: Subject to section 54 of the Securities Act 1978 and any provision of the Listing Rules, the Company shall not be obliged to provide a share certificate **in** relation to Shares that can be transferred under a system authorised or approved under the Securities Transfer Act 1991 that does not require a share certificate for the transfer of Shares.

5.2 Charges for Issue of Share Certificates:

5.2.1 No Charge for Certificates Generally: The Company shall register transfer forms, split certificates, renunciations and transfer forms, issue certificates and transmission receipts and mark or note transfer forms without charge, except where the issue of certificates is to replace those defaced, lost or destroyed.

5.2.2 Charges for Defaced and Lost Certificates: The Board may before issuing a new certificate pursuant to clause 5.1.3, require the payment of the actual expenses of the Company of investigating and dealing with the matter as the Board thinks fit.

6. CALLS ON SHARES

6.1 Board to Make Calls: The Board may from time to time make such calls as it thinks fit upon the Shareholders in respect of all or any of the money which is unpaid on their Shares and which is not by the conditions of allotment thereof made payable at a fixed time or fixed times. Each Shareholder shall (subject to receiving at least 21 days' notice specifying the time or times and place of payment) pay the amount of every call so made on him or her to the Company or Person (if any) appointed for the purpose and at the times and places appointed by the Board. For the avoidance of doubt, **it** is recorded that unless expressly stated to the contrary **in** its Terms of Issue, liability for calls in respect of a Share will in all cases attach to the holder of such Share for the time being and not to any prior holder of the Share. A call may be made payable by instalments and may be revoked or postponed as the Board may from time to time determine.

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

- 6.3 Liability of Joint Holders:** The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof.
- 6.4 Interest on Calls:** If the sum payable in respect of any call or instalment is not paid on or before the day appointed for payment thereof, the Person from whom the sum is due shall be liable to pay interest on the sum from the day appointed for the payment thereof to the time of actual payment at such rate as the Board may determine, but the Board shall be at liberty to waive payment of that interest wholly or in part.
- 6.5 Sums Due on Issue Are Calls:** Any sum which by the terms of any prospectus or by the Terms of Issue of a Share becomes payable on issue or at any fixed date or which is payable by instalments shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which, under the terms of the prospectus or by the Terms of Issue, the same becomes payable, as if it were a call duly made by the Board, and of which due notice has been given, and all the relevant provisions of this Constitution with respect to the payment of calls, and in the case of non-payment the payment of interest and expenses and forfeiture of Shares for non-payment of calls, shall apply as if the amount had become payable by virtue of a call duly made and notified.
- 6.6 Power to Differentiate Between Holders:** The Board may, by the Terms of Issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
- 6.7 Payment of Call in Advance:** The Board may, if it thinks fit, receive from any Shareholder willing to advance the same, all or any part of the money uncalled and unpaid upon any Shares held by him or her, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate as may be agreed upon between the Shareholder paying the sum in advance and the Board. The Board may at any time repay to any Shareholder the whole or any portion of any money so advanced upon giving such Shareholder at least one Month's notice in writing and as from the date of such repayment interest (if any) shall cease to accrue on the money so repaid. No Shareholder shall be entitled as of right to any payment on any amount so paid in advance and the Board may decline to pay any interest. Any amount so paid in advance shall not be taken into account in ascertaining the amount of any Dividend or other Distribution payable upon the Shares concerned or the voting rights in respect of the Shares concerned.
- 6.8 Proof of Liability:** The amount of any unpaid call may be recovered as a debt due from the Shareholder to the Company by proceedings commenced at any time after the call becomes payable. In any such proceedings it shall be sufficient to prove that:
- 6.8.1 Name on Register:** the name of the Shareholder sued is entered in the Register as the holder or one of the holders of the Share in respect of which such debt accrued;

6.8.2 Resolution: a resolution of the Board making the call was duly recorded in the minute book; and

6.8.3 Notice: notice of such call was duly given to the Shareholder sued.

It shall not be necessary to prove the appointment or qualification of any member of the Board that made such call nor any other matter whatsoever. The proof of the matters aforesaid shall be conclusive evidence of the debt.

6.9 Cancellation of Unpaid Amounts: Without prejudice to clauses 4.4, 4.5 and 4.7 of this constitution, no obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred except as permitted by the Listing Rules.

7. COMPANY'S POWER TO FORFEIT OR SELL SHARES

7.1 Forfeiture of Shares:

7.1.1 Notice Requiring Payment of Calls: If a Shareholder fails to pay any call or instalment of a call on or by the day appointed for payment the Board may, at any time thereafter serve a notice on that Shareholder requiring payment of the amount unpaid together with any interest which may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.

7.1.2 Notice to State Time and Place: The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment on or before the time appointed, the Shares in respect of which the amount was owing will be liable to be forfeited.

7.1.3 Forfeiture on Non-Compliance: If the requirements of any such notice are not complied with, any Share in respect of which the notice has been given may be forfeited at any time before the required payment has been made, by a resolution of the Board to that effect. Such forfeiture shall include all Dividends and other Distributions declared in respect of the forfeited Shares and not actually paid before the forfeiture.

7.1.4 Company May Dispose of Forfeited Share: A forfeited Share shall be deemed to be the property of the Company and may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit, and the provisions of clause 7.3.4 shall apply (with all necessary modifications) in relation to any such sale or other disposition. The Board may at any time before such Share is disposed of, cancel the forfeiture upon such terms and conditions as it may approve.

7.1.5 Consequences of Forfeiture: A Person whose Shares have been forfeited shall cease to be a Shareholder in respect of the

forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all amounts which, at the date of forfeiture, were payable by that Person to the Company in respect of the Shares, but that liability shall cease if and when the Company receives payment in full of all such amounts.

7.1.6 Notice of Forfeiture: On the forfeiture of any Share the Board shall cause a note of such forfeiture and the date thereof to be entered in the Register and shall cause notice of such forfeiture and the date thereof to be sent to the Shareholder in whose name the Share stood immediately prior to the forfeiture and shall upon the disposal of any forfeited Share cause a note of the manner and date of such disposal to be similarly entered in the Register.

7.1.7 Title to Forfeited Share: A written statutory declaration given by a Director that a Share has been duly forfeited on a date stated shall be conclusive evidence of the facts stated in the declaration as against all Persons claiming to be entitled to the Share.

7.1.8 Validity of Sale: The Company may receive the consideration, if any, given for the forfeited Share on any sale or disposition thereof and may execute a transfer of the Share in favour of the Person to whom the Share is sold or disposed of. The Person to whom the Share is sold or disposed of shall be entered upon the Register as the holder of the Share and shall not be bound to see to the application of the purchase money, if any, nor shall his or her title to the Share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or other disposal of the Share. If the certificate for the forfeited Shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as it thinks fit from the certificate not delivered up, whereupon the latter shall be deemed to have been cancelled.

7.1.9 When Forfeiture Applies: The provisions of these clauses as to forfeiture shall apply in the case of non-payment of any sum which, by the Terms of issue of a Share, becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

7.2 Surrender of Shares: The Board may accept from any Shareholder a surrender of that Shareholder's Shares which are liable to forfeiture or any part thereof upon such terms as may be agreed upon between the Shareholder and the Board.

7.3 Company's Lien:

7.3.1 When Lien Imposed: The Company shall have a first and paramount lien upon all the Shares that are registered in the name of a Shareholder (whether solely or jointly with others) and upon the proceeds of sale thereof for any amount payable in respect of the Shares and interest thereon, and sale expenses owing to the

Company in respect of such Shares and also for such amounts (if any) as the Company may be called upon to pay under any statute in respect of Shares of that Shareholder, whether the period for the payment, fulfilment or discharge thereof respectively shall have actually arrived or not, and no equitable interest in any Share shall be created except upon the basis and condition that clause 4 is to have full effect and such lien shall extend to all Dividends and other Distributions from time to time declared in respect of such Shares.

7.3.2 Registration to Operate as Waiver: The registration of a transfer of Shares on which the Company has any lien shall, unless notice to the contrary shall first be given to the transferee, operate as a waiver of the Company's lien, if any, on such Shares.

7.3.3 Sales of Shares Subject to Lien: The Company may sell, in such manner as the Board thinks fit, any Shares on which the Company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the Person entitled thereto by reason of the registered holder's death or bankruptcy.

7.3.4 Title to Shares Sold Subject to Lien: To give effect to any such sale the Board may authorise any Person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and thereupon shall be the holder of such Shares and discharged from all calls due prior to such purchase. The purchaser shall not be bound to see to the application of the purchase money, nor shall his or her title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any Person aggrieved by the sale shall be in damages only and against the Company exclusively. If the certificate for the forfeited Shares is not delivered up to the Company the Board may issue a new certificate distinguishing it as it thinks fit from the certificate not delivered up, whereupon the latter shall be deemed to have been cancelled.

