

Constitution of First NZ Properties Limited

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CONSTITUTION
OF
FIRST NZ PROPERTIES LIMITED

1. DEFINITIONS AND INTERPRETATION

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

"**Act**" means the Companies Act 1993.

"**Alternate Director**" means a person appointed as an alternate director of the Company in accordance with this Constitution.

"**Board**" means Directors who number not less than the required quorum, acting together as a board of Directors.

"**Class**" means a class of Shares having attached to them identical rights, privileges, limitations and conditions.

"**Company**" means First NZ Properties Limited.

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

"**Director**" means a person appointed as a director of the Company in accordance with this Constitution.

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

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

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

"**month**" means calendar month.

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

"**person**" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

"**Personal Representative**" means:

- (a) in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- (b) in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and

- (c) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that statute.

"Records" means the documents required to be kept by the Company under section 189(1) of the Act.

"Representative" means:

- (a) a person appointed as a proxy under clause 21;
- (b) a Personal Representative; or
- (c) a representative appointed by a corporation under clause 22.1.

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

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

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

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

"working day" has the meaning set out in section 2 of the Act.

1.2 **Interpretation:** In this Constitution, unless the context otherwise requires or specifically stated otherwise:

- (a) the table of contents, headings and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to a statute or other law includes regulations, rules, orders and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of adoption of this Constitution);
- (d) "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act (unless expressly defined or explained in this Constitution) have the same meaning in this Constitution;
- (f) any word or expression cognate with a definition in this Constitution has a meaning corresponding or construed to that definition; and
- (g) references to clauses and subclauses are references to clauses and subclauses in this Constitution, unless stated otherwise.

1.3 **Constitution not to prevail over Act:** This Constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it, provided that if there is any conflict between:

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

the provision, word or expression in this Constitution prevails.

2. SHARES

2.1 **Classes of Shares:** Different Classes of Shares may be issued by the Company in accordance with the provisions of this Constitution. Without limiting the Classes which may be issued, any Share may be issued upon the basis that it:

- (a) confers preferential rights to distributions of capital or income;
- (b) confers special, limited or conditional voting rights;
- (c) does not confer voting rights; or
- (d) is redeemable in accordance with section 68 of the Act.

2.2 **Board may issue Shares and other securities:** The Board may issue Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Share, to any person and in any number it thinks fit.

2.3 **Pre-emptive rights:** Section 45 of the Act does not apply to the issue of Shares.

2.4 **Consolidation and subdivision of Shares:** The Board may:

- (a) consolidate and divide the Shares or any Class; and
- (b) subdivide the Shares or any Class,

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

2.5 **Bonus issues:** The Board may resolve to apply any amount which is available for Distribution either:

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

- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in subclause 2.5(a)(i),

or partly in one way and partly in the other.

2.6 **Shares in lieu of dividends:** The Board may exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

2.7 **Fractional entitlements:** The Board may, in exercising any powers pursuant to this clause 2, deal with fractional entitlements to Shares or other securities in such manner as the Board considers equitable and in the interests of the Company.

3. ALTERATION OF SHAREHOLDER RIGHTS

3.1 **Special Resolution required:** Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution or the Act must be approved by Special Resolution of each Interest Group.

3.2 **Meetings of Interest Groups:** The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, except that the necessary quorum shall be two persons holding or representing the holders of not less than one third of the Shares of the relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

3.3 **Issue of further Shares:** The issue of further Shares ranking equally with, or in priority to, any existing Shares, whether as to voting rights, Distributions or otherwise, will not be treated as be an action affecting the rights attaching to the existing Shares of that Class.

4. ACQUISITION OF COMPANY'S OWN SHARES AND REDEMPTION

4.1 **Company may purchase Shares:** The Company may purchase or otherwise acquire Shares from one or more Shareholders in accordance with the provisions of the Act and may, subject to any requirements or restrictions imposed by law, hold any Shares so purchased or acquired.

4.2 **Company may redeem Shares:** The Company may redeem any one or more of its Shares at its option for a consideration that is the fair market value of the shares at the time of redemption as determined by a suitably qualified person who is not associated with or interested in the Company as appointed by the Board.

5. SHARE CERTIFICATES

5.1 **Issue of Share certificates:** The Company may issue Share certificates in respect of all or any Shares and must, within 20 working days after receiving an application by a Shareholder, send to that Shareholder a Share certificate, in accordance with section 95 of the Act.

5.2 **Replacement Share certificates:** The Company:

- (a) may issue a replacement certificate for any Share certificate that is worn out or defaced; and
- (b) shall issue a replacement Share certificate for one that has been lost or destroyed, subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

6. **EQUITABLE INTERESTS IN SHARES**

- 6.1 **No notice of trusts:** No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.
- 6.2 **No recognition of equitable interests:** Except as required by law, no person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Share, or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share.

7. **CALLS ON SHARES**

- 7.1 **Board may make calls:** The Board may, from time to time, make such calls as it thinks fit upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.
- 7.2 **Time of call:** A call is deemed to be made at the time when the resolution of the Board making the call is passed.
- 7.3 **Fixed instalments deemed calls:** An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.
- 7.4 **Notice of call:** At least 10 working days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.
- 7.5 **Differential calls:** The Board may, on the issue of Shares, differentiate between the Shareholders as to the amounts to be paid in respect of the Shares and the times of payment of such amounts.
- 7.6 **Manner of payment:** A Shareholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.
- 7.7 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.
- 7.8 **Default interest:** If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board may reasonably determine, unless the Board waives payment of interest wholly or in part.