7.4 Power to Sell Where Less Than Minimum Holdings:

7.4.1 Notice to Shareholder Holding Less Than Minimum Holding: Where the number of Shares registered in the name of a Shareholder is less than a Minimum Holding the Board may at any time give written notice of that fact and of the provisions of clause **7.4.2** to the Shareholder.

7.4.2 Power of Sale: The Company may, at any time after the expiration of three months after the date of a notice given under

clause 7.4.1, if the Shares then registered in the name of the Shareholder are less than a Minimum Holding, sell the Shares through NZX, and account to the Shareholder for the proceeds of sale after deduction of reasonable sale expenses.

7.4.3 Provisions Relating to Sale: To give effect to any sale under clause 7.4.2 the Board may authorise any Person to transfer the Shares sold to the purchaser thereof. The purchaser shall not be bound to see to the application of the purchase money, nor shall the purchaser's title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any Person aggrieved by the sale shall be in damages only and against the Company exclusively. If the certificate for the Shares sold is not delivered up to the Company, the Board may issue a new certificate distinguishing it as it thinks fit from the certificate not delivered up, whereupon the latter shall be deemed to have been cancelled.

7.5 Evidence of Power of Sale or Forfeiture: A written statutory declaration of a Director that a power of sale under this clause 7 has arisen and is exercisable by the Company or that a Share has been duly forfeited on the date stated therein, shall be conclusive evidence of the facts stated therein.

8. APPLICATION OF PROCEEDS OF SALE

The proceeds of sale of any Shares sold under clause 7 shall be applied as follows:

- 8.1 Unpaid Calls:** first, in satisfaction of any unpaid calls, instalments premiums, or other amounts, and any interest thereon, in respect of which a lien existed;
- 8.2 Expenses:** secondly, in payment of any expenses incurred in relation to the sale; and
- 8.3 Residue:** the residue (if any) shall be paid to, or in accordance with a direction of, the Person who was the holder of the Shares immediately before the sale or surrender of the Person's certificate for the Shares or the executors or administrators or assigns of that Person.

9. TRANSFER OF SHARES

- 9.1 Power to Transfer:** Subject to clause 9.3 and any applicable law, any Shareholder may transfer all or any of his or her Shares together with (but subject to the Terms of Issue) any liability in respect of unpaid calls, by instrument of transfer complying with clause 9.2, or by using a wholly or partly electronic system for the transfer of securities which has been approved by any statute.
- 9.2 Form of Transfer:**

- 9.2.1 Securities Transfer Act:** Any Shares disposed of by an "authorised transaction" or a "stock exchange transaction" within the meaning of those terms in the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act.
- 9.2.2 Transfers Executed Outside New Zealand:** Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation or by some other method required by law for entering into an obligation by deed as transferor or if the signature of the transferor who is an Individual has been witnessed by an Individual who has added his or her occupation and address after his or her signature.
- 9.2.3 Other Transfers:** Every instrument of transfer not falling within the provisions of clauses 9.1, 9.2.1 or 9.2.2 shall comply with the following provisions:
- (a) the form of the instrument of transfer shall be any usual or common form;
 - (b) the instrument of transfer shall be signed or executed by the transferor or the transferor's representative;
 - (c) if registration of the transfer imposes any liability on the transferee, as holder of the shares, to the Company the instrument of transfer shall be signed or executed by the transferee; and
 - (d) the instrument of transfer shall be accompanied by such evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares; and
 - (e) except where execution is under the common seal of a corporation by a corporation by some other method required by law for entering into an obligation (by deed), every signature to the instrument of transfer shall be witnessed by an Individual who shall add his or her occupation and address after his or her signature.
- 9.2.4 No Fee:** No fee shall be payable to the Company upon any transfer of Shares.
- 9.2.5 Transfer Effective on Registration:** The transferor of a Share shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Register in respect thereof.

9.3 Power to Refuse or Delay Registration: The Board may, in its absolute discretion, refuse or delay registration of a transfer of any Shares if:

9.3.1 Lien: the Company has a lien on the Shares; or

9.3.2 Minimum Holding: the registration, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than a Minimum Holding.

9.4 Deposit of Transfer for Registration: Every instrument of transfer shall be delivered to the Office or the office of the agent of the Company which maintains the Register for registration.

10. TRANSMISSION OF SHARES

10.1 Persons Recognised on Death of Shareholder: In the case of the death of a Shareholder, the survivor, or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he or she was the sole holder, shall be the only Persons recognised by the Company as having any title to the deceased's interest in the Shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by him or her with any other Person or Persons.

10.2 Registration on Death, Bankruptcy or Mental Disorder:

10.2.1 Manager or Personal Representative: Any Person appointed pursuant to the Protection of Personal Property Rights Act 1988 to be in charge of the affairs of a mentally disordered Shareholder or any Person becoming entitled to Shares in consequence of the death or bankruptcy of a Shareholder, may, upon such evidence being produced as may from time to time be properly required by the Board and subject as hereinafter provided, elect either to be registered as the holder of the Shares or to nominate some other Person as the transferee of the Shares but the Board shall, in either case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the Shares by that Shareholder before that Shareholder becoming mentally disordered or before that Shareholder's death or bankruptcy, as the case may be.

10.2.2 Notice in Writing: If the Person so becoming entitled elects to be registered as the holder of the Shares, then that Person shall deliver or send to the Company a notice in writing signed by that Person stating that that Person so elects. If that Person elects to have another Person registered that election shall be testified by that Person executing in favour of the other Person a transfer of the Shares. All the limitations, restrictions and provisions of this Constitution relating to the right to transfer and the registration of

transfers of Shares shall be applicable to any such notice or transfer as aforesaid as if the mental disorder, death or bankruptcy of the Shareholder had not occurred and the notice of transfer were a transfer signed by that Shareholder,

10.2.3 Entitlement to Distributions and Other Rights: Where the registered holder of any Shares becomes mentally disordered, dies or becomes bankrupt that Person's personal representative or the assignee of that Person's estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the Board in that behalf, be entitled to the same Distributions and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been entitled to if the registered holder had not died or become bankrupt; and where two or more Persons are jointly entitled to any Shares in consequence of the death of the registered holder they shall, for the purposes of this Constitution, be deemed to be joint holders of the Shares.

11. SHARE REGISTER

11.1 Share Register: Subject to section 88 of the Act, the Board may divide the share register into two or more registers to be kept in different places.

11.2 Registration of Shareholdings in Parcels: The share registrar of the Company, on request by a Shareholder, or proposed transferee, may register a shareholding in separate parcels identified by a distinguishing word, number or other parcel differentiator. Where a Shareholder's shareholding is so registered, the Company may communicate separately with the Shareholder in respect of each parcel, pay Dividends and Distributions and otherwise act, so far as the Board considers convenient, as if the separate parcels belonged to different Shareholders.

PART III - GENERAL MEETINGS

12. GENERAL MEETINGS

12.1 Annual Meetings:

12.1.1 Annual Meeting: The Board shall in each calendar year, not later than six months after the balance date of the Company, call a meeting of Shareholders in addition to any other meetings in that year, and shall specify the meeting as the annual meeting in the notice calling it.

12.1.2 Maximum 15 Months Between Meetings: No more than 15 Months shall elapse between the date of one annual meeting of Shareholders and that of the next.

12.1.3 Board to Appoint Time and Place: Subject to the provisions of the Act, all meetings of Shareholders shall be held at such time and place as the Board appoints.

12.1.4 Other Meetings: All meetings of Shareholders other than annual meetings shall be called special meetings.

12.2 Special Meetings: Whenever it thinks fit, the Board may convene a special meeting, and special meetings shall also be convened on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.

12.3 Attendance at Meetings: Equity Security holders of all Classes shall be entitled to attend meetings of holders of Equity Securities carrying Votes.

12.4 Methods of Holding Meetings: A meeting of shareholders may be held either:

12.4.1 Shareholders Present: by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

12.4.2 Audio Visual Meetings: if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

12.5 Powers Exercisable by Ordinary Resolution: Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by way of Ordinary Resolution.

13. NOTICE OF GENERAL MEETINGS

13.1 Method and Format of Notice:

13.1.1 Written Notice: Written notice of the time and place of a meeting of Shareholders must be sent to every Security holder entitled to receive notice of meetings and to every Director and Auditor of the Company not less than 10 Business Days before the meeting.

13.1.2 Notice to State Nature of Business: The notice calling any meeting of Shareholders must state the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it and set out the text of any Special Resolution to be submitted to the meeting.

13.1.3 Resolutions: So far as is reasonably practicable, resolutions shall be framed in a manner which enables Shareholders to instruct a Proxy to vote either for or against any resolution.

13.2 Persons to Whom Notice to be Given: Notice of every meeting of Shareholders shall be given in any manner authorised by clause 29 to:

13.2.1 Equity Security Holders: every holder of an Equity Security except those who have not supplied to the Company an address either within or outside New Zealand for the giving of notices to them;

13.2.2 Representatives: every Person (of whom the Company has due notice) upon whom the ownership of Equity Securities has devolved by reason of his or her being the manager, or a legal personal representative, or an assignee in bankruptcy of a holder of Equity Securities, where the holder of Shares but for his or her mental disorder, or for his or her death or bankruptcy, as the case may be, would be entitled to receive notice of the meeting;

13.2.3 Directors and Auditor: The Directors and the Auditor; and

13.2.4 Other Persons: any other Person entitled under contract, the provisions of the Act or this Constitution to receive such notice.

No other Person shall be entitled to receive notice of meetings of Shareholders.

13.3 Register Conclusive: The Shareholders entitled to receive a notice of meeting shall:

13.3.1 Shareholders on Fixed Date: if the Board fixes a date for the purpose of determining the entitlement, be those Shareholders entered in the Register on that date; or

13.3.2 Shareholders on Day Before Notice is Given: if the Board does not fix a date, be those Shareholders entered in the Register at

the close of business on the day immediately preceding the day on which the notice is given;

provided that the Board shall not fix a date under this clause if such date precedes by more than 30 Business Days or less than 10 Business Days the date upon which the meeting is to be held.

- 13.4 Omission of Notice:** The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Person entitled to receive notice shall not invalidate the proceedings at that meeting.
- 13.5 Notice Irregularity:** Any irregularity in a notice of meeting shall be waived if all of 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.
- 13.6 Form of Proxy to be Included with Notice of Meeting:** The Company shall send a proxy form complying with clauses 15.2.4, 15.2.5 and 15.2.9 to every Shareholder entitled to attend and vote at a meeting of the Company with the notice convening the meeting. In every such notice, there shall appear with reasonable prominence a statement that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a Proxy to attend and vote instead of him or her and that a Proxy need not be a Shareholder of the Company.

14. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

14.1 Quorum:

14.1.1 Quorum Required: Subject to clause 14.1.2, no business shall be transacted at any meeting of Shareholders unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as is otherwise provided in this Constitution, the quorum for a meeting shall be five Shareholders having the right to vote at the meeting present in Person or by Proxy, Attorney, or Representative.

14.1.2 Quorum Not Present: If within 30 minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders under section 121 of the Act, shall be dissolved. In any other case the meeting shall stand adjourned to the same day in the following week at the same time and place, or to such other day and at such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the Shareholder or Shareholders having the right to vote at the meeting who are present in Person or by Proxy, Attorney or Representative at the meeting shall be a quorum.

14.2 Chairperson:

14.2.1 Chairperson of Board to be Chairperson: The Chairperson (or failing the Chairperson, the Deputy Chairperson), if any, must, if present, preside as chairperson of every meeting of the Shareholders, 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.

14.2.2 Directors to Appoint Chairperson (or Deputy Chairperson): If no Chairperson has been elected, or if at any meeting, the Chairperson (or failing the Chairperson, the Deputy Chairperson) is not present within 15 minutes of the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as Chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may choose one of their members to be chairperson of the meeting.

14.2.3 Shareholders to Appoint Chairperson: If no Director is willing 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 of the meeting.

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

14.4 Powers to Adjourn Meetings:

14.4.1 Chairperson's Power to Adjourn: The chairperson of any meeting at which a quorum is present may, with the consent of the meeting (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place.

14.4.2 Business at Adjourned Meeting: No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

14.4.3 Notice of Adjourned Meeting: When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting, but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

14.5 Powers to Dissolve Meetings:

14.5.1 Chairperson may Adjourn or Dissolve: If any meeting shall become so unruly, disorderly or inordinately protracted that in the

opinion of the chairperson of the meeting the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson of the meeting, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may in his or her sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the meeting.

14.5.2 Unfinished Business: If any meeting is dissolved by the chairperson of the meeting pursuant to clause 14.5.1, the chairperson of the meeting 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 clause 14.7.

14.6 Voting:

14.6.1 Show of Hands or Voice: In the case of a meeting of Shareholders held in accordance with clause 12.4.1, unless a poll is demanded, any voting at any meeting shall be by show of hands or voice vote (as the chairperson of the meeting may direct).

14.6.2 Voice Vote: In the case of a meeting of Shareholders held in accordance with clause 12.4.2, unless a poll is demanded, voting at any such meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

14.6.3 Passage of Resolution: A declaration by the chairperson that a resolution has on a show of hands or on a voice vote been carried by the requisite majority, shall be conclusive evidence of the fact unless a poll is demanded.

14.7 Polls: At a meeting, a poll may be demanded by:

14.7.1 Five Shareholders: not less than five Shareholders having the right to vote at the meeting; or

14.7.2 Shareholders Representing 10% of Voting Rights: a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or

14.7.3 Shareholders Holding 10% of Capital: 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 the Shares that confer that right; or

14.7.4 Chairperson: the chairperson of the meeting.

- 14.8 Poll May be Demanded Before or After Show of Hands or Voice**
Vote: A poll may be demanded either before or after the vote by show of hands or voice vote.
- 14.9 Poll Procedure:** A poll shall be taken in such manner as the chairperson of the meeting directs.
- 14.10 Votes Attached to Shares Counted in a 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 represented by Proxy or otherwise and voting. The result of a poll declared by the chairperson of the meeting shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 14.11 Chairperson Allowed Casting Vote:** In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson of the meeting shall be entitled to a second or casting vote.
- 14.12 Different Polls to be Taken at Different Times:** A poll demanded on the election of a chairperson of the meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs, and the meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.
- 14.13 Proxy Allowed to Demand a Poll:** The instrument appointing a Proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a Person as proxy for a Shareholder shall have the same effect as a demand by the Shareholder.
- 14.14 Directors May Attend Meetings:** Each Director shall be entitled to attend every meeting of Shareholders notwithstanding that he or she is not a Shareholder of the Company.
- 14.15 Notices, Reports, Financial Statements:** Holders of Equity Securities 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.
- 14.16 No Postal Votes:** Unless the Board determines otherwise, clause 7 of the first schedule of the Act providing for postal votes shall not apply to the Company.

15. VOTES OF MEMBERS

15.1 Power to Vote:

15.1.1 General Power: Subject to any rights or restrictions for the time being attaching to any Class or Classes of Shares and to any restrictions in the Listing Rules or this Constitution, every holder of Shares present in person or by Proxy, Attorney, or Representative shall be entitled:

- (a) on a vote by voices or show of hands, to one vote; and
- (b) on a poll:
 - (i) to one vote for each Share held by such Shareholder the issue price of which is fully paid; or
 - (ii) in respect of each Share held by such Shareholder the issue price of which is not fully paid, a fraction of the vote which would be exercisable if the issue price of such Share were fully paid, equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

Provided that for the purposes of this clause 15.1.1(b)(ii) a Security which is not fully paid is not of the same Class as a fully paid Security.

15.1.2 Joint Holders Right to Vote: In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by Proxy, Attorney, or Representative, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which their names appear in the Register.

15.1.3 Votes of Personal Representatives: Where two or more persons are entitled under section 93 or 94 of the Act to be registered as holder of Shares of a deceased or bankrupt Shareholder, the right of one of them to vote shall be determined by the order in which their names appear in the Register.

15.1.4 Shareholders within Protection of Personal and Property Rights Act: A Shareholder who is a mentally disordered Person (within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992) and who is subject to assessment or a compulsory treatment order or a Shareholder who is subject to the jurisdiction of the Family Court under the Protection of Personal and Property Rights Act 1988 or whose Shares are subject to a

property order or an administration order thereunder may vote by his or her manager, administrator, welfare guardian or other Person having authority to administer his or her estate. Any such manager, administrator, welfare guardian or other Person as aforesaid may vote whether on voices or on a show of hands or on a poll may vote by Proxy.

15.1.5 Other Shareholders Not Able to Manage Their Own Affairs:

The provisions of this clause apply in respect of Shareholders who are not subject to the jurisdiction of the Family Court under the Protection of Personal and Property Rights Act 1988 and to whom the provisions of clause 15.1.4 are accordingly not applicable. Every such member who would if ordinarily resident in New Zealand be subject to the jurisdiction of the Family Court under the Protection of Personal and Property Rights Act 1988 or in respect of whom an order has been made by any court having jurisdiction in lunacy may vote whether on voices or on a show of hands or on a poll by his or her committee, receiver, or curator bonis or other Person in the nature of a committee, receiver, or curator bonis or appointed by that court and any such committee, receiver, curator bonis or other Person may on a poll vote by Proxy.

15.1.6 Share Subject to Unpaid Calls: No Shareholder shall be entitled at any meeting to exercise voting rights in respect of any Shares or to form part of any quorum by virtue of his or her holding such Shares unless all calls or other sums presently payable by it, him or her to the Company in respect of the Shares have been paid.