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

(a) it is sufficient to prove that:

- (i) the name of the relevant Shareholder is entered in the Share Register as the holder, or one of the holders, of the Shares to which the call relates; and
- (ii) except in relation to any amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date, the resolution making the call is entered in the Records and notice of the call has been duly given,

and proof of the matters mentioned in this clause is conclusive evidence of the debt; and

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

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

8. FORFEITURE OF SHARES

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

8.2 **Contents of notice:** The notice shall specify a further date (not earlier than 10 working days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due is liable to be forfeited.

8.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited Share and not paid before the forfeiture.

8.4 **Notice of forfeiture:** When a Share has been forfeited, the Company shall give notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture and shall enter in the Share Register details of the forfeiture.

8.5 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.

8.6 **Effect of forfeiture:** The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share but remains liable to the Company for all money payable in respect of the forfeited Share.

9. LIEN ON SHARES

9.1 **Lien on Shares:** The Company has a first and paramount lien upon each Share, the proceeds of sale of the Share, and all Distributions made in respect of the Share, for:

- (a) all unpaid calls owing in respect of the Share and interest thereon (if any);
- (b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived; and
- (c) all liabilities and obligations of the Shareholder to the Company, whether solely or jointly with any other person, whether incurred or arising before or after notice to the Company of any equitable interest in any person other than the Shareholder, and whether or not the date for payment, fulfilment or discharge thereof has arrived

9.2 **Waiver of lien:** Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share, except as provided in clause 12.1.

10. SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN

10.1 **Company may sell Shares:** The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but:

- (a) the Company shall not sell any Shares:
 - (i) unless the amount in respect of which a lien exists is due and payable;
 - (ii) until the expiry of 10 working days after written notice demanding payment of the amount owing has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Shares; and
- (b) before the power of sale is exercised the Shares shall be offered for sale to the holders of the remaining Shares as though they are new Shares to which the provisions of clause 2.2 apply.

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

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

10.4 **Sale procedure:** For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be

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

11. TRANSFER OF SHARES

- 11.1 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share by an instrument of transfer which complies with this Constitution.
- 11.2 **Financial Markets Conduct Act:** A Share which is disposed of in a transaction to which the provisions of subpart 9 of Part 4 of the Financial Markets Conduct Act 2013 apply may be transferred in accordance with the provisions of that Act.
- 11.3 **Other forms of transfer:** An instrument of transfer to which the provisions of clause 11.2 are not applicable shall:
- (a) be in any common form or any other form which the Board may approve;
 - (b) be signed or executed by or on behalf of the transferor; and
 - (c) if registration as holder of the Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.
- 11.4 **Delivery to Company:** An instrument transferring shares must be delivered to the Company or to the agent of the Company who maintains the Share Register, together with the Share certificate (if any) relating to the Shares to be transferred, and the transferee shall provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.
- 11.5 **Board may refuse to register:** Subject to the Act (which imposes certain procedural requirements on a board), the Board may refuse to register, or delay the registration of, a transfer of any Share if:
- (a) the Company has a lien on the Share;
 - (b) the Share is not fully paid up;
 - (c) the instrument of transfer is not accompanied by the relevant Share certificate (if any) and such other evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share;
 - (d) registration would impose a liability to the Company on the transferee and the transferee has not signed the transfer form;
 - (e) the transfer is for more than one class of Shares; and
 - (f) the registration of the transfer would result in the transferor or the transferee holding less than 3,000 Shares (or any equivalent number determined by the Board that takes into account the effect of any subdivision or consolidation),

provided that the Board resolves to exercise its power under this clause within 20 working days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five working days of the resolution being passed by the Board.

11.6 **When transfer effective:** A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

11.7 **Company to retain transfer:** If the Company registers a transfer it shall retain the instrument of transfer.

11.8 **Multiple registers:** The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places.

12. TRANSMISSION OF SHARES

12.1 **Transmission on death of Shareholder:** If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder, but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share, or constitute a release of any lien which the Company may have in respect of any Share.

12.2 **Rights of Personal Representatives:** A Personal Representative of a Shareholder:

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

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

13. DISTRIBUTIONS

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

13.2 **Form of Distribution:** Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit but shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.

13.3 **Entitlement to dividends:** Subject to section 107 of the Act (relating to unanimous consent to certain actions), the Board shall not authorise a dividend:

- (a) in respect of some but not all the Shares in a Class; or
- (b) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class,

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

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

13.5 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.

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

14. EXERCISE OF POWERS OF SHAREHOLDERS

14.1 **Alternative forms of meeting:** A meeting of Shareholders may be held by a number of Shareholders, who constitute a quorum:

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

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

14.2 **Participation by electronic means:** A Shareholder, or the Shareholder's proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if:

- (a) the Board approves those means; and
- (b) the Shareholder, proxy, or representative complies with any conditions imposed by the Board in relation to the use of those means (including, for example, conditions relating to the identity of the shareholder, proxy, or representative and that person's

approval or authentication (including electronic authentication