15.1.7 Votes Need Not be Cast in Same Way: On a poll a Shareholder (including a Proxy) entitled to more than one vote need not use all its, his or her votes or cast all the votes it, he or she uses in the same way.

15.1.8 Restrictions in Listing Rules on Voting:

- (a) A holder of any Securities shall not vote on a resolution if to do so would be contrary to rule 9.3 of the Listing Rules.
- (b) The Board shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in rule 9.3.1 of the Listing Rules, the identity of the holders of Securities who are disqualified from voting on that resolution pursuant to that rule and prepare a list of the holders, if any, who the Board considers are so disqualified.
- (c) The Board shall supply on request a copy of a list prepared under clause 15.1.8(b) to any holder of Equity Securities and to NZX.

- (d) Any objection to the accuracy or completeness of any list supplied under clause 15.1.8(c) shall be disregarded by the Company and the chairperson of the relevant meeting if the objection is notified to the Company less than one full Business Day before the time fixed for commencement of the meeting.
- (e) Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any Person who casts a vote at a meeting in breach of clause 15.1.8(a), no resolution of, or proceeding of, that meeting shall be impugned on the basis of a breach of clause 15.1.8(a).

15.2 Proxies:

15.2.1 Votes by Proxy: A Shareholder may exercise the right to vote at a meeting either by being present in person or by Proxy.

15.2.2 Proxy May Attend Meeting: A Proxy is entitled to attend and be heard at a meeting as if the Proxy were the Shareholder.

15.2.3 Appointment of Proxy to be in Writing: A Proxy must be appointed by a notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or for a specified period not exceeding 12 months. A Proxy need not be a Shareholder.

15.2.4 Form of Proxy: A notice appointing a Proxy shall be in the following form or in such other form as the Board may approve:

I _____ of _____ being a shareholder of **BRISCOE GROUP LIMITED** hereby appoint _____ or failing him or her _____ as my proxy to vote for me and on my behalf at the meeting of shareholders to be held on the _____ day of _____ 20____, and at any adjournment thereof.

SIGNED this _____ day of _____ 20____

This form is to be used in favour of/against the resolution (strike out the inappropriate words).

Unless otherwise instructed the Proxy will vote or abstain from voting as he or she thinks fit.

15.2.5 Proxy Not to be Named: The Company shall not issue any proxy form with a Proxy named therein either by name or by reference to an office which he or she may hold, but the Company may indicate in a footnote that certain Persons are willing to act as a Proxy if a Shareholder desires to appoint any of them and the

Company may set out on any proxy form issued by the Company the names of the Directors for the time being of the Company.

15.2.6 Validity on Death or Mental Disorder: A vote given in accordance with the terms of a notice 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 is given or the transfer of the Share in respect of which the Proxy is given, if no intimation in writing of such death, mental disorder, revocation, or transfer has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the Proxy is used or has been handed to the Chairperson of the meeting before the vote is given.

15.2.7 Notice of Proxy to be Lodged 48 Hours Before Meeting: No Proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced not less than 48 hours before the time of the meeting in the manner set out in clause 15.2.8.

15.2.8 Notice of Proxy to be Lodged in Particular Manner 48 Hours Before Meeting: A copy of the written notice appointing a Proxy and a copy of the power of attorney or other authority, if any, under which it is signed or, if required by the Board, a notarially certified copy of that power or authority shall be deposited at the Office or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the Person named in the notice proposes to vote.

15.2.9 Proxy Form to Allow Vote For or Against: A proxy form shall (to the extent that the subject matter of the relevant resolution reasonably permits) allow Shareholders to instruct the Proxy to vote either for or against any resolution.

15.2.10 Electronic Proxy: Notwithstanding the provisions of clause 15.2.8 and to the extent permitted by the Act and the Listing Rules, and if approved by the Company, a Proxy may be delivered by electronic mail to an address specified by the Company for that purpose.

15.3 Corporations Acting by Representatives at Meeting: Any corporation which is a Shareholder, or an Attorney of a Shareholder, of the Company may by resolution of its directors or other governing body authorise such Individual as it thinks fit to act as its representative at any particular meeting of Shareholders, or any particular meeting of any Class of Shareholders, or at all such meetings until notice of revocation of such authority shall have been given to the Company and any Individual so authorised shall be entitled to exercise the same powers on behalf of the corporation which he or she represents as that corporation could exercise if it were an individual Shareholder of the Company.

15.4 Appointment of Attorney: Any Shareholder may at any time and from time to time by power of attorney appoint any Person to be his or her attorney to attend meetings of the Company and on behalf of the Shareholder to vote and generally to act for the Shareholder in the capacity as such as fully and effectually to all intents and purposes as such Shareholder could do if present in person or by Proxy or Representative.

PART IV - DIRECTORS

16. DIRECTORS

16.1 Number of Directors: The number of Directors shall not be less than three nor more than five or such other number as is fixed by an Ordinary Resolution, at least two of which Directors shall be ordinarily resident in New Zealand and subject to these limitations the number of Directors to hold office shall be fixed from time to time by the Board. The Persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed as directors pursuant to this Constitution.

16.2 No Shareholding Qualification for Directors: An Individual shall not be required to hold Shares in order to make him or her eligible for appointment as a Director or as an Alternate Director.

16.3 Power to Appoint to Fill Casual Vacancy or in Addition to Existing Directors:

16.3.1 Board's Powers: Subject to the Listing Rules, the Board shall have the power at any time, and from time to time, to appoint any Individual to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors shall at no time exceed the maximum determined under clause 16.1. Any Director so appointed shall hold office only until the next annual meeting of Shareholders, and shall then be eligible for re-election, but shall not be taken into account in determining the number of Directors who are to retire by rotation at that meeting.

16.3.2 Shareholders' Powers: Without prejudice to the powers of the Board under clause 16.3.1, and subject to the provisions of clause 16.1, and rule 3.3.2 of the Listing Rules (in the case of an annual meeting), the Company by Ordinary Resolution may, provided notice proposing the election has been given to each Person entitled to receive notice of the meeting not less than 10 Business Days before the meeting, elect any Individual to be a Director, either to fill a casual vacancy or as an additional Director.

16.4 Resignation and Removal of Directors:

16.4.1 Resignation: A Director may resign from office as such at any time by tendering to the Company a written notice of resignation or by announcing the same at a meeting of the Board. A resignation by written notice shall take effect as from the time of receipt of the notice at the Office unless a later date is specified in the notice in which case such resignation shall take effect from the date specified in the notice.

16.4.2 Removal: The Company by Ordinary Resolution may remove any Director before the expiration of his or her period of office

notwithstanding anything in this Constitution or in any agreement between the Company and that Director. Any such removal shall be without prejudice to any claim that the Director may have for damages for breach of any contract of service between him or her and the Company.

16.5 Rotation of Directors:

16.5.1 Exception to Rotation: The Managing Director shall be exempt from the obligation to retire in rule 3.3.8 of the Listing Rules, but shall be included in the number of Directors upon which the calculation for the purpose of rule 3.3.8 of the Listing Rules is based. If there is more than one Managing Director, only one of them, nominated by the Directors, is entitled not to be subject to retirement under this clause.

16.5.2 Must Seek Election Every Three Years: No Director who is not the Managing Director may hold office without re-election beyond the third annual meeting following the meeting at which the Director was last elected or re-elected.

16.5.3 Deeming Provision: If a Director retiring at an annual meeting as required by the Listing Rules and this Constitution, is re-elected at that meeting, he or she is deemed to have held office until he or she is re-elected.

16.6 Remuneration of Directors:

16.6.1 Directors Entitled to Expenses: The Directors shall be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendance at meetings of the Board or a committee, or of the Company and when in any other manner whatsoever and wheresoever engaged on the business or affairs of the Company together with an expense allowance of such sum as the Board may consider reasonable for each day, or part of a day, upon which the Director is absent from his or her usual place of residence in the execution of such duties.

16.6.2 Special Remuneration: Subject to any applicable restriction in the Listing Rules, the Board may authorise the Company to pay special remuneration to any non-executive Director who is or has been engaged by the Company to carry out any services which in the opinion of the Board is work not in the capacity of a Director.

16.6.3 Directors' Remuneration not Referable to Turnover or Profit: Notwithstanding anything herein before contained, the remuneration of the Directors whether special or otherwise in respect of their services as Directors shall not be wholly or in part by way of commission on, or percentage of, turnover or Dividends, nor, except in the case of an Executive Director, of profits.

16.7 Directors' Gratuities: Subject to the provisions of section 161 of the Act, the board may on behalf of the Company make a payment to a Director or former Director of the Company, or his or her dependants, by way of a lump sum or pension upon or in connection with the retirement or cessation of office by that Director, only if the amount of the payment or the method of calculation of that payment is authorised by an Ordinary Resolution provided that the Company may make a payment to a Director or former Director that was in office on or before 1 May 2004 and has continued to hold office since that date, or to his or her dependants, by way of lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, without an Ordinary Resolution of the Issuer provided that the total amount of that payment (or the base for that pension) does not exceed the total remuneration of that Director in his or her capacity as a Director in any three years chosen by the Company.

All such benefits paid or payable shall be in addition to amounts or benefits paid or payable to any such director from any superannuation scheme established by the Company or any of its subsidiaries.

16.8 Disqualification of Directors: The office of Director shall be vacated by a Director, if the Director:

16.8.1 Bankruptcy: becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or

16.8.2 Prohibition: becomes prohibited from being a Director by reason of section 151(2) of the Act; or

16.8.3 Protection of Personal and Property Rights Act 1988: becomes of unsound mind or becomes subject to a property order under the Protection of Personal and Property Rights Act 1988; or

16.8.4 Resignation: resigns his or her office pursuant to clause 16.4.1; or

16.8.5 Absence: absents himself or herself from attendance at meetings of the Board continuously for the space of six months (calculated from the date of the last meeting of the Board attended by that Director) without special leave of absence from the Board and his or her Alternate Director (if any) shall not have attended any such meeting in his or her stead, unless the Board resolves otherwise; or

16.8.6 Removal: is removed from office pursuant to clause 16.4.2; or

16.8.7 Termination of Employment: being an Executive Director, ceases for any reason to be in the salaried employment of the Company or any of its Subsidiaries unless the Board resolves otherwise; or

16.8.8 Retirement under Listing Rules: retires his or her office at an annual meeting of Shareholders pursuant to the Listing Rules and is

not re-elected at that meeting, in which case he or she will be deemed to have held office until the end of that meeting or adjournment thereof.

- 16.9 Validity of Acts:** The actions taken by the Board, or any committee, or any Director to whom the Board has delegated any of its powers or by any Individual acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or Person acting as aforesaid or that they or any of them were not qualified for appointment, be as valid as if every such Person had been duly appointed and was qualified to be a Director.

17. ALTERNATE DIRECTORS

- 17.1 Appointment of Alternate Director:** Each Director shall have the power to appoint, by notice in writing to the Company, any Individual who is not already a Director and who is approved by a majority of the other Directors, to act as an alternate director in his or her place, either for a specified period, or generally during the absence or inability to act from time to time of such Director. The appointment may be revoked at any time by a majority of the other directors, or by the Director who appointed the alternate giving written notice to the Company. A Director may not be appointed to act as alternate for another Director. No Director may appoint a deputy or agent otherwise than by way of appointment of an alternate under this clause 17.
- 17.2 Termination of Appointment:** The appointment of an Alternate Director shall terminate on the happening of any event which if he or she were a Director would cause him or her to vacate such office, or if his or her appointor ceases to be a Director or if a majority of Directors other than his or her appointor give written notice to that appointor and to the Company withdrawing the approval of that Individual as an Alternate Director (provided that a Director retiring at a meeting of the Company and being re-elected at that meeting as required by the Listing Rules shall not for the purposes of this provision be treated as having ceased to be a Director).
- 17.3 Powers of Alternate Director:** An Alternate Director shall, unless otherwise provided by the terms of his or her appointment, whilst acting in the place of the Director he or she represents, have, exercise, and discharge all the powers, rights, duties, and privileges (including without limitation the right to receive notice of, and participate in, meetings of the Board, the power to sign resolutions of the Directors in accordance with clause 20.3, but excluding the right of acting as Managing Director and excluding the right to appoint an Alternate Director) of the Director appointing him or her and be subject in all respects to the same terms and provisions as that Director except in respect of remuneration.
- 17.4 Remuneration of Alternate Directors:** An Alternate Director may be paid expenses, and shall be entitled to be indemnified by the Company to the same extent, with any necessary modifications, as if he or she were a Director but he or she shall not be entitled to receive from the Company, in respect of his or her appointment as Alternate Director, remuneration other than such

proportion (if any) of the remuneration otherwise payable to his or her appointor as such appointor may by notice in writing to the Company from time to time direct.

18. DIRECTORS' INTERESTS

18.1 Directors' Declaration of Interests:

18.1.1 Entry in Interests Register: If a Director becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, he or she must cause to be entered in the Interests Register, and disclose to the Board:

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

18.1.2 General Notice: For the purposes of clause 18.1.1, a general notice entered in the Interests Register or disclosed to the Board to the effect that a Director:

- (a) is a shareholder, director, officer, or trustee of another named company or other person; and
- (b) is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that other company or person;

shall be a sufficient disclosure of interest in relation to such transactions.

18.1.3 Failure to Comply: Failure by a Director to comply with clause 18.1.1 shall not affect the validity of a transaction entered into by the Company or the Director.

18.1.4 Interested Director Voting: A Director who is interested in a transaction entered into, or to be entered into, by the Company shall not vote on a matter relating to the transaction but may attend a meeting of Directors at which a matter relating to the transaction arises, (but shall not be included among the Directors present for the purpose of a quorum) provided that an interested Director may vote and be counted in the quorum in respect of such a matter if the matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act. For the purposes of this clause 18.1.4 the term "interested" has the meaning given to that term in section 139 of the Act.

19. PROCEEDINGS OF DIRECTORS

19.1 Third Schedule Does Not Apply: The proceedings at meetings of the Board shall be as set out in this Constitution and the provisions set out in the Third Schedule to the Act shall not apply to proceedings of the Board.

19.2 Meetings of Directors:

19.2.1 Convening of Meetings: The Board may meet for the despatch of business, adjourn, and otherwise regulate its meetings and proceedings as it thinks fit. Any Director may at any time summon a meeting of the Board (including a teleconference meeting as provided for in clause 19.4).

19.2.2 Notice of Meetings: Notice of every meeting of the Board shall be given to every Director either personally or by written notice sent to the last address notified to the Company by the Director for this purpose. A notice convening a meeting of the Board shall be in writing and shall specify:

- (a) the date and time (in accordance with New Zealand time) at which the meeting is to be held;
- (b) the place at which the meeting is to be held; and
- (c) in the case of a meeting which may be attended by telephone or other instantaneous audio (or audio and visual communication) the telephone number to which it is necessary to be connected for the purposes of attending the meeting by such means.

19.2.3 Quorum: Until otherwise determined by the Board, and subject to any restrictions in the Listing Rules, the quorum necessary for the transaction of the business of the Board shall be two Directors. A meeting of the Board at which the quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Constitution for the time being vested in or exercisable by the Board.

19.2.4 Chairperson: The Board may elect a Chairperson and (if it thinks fit) a Deputy Chairperson and determine the period for which each is to hold office. The Chairperson, or in his or her absence the Deputy Chairperson (if any), shall preside at all meetings of the Board but if neither the Chairperson nor the Deputy Chairperson (if any) is present within 15 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.

19.2.5 Votes: Questions arising at any meeting of the Board shall be decided by a majority of votes. Each Director present at the

meeting, except any Director prohibited from voting by the Listing Rules from voting, shall have one vote. The Chairperson shall have a casting vote in the event of a tie unless only a quorum is present. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.

19.2.6 Proceedings in Case of Vacancy: The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors or Director may act only for the purposes of increasing the number of Directors to the said minimum number or to summon a meeting of the Company but for no other purpose.

19.2.7 Presence by Telephone: Without limiting clause 19.4, a Director may participate in any meeting of the Board by telephone or other instantaneous audio (or audio and visual) communication provided such Director has given notice in writing of his or her intention so to do to the Company at least 48 hours prior to the scheduled commencement time of such meeting. The requirements as to such notice may be waived by the Board. Any such Director:

- (a) must throughout the meeting be able to hear each of the other Directors taking part;
- (b) must, at the commencement of the meeting, acknowledge his or her presence for the purpose of the meeting, to all the other Directors taking part;
- (c) may not leave such meeting by disconnecting his or her telephone or other means of communication unless he or she has first obtained the express consent of the Chairperson; and
- (d) shall (for the purposes of this Constitution) be conclusively presumed to have been physically present and to have formed part of the quorum at all times during the meeting unless he or she first obtained the express consent of the Chairperson of the meeting to leave the meeting as aforesaid. Neither the meeting, nor any business conducted thereat, shall be invalidated if a Director does leave a meeting conducted as aforesaid without the express consent of the Chairperson.

19.2.8 Provisions to Apply Except Where Otherwise Agreed: The provisions contained in this clause 19 shall apply in relation to all meetings of the Board except where otherwise agreed by all the Directors for the time being in relation to any particular meeting or meetings.

19.2.9 Omission of Notice: The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Director shall not invalidate the proceedings at that meeting.

19.3 Resolution in Writing Assented to by All Directors: A resolution in writing signed or assented to by letter, telex, facsimile, or other written message, by each Director (or by his or her Alternate Director) shall be as valid and effective as if it had been passed at a meeting of the Board duly called and constituted. Any such resolution may consist of several documents in like form, each signed or purporting to have been despatched by one or more Directors or their Alternate Directors as the case may be. Every such resolution shall be recorded in the minutes and copies shall be sent to any Directors by whom the resolution has not been signed.

19.4 Teleconference Meeting of Directors:

19.4.1 Power to Meet by Teleconference: For the purpose of this Constitution the contemporaneous linking together by telephone or other means of instantaneous audio (or audio and visual) communication of a number of the Directors not less than the quorum of a meeting of the Board, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Board and all the provisions in this Constitution as to meetings of the Board shall apply to such meetings so long as the following conditions are met:

- (a) all the Directors for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of a meeting by telephone or other means of communication and to be linked by telephone or such other means for the purposes of such meeting; notice of any such meeting may be given on the telephone or by other means of communication at least twelve hours before the time of commencement of the meeting;
- (b) each of the Directors taking part in the meeting by telephone or other means of communication must throughout the meeting be able to hear each of the other Directors taking part; and
- (c) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other Directors taking part.

19.4.2 Restriction on Leaving Teleconference: A Director may not leave a meeting conducted pursuant to clause 19.4.1 by disconnecting his or her telephone or other means of communication unless he or she has first obtained the express consent of the Chairperson of the meeting and a Director shall for the purposes of this Constitution be conclusively presumed to have

been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she first obtained the express consent of the chairperson of the meeting to leave the meeting as aforesaid. Neither the meeting nor any business conducted thereat shall be invalidated if a Director does leave a meeting conducted pursuant to this clause without the express consent of the Chairperson.

19.4.3 Minutes at Teleconference: A minute of the proceedings at a meeting by telephone or other means of communication shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting.

19.5 Scheduling and Notice of Meetings:

19.5.1 Regular Meetings: The Board shall schedule its regular meetings in advance as follows:

- (a) as soon as reasonably practicable after the commencement of each calendar year, the Board shall decide upon the date, time and place of every meeting ("scheduled meeting") of the Board then proposed to be held during the remainder of the then current calendar year; and
- (b) as soon as reasonably practicable after the Board has decided upon the date, time and place of every scheduled meeting of the Board for any calendar year, the Managing Director or, failing him or her, any other Director appointed for that purpose by the Board, shall give a notice to every Director setting out that information and such notice shall serve as notice of each such meeting for the purposes of this clause 19.5.

19.5.2 Notice Periods: The following periods of notice shall apply to the convening of meetings of the Board.

- (a) In the case of a scheduled meeting of the Board, where notice of that meeting has previously been given in accordance with clause 19.5.1(b) no further notice shall be required. The minimum period of notice required in order to change the scheduled date, time or place of a scheduled meeting of the Board shall be seven clear days.
- (b) Except in the case of urgency falling within clause 19.5.2(c), the minimum period of notice for convening a meeting of the Board other than a scheduled meeting shall be seven clear days.
- (c) In the case of urgency where, in the opinion of the Chairperson or in his or her absence the Deputy Chairperson

(if any) or in the absence of both, the Managing Director, (if any) or any other two Directors a meeting of the Board is required in the interests of the Company to be convened on less than seven clear days' notice, the meeting may be convened on shorter notice provided that:

- (i) not less than three-quarters of the Directors consent to such shorter notice; or
- (ii) the Chairperson or in his or her absence the Deputy Chairperson (if any) or in the absence of both the Managing Director (if any) and at least one other Director consider that by reason of extreme urgency, a meeting on shorter notice determined by them is required in the interests of the Company and that it is not practicable to comply with clause 19.5.2(c)(i) above.

19.5.3 Meetings Convened on Short Notice: In the case of a meeting convened on short notice pursuant to clause 19.5.2(c) so far as can reasonably be achieved:

- (a) a copy of the notice convening the meeting shall be given to each Director either personally or sent by facsimile transmission to his or her facsimile number prior to the holding of the meeting;
- (b) the Chairperson, if any, or Managing Director shall endeavour to contact every Director personally or by telephone prior to the holding of the meeting to try to ensure that every Director is aware that the meeting is to be held;
- (c) every Director shall be entitled to participate in the meeting by telephone notwithstanding his or her failure to give the required notice provided for under clause 19.2.7; and
- (d) the business to be transacted at the meeting shall be limited to business related to the urgent matter or matters which necessitated the meeting being called on short notice.

19.5.4 Despatch of Notices: Subject as provided in clause 19.5.3(a), notices convening a meeting of the Board shall, so far as the circumstances reasonably permit, be despatched as follows:

- (a) in the case of a Director having an address within New Zealand, either:
 - (i) delivered to each Director at his or her address; or
 - (ii) sent by facsimile transmission to the Director's facsimile number; or

- (iii) handed to the Director personally; or
- (b) in the case of a Director having an address outside New Zealand, either:
 - (i) sent by air courier to the Director's address (in which case an advice of despatch shall be promptly sent by facsimile transmission to the Director's facsimile number); or
 - (ii) sent by facsimile transmission to the Director's facsimile number; or
 - (iii) handed to the Director personally.

19.5.5 Board Papers:

- (a) The documentation required for each meeting of the Directors ("board papers") shall comprise:
 - (i) an agenda of the general nature of the business to be transacted at the meeting;
 - (ii) where practicable, details of the resolutions to be put to the meeting; and
 - (iii) such explanatory or background papers as the Chairperson (or failing him or her the Deputy Chairperson (if any)) shall think fit.
- (b) The requirements concerning the despatch of the board papers relating to a meeting of the Directors are as follows:
 - (i) the board papers shall be despatched in a timely manner, having regard to the circumstances of each Director;
 - (ii) the board papers shall be delivered or sent in the same manner as is laid down by clause 19.5.6 in relation to notices; and
 - (iii) in the case of a meeting convened on short notice pursuant to clause 19.5.3 a Director shall be entitled to require the Company to send the board papers to him or her by facsimile transmission to his or her facsimile number provided that the Director is able to give satisfactory assurances that confidentiality will be preserved in relation to the facsimile transmission.

19.5.6 Notices:

- (a) Each Director shall from time to time give written notice to the Company of his or her address, facsimile number, and telephone number or numbers for the purposes of this clause 19.
- (b) A notice given to a Director pursuant to this clause 19 shall be deemed to be given when delivered at the address notified under clause 19.5.6(a) or in the case of a facsimile transmission when the Company receives an acknowledgment of receipt.

20. COMMITTEES

The Board may, from time to time, subject to section 130 of the Act and the Listing Rules, appoint committees consisting of an Individual or such Individuals (whether or not Directors) as it thinks fit and may delegate any of its powers to any such committee and may, from time to time, vary, suspend or remove such delegation. Any committee so formed shall in the exercise of its powers so delegated conform to any regulation that may be imposed on it by the Board and subject to any such regulations the proceedings of any committee appointed under this clause shall be governed by clause 19 but substituting the words "committee member" for the word "Director" on each occasion therein.

21. POWERS AND DUTIES OF DIRECTORS

- 21.1 Management of Company:** Subject to clauses 21.6 and the Listing Rules, the business and affairs of the Company shall be managed by the Board except to the extent of any provision to the contrary in this Constitution.
- 21.2 General Power:** The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs.
- 21.3 Exercise of Powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution or the Listing Rules, to be exercised by the Shareholders.
- 21.4 Appointment of Attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a Person as its attorney, either generally or in relation to a specific matter. Any such power of attorney may contain such provisions for the protection of Persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
- 21.5 Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other Person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of that

power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

21.6 Major Transactions: The Company must not enter into a Major Transaction unless the transaction is:

21.6.1 Special Resolution: approved by a Special Resolution; or

21.6.2 Contingent on Special Resolution: contingent upon approval by a Special Resolution.

21.7 Board to Cause Minutes to be Kept:

21.7.1 Minutes: The Board shall cause minutes to be made, in books provided for the purpose of recording:

- (a) all appointments of officers made by the Board;
- (b) the names of all the Directors present at each meeting of the Board and the names of all committee members present at each meeting of a committee;
- (c) all resolutions and proceedings at all meetings of the Company, and of the Board, and of committees of the Board; and
- (d) all instruments whose execution is authorised.

21.7.2 Evidence of Minutes: Any minutes of any meeting of the Company or of the Board or of any committee, purporting to be signed by the Chairperson of such meeting or of the next succeeding meeting, shall be receivable in all courts, and by any Person authorised to take evidence, and may be relied on by all other Persons (not being Persons having actual knowledge to the contrary), as prima facie evidence of the matters stated in such minutes.

21.8 Acts in Interest of Holding Company:

21.8.1 Wholly-Owned Subsidiary: If at any time the Company is a wholly-owned Subsidiary, a Director may, when exercising his or her powers or performing his or her duties as a Director, act in a manner which he or she believes is in the best interests of the Company's Holding Company even though it may not be in the best interests of the Company.

21.8.2 Subsidiary: If at any time the Company is a Subsidiary (not being a wholly-owned Subsidiary), a Director may, when exercising powers or performing duties of a Director, with the prior consent of the Shareholders (excluding the Company's Holding Company), act

in a manner which he or she believes is in the best interests of the Company's Holding Company even though it may not be in the best interests of the Company.

22. MANAGING DIRECTOR

- 22.1 Power to appoint Managing Director:** The Board may from time to time appoint one of the Directors to the office of Managing Director of the Company for such period not exceeding five years and on such terms as it thinks fit and may at any time within a period of three months before the expiration of such period of appointment as aforesaid extend such period of appointment for a further period not exceeding five years and may likewise extend any such further period or periods of appointment. If the Board so determines, a Managing Director may be referred to as the Chief Executive of the Company.
- 22.2 Managing Director Liable to Dismissal:** Every Managing Director shall be liable to be dismissed or removed by the Board (with or without cause), but the Board may enter into any agreement on behalf of the Company with any Person who is, or is about to become, a Managing Director, with regard to the length and terms of his or her employment, but so that the remedy of any such Person for any breach of the agreement shall be in damages only, and he or she shall have no right to claim to continue in such office contrary to the will of the Board.
- 22.3 Remuneration of Managing Director:** Subject to the Listing Rules, the remuneration of a Managing Director shall be fixed by the Board and may be by way of salary, commission, participation in profits, or partly in one way and partly in another. Such remuneration may be in addition to the remuneration of that Managing Director as an ordinary Director.
- 22.4 Removal of Managing Director:** Subject to the Listing Rules and to any agreement entered into between a Managing Director and the Company as aforesaid, a Managing Director shall be subject to the same provisions as regards resignation, removal, and disqualification as the other Directors of the Company, and if he or she ceases to hold the office of Director from any cause, he or she shall thereupon cease to be a Managing Director. If a Managing Director shall cease to be employed by the Company then, unless the Board otherwise determines, he or she shall ipso facto cease to be a Director.
- 22.5 Powers Capable of Being Conferred Upon Managing Director:** Subject to section 130 of the Act, the Board may from time to time entrust to and confer upon a Managing Director any of the powers exercisable by the Board upon such terms and conditions, and with such restrictions, as it may think fit and either collaterally with or to the exclusion of its own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers.

23. INDEMNITY AND INSURANCE

23.1 Indemnity of Directors: Subject to the Listing Rules and clause 23.3, every Director shall be indemnified by the Company:

23.1.1 Unsuccessful, Acquitted or Discontinued Actions: 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

23.1.2 Acts or Omissions: 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.

23.2 Other Indemnities: Subject to the Listing Rules and clause 23.3, 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:

23.2.1 Unsuccessful, Acquitted or Discontinued Actions: 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

23.2.2 Acts or Omissions: 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, or costs incurred by him or her in defending or settling any claim or proceeding relating to such liability.

23.3 Exceptions: An indemnity conferred by clause 23.1.2, or given pursuant to clause 23.2.2, shall not apply in respect of:

23.3.1 Criminal Liability: any criminal liability;

23.3.2 Breach of Fiduciary Duty: 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 a Related Company; or

23.3.3 Directors' Duties: in the case of a Director or a director of a Related Company, any liability in respect of a breach of the duties specified in section 131 of the Act.

23.4 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:

23.4.1 Acts or Omissions: liability, not being criminal liability, for any act or omission by him or her in such capacity; or

23.4.2 Claims or Proceedings: costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or

23.4.3 Criminal Proceedings: costs incurred by him or her in defending any criminal proceedings:

(a) 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

(b) in which he or she is acquitted.

23.5 Definitions: In this clause 23:

23.5.1 Director: "Director" includes a former Director and "director" includes a former director; and

23.5.2 Other Extended Meanings: other words given extended meanings in section 162(9) of the Act have those extended meanings.

PART V - DISTRIBUTIONS

24. DISTRIBUTIONS

- 24.1 Power to Make Distribution:** The Board may in accordance with the Act authorise a Distribution by the Company at any time, and of an amount, and to any Shareholder the Board thinks fit, if it is satisfied on reasonable grounds that the Company will, immediately following the Distribution, satisfy the Solvency Test. If after a Distribution is authorised and before it is made, the Board ceases to be satisfied on reasonable grounds that the Company will, immediately after the Distribution is made, be able to satisfy the Solvency Test, the Distribution is deemed not to have been authorised.
- 24.2 Rules for Application of Solvency Test:** In applying the Solvency Test for the purposes of clause 24.1, "Debts" and "Liabilities" have the meanings given to those terms in section 52(4) of the Act.
- 24.3 Solvency Test:** The Directors who vote in favour of a Distribution must sign a certificate stating that, in their opinion the Company will, immediately after the Distribution is made, satisfy the Solvency Test and the grounds for that opinion in terms of and in the manner provided under the Act.
- 24.4 Distribution to Joint Holders:** If several Persons are registered as joint holders of any Shares, and such Persons are entitled to receive Distributions in respect of the Shares, any one of them may give effectual receipts for any Distribution.
- 24.5 Manner of Payment:** Any Distribution may be paid in any usual manner (whether by direct credit or otherwise) reasonably directed by the Person entitled thereto and failing any such direction may be paid by cheque or warrant sent through the post to the registered address of the Person entitled thereto or in the case of joint holders to any one of such joint holders at his or her registered address, or to such Person and such address as the Person entitled or such joint holders, as the case may be, may direct, and the Company shall not be responsible for any loss arising from such mode of transmission.
- 24.6 Deductions from Distributions:** The Board may deduct from Distributions payable to any Person all such sums of money as may be due from him or her to the Company on account of calls or otherwise or any debt or liability in respect of which the Company has a lien pursuant to this Constitution upon the specific Shares in respect of which the Distribution is payable, and on account of such amounts as the Company may be called upon to pay under any statute or legislative enactment in respect of the Shares of a deceased or other Shareholder.
- 24.7 Persons to Whom Distributions Payable:** Distributions shall be payable to the Persons who are the registered holders of the Shares in respect of which they are authorised at the time of the authorisation of such Distributions or, if so stipulated by the terms of the authorisation, at the time when such Distributions are resolved to be payable.

- 24.8 Shareholder May Agree That Distribution Payable To Third Party:** Notwithstanding clause 24.1, the Board may enter into any agreement on behalf of the Company with a Person (whether as a term of the issue of Shares or otherwise) for Distributions in respect of all or some of the Shares held by that Person to be paid, during such period or periods as may be specified in such agreement, to one or more third parties nominated by that Person and payment by the Company of any Distribution to such one or more third parties in accordance with that agreement shall constitute a full discharge of the obligations of the Company to that Person in respect of the relevant Distribution. Nothing in this clause 24.8 shall derogate from clause 4.
- 24.9 Right Not Transferred:** Subject to the terms of authorisation of any Distribution, a transfer of any Share shall not as against the Company pass the right to any Distribution authorised in respect of that Share payable before the registration of the transfer.
- 24.10 Distributions Payable in Currencies other than the Currency of New Zealand:** The Board may direct the payment of any Distribution wholly or partly in a currency or in currencies other than the lawful currency of New Zealand and may direct that the Distribution payable in respect of any Shares shall be paid wholly or partly in one currency and that the Distribution payable in respect of other Shares shall be paid in one or more other currencies. The Board may determine or provide for the determination of the exchange rate or exchange rates to be used in calculating the amount of any Distribution to be paid in a currency or currencies other than the lawful currency of New Zealand and where any question arises in regard to any payment of a Distribution in a currency or in currencies other than the lawful currency of New Zealand the Board may settle the same as it considers expedient.
- 24.11 No Interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

25. DIVIDENDS

- 25.1 Entitlement to Dividends:** The provisions of clause 24 apply to any Dividend authorised by the Board provided that the Board must not authorise a Dividend:
- 25.1.1 Selective:** in respect of some but not all of the Shares in a Class; or
 - 25.1.2 Unequal Amounts:** 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 the Terms of Issue of the Share. Nothing in this clause prevents the Board from issuing Shares wholly or partly in lieu of any Dividend in accordance with the Ac

25.2 Unclaimed Dividends:

25.2.1 Investment: All Dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed and the Company shall be entitled to mingle the amounts of any such Dividends with other money of the Company or spend the same, and shall not be required to hold them or regard them as being impressed with any trust.

25.2.2 Forfeiture: All Dividends, and any other moneys payable to any Shareholder or former Shareholder in respect of Shares and/or interest in respect of Debt Securities issued by the Company remaining unclaimed for five years after having been declared or otherwise having become payable, shall be automatically forfeited for the benefit of the Company, unless the Board shall resolve otherwise. Subject to the provisions of clause 24, the Board shall at any time annul such forfeiture and pay the Dividend or other money so forfeited to any Person producing evidence that he or she is entitled to the same.

25.2.3 Waiver: A Shareholder may waive his or her right to receive a Dividend by notice in writing to the Company signed by or on behalf of the Shareholder.

26. BONUS ISSUES

26.1 Power to Issue Bonus Shares: The Board may resolve that any Distribution authorised under clause 24 or clause 25 may be applied either in or toward paying up any amounts for the time being unpaid on any Shares held by those Persons respectively or paying up in full the issue price of Securities issued as fully paid up to and amongst those Persons in the proportion as they would have been entitled to the same, or partly in the one way and partly in the other, and the Board shall give effect to every such resolution.

26.2 Participation by Holders of Shares Having Special Terms of Issue: Where the holders of any Shares issued by the Company are, by virtue only of the Terms of Issue thereof, entitled to participate in any Distribution whether at the time such Distribution is made or at some future time, such holders shall participate in any such Distribution to the extent and in the manner authorised by the Terms of Issue, and all the provisions of clauses 24 and 25 shall be subject to the Terms of Issue and shall be deemed to be modified in order to give effect thereto.

26.3 Power of Directors on Distribution: In the event of any Distribution under clause 26.2 the Board shall make all allotments and issues of fully paid Securities, if any, and generally shall do all acts and things required to give effect thereto, and may either round up or disregard fractional entitlements to a Security or make such provision by the issue of fractional certificates or by payment in cash or otherwise as the Board thinks fit, and the Board may also authorise any Person to enter on behalf of all the Persons entitled thereto into

an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any further Security to which they may be entitled upon any such Distribution, or (as the case may require) for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the Distribution, of the amounts or any part of the amounts remaining unpaid on their existing Shares and any agreement made under any such authority shall be effective and binding on all such Persons.

26.4 Issue of Shares in Lieu of Dividends: The Board may, in its discretion, constitute, implement and maintain, on such terms and conditions as it may determine from time to time, one or more schemes for the benefit of the holders of Shares in the Company pursuant to which the holders of all or some of the Shares in the Company may be given any one or more of the following options, namely:

26.4.1 Subscription for Shares: instead of taking in cash the whole or any part of any Dividend which is declared on any ordinary Shares held by them, to invest such cash in subscribing for Shares payable in full or by instalments, or in paying up any unpaid or partly paid ordinary Shares held by them, on the terms and conditions of any such scheme; or

26.4.2 Forgo Entitlement: to forgo their entitlement to any Dividend or Distribution declared on ordinary Shares in respect of all or any ordinary Shares held by them and to take instead fully paid ordinary Shares, to be issued by the Company by way of bonus, on the terms and conditions of any such scheme; or

26.4.3 Not Rank for Dividend: to elect that all or any of the Shares held by them will not rank for Dividend during such period or periods as may be fixed by the terms and conditions of any such scheme and will instead entitle the Shareholder to the issue of fully paid Shares, to be issued by the Company by way of bonus, on the terms and conditions of any such scheme; or

26.4.4 Other Options: any other option in respect of the whole or any part of any Dividend on any ordinary Shares held by them as the Board shall determine.

Participation in any such scheme shall be available to such Shareholders as wish to participate therein and are eligible to do so under the terms and conditions of the scheme. The Board may in its discretion vary, terminate or suspend any such scheme which may be in existence from time to time on reasonable written notice to all Shareholders who are eligible (under the terms and conditions of that scheme) to participate in that scheme.

PART VI - GENERAL

27. ACCOUNTS

27.1 Books to be Kept:

27.1.1 Accounting Records: The Board shall cause accounting records to be kept that comply with the requirements of the Act.

27.1.2 Place of Records: The books of account shall be kept at the Office or, subject to section 195 of the Act, at such other place or places as the Board thinks fit.

27.1.3 Inspection by Directors: Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.

27.1.4 Inspection by Shareholders: Subject to the provisions of sections 215, 216, 217 and 218 of the Act, the Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company, or any of them, shall be open to the inspection of Shareholders not being Directors, and no Shareholder (not being a Director) shall have any right of inspecting any account or book or papers of the Company except as conferred by statute or authorised by the Board.

27.2 Accounts to be Prepared: The Board shall from time to time, in accordance with the Financial Reporting Act 1993, cause to be prepared financial statements and shall send to every shareholder the annual report and financial statements of the Company in accordance with sections 208 to 212 (both inclusive) of the Act.

28. AUDIT

Auditors shall be appointed and their duties regulated in accordance with sections 196 to 207 (both inclusive) of the Act.

29. NOTICES

29.1 Manner of Notice: A notice, report, account or other document required to be given or sent by the Company under this Constitution or the Listing Rules may be given or sent by the Company to any Shareholder either personally or by sending it by post (which, in the case of a registered address outside New Zealand, shall be airmail post) to that Shareholder or to that Shareholder's registered address or, with the Shareholder's consent, to that Shareholder's email address.

29.2 Notice to Other Holders: All notices, reports, accounts and other documents required to be sent to a holder of any other Equity Security, shall be sent in the same manner, as though the holder were a Shareholder.

29.3 Service of Notice:

29.3.1 By Post: Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post. In proving the giving of any notice by mail it shall be sufficient to prove that the letter, post card, envelope or wrapper containing the notice was properly addressed, stamped and posted and a certificate in writing signed by any Director or other officer or Employee of the Company that the letter, post card, envelope or wrapper containing the notice was so addressed, stamped and posted shall be conclusive proof thereof.

29.3.2 Postal Address outside New Zealand: If a holder of a Security quoted on NZX has no registered address within New Zealand and has not supplied to the Company an address within New Zealand or an email address for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that Security holder at such address and shall be deemed to have been received by that Security holder 24 hours after the time of the posting.

29.3.3 By Email: Where a notice is sent by email, service of the notice shall be deemed to be effected by properly addressing an email and to have been effected at the time that email first enters an information system outside the control of the Company or outside the control of the Company's agent sending the notice on the Company's behalf.

29.4 Notice Where Shareholder has No Registered Address: If a shareholder has no registered address he or she shall not be entitled to have any notice sent to him or her from the Company and all proceedings taken without notice to any such Shareholder shall be as valid as if he or she had due notice thereof. If a Shareholder has no registered address, a notice may (but need not) be given by the Company to any such Shareholder by advertisement in a newspaper circulating in the neighbourhood of the Office addressed to the Shareholders of the Company generally and any notice so given shall be deemed to have been duly given at noon on the day on which the advertisement appears.

29.5 Notice to Joint Holders: A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder first named in the Register in respect of the Share.

29.6 Notice to Representatives or Manager: A notice may be given by the Company to the Person entitled to a Share in consequence of the mental disorder, death or bankruptcy of a Shareholder, by sending it through the post

in a prepaid letter addressed to him or her by name, or by the title of the manager of the mentally disordered Person, or the legal personal representatives of the deceased, or the assignee of the bankrupt, or by any like description, as the case may be, at the address, if any, supplied for the purpose by the Person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the mental disorder, death or bankruptcy had not occurred.

29.7 Signature of Notice: The signature of any notice to be given by the Company may be written in accordance with the definition of "written" in clause 1.2.

29.8 Registered Address: The address entered in the Register shall be the registered address of each Shareholder. It shall be the duty of each Shareholder upon changing his, her or its address to notify the Company of such change. If notices or communications posted to a Shareholder's registered address are returned to the Company marked by the postal authorities or otherwise to the effect that the Shareholder is not known at that address or that delivery cannot be effected at that address, then the Company may send a registered letter to the Shareholder's registered address and if such registered letter is returned not having been delivered, then the Shareholder shall be deemed to have no registered address.

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

29.10 Notices to Equity Security Holders: Equity Security holders of all Classes shall be entitled to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying Votes.

29.11 Waiver by Shareholders: Subject to section 210 of the Act (which requires financial statements to be sent to Shareholders who elect not to receive annual reports), a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

30. EXECUTION OF DOCUMENTS

Contracts and other enforceable obligations requiring the signature of the Company may be signed:

30.1 Deeds: if a deed, by:

- (a) two or more Directors; or
- (b) a Director and one other person appointed by the Board for the purpose, both of whose signatures must be witnessed; or

(c) one or more attorneys of the Company;

or

30.2 Other Written Obligations: if not a deed, by any person acting under the express authority of the Company.

31. LIQUIDATION

If the Company is liquidated, the liquidator may, with the sanction of the Company by Special Resolution and any other sanction required by the Act, divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for the purpose set such value as he or she deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the Shareholders or different Classes of Shareholders. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, thinks fit, but so that no Shareholder shall be compelled to accept any Shares or other Securities on which there is any liability.

32. DISTRIBUTION OF ASSETS

32.1 Distribution of Excess Assets: Subject to the terms and conditions upon which any Class of Securities may have been issued, upon liquidation the surplus assets of the Company shall be distributed among the Shareholders in proportion to the number of Shares held by them respectively less any amount of the issue price for such Shares which remains outstanding.

32.2 Interpretation: In this clause 32 "surplus assets" means the assets in the hand of the liquidator after the payment of all the debts and liabilities of the Company including all the costs of the winding up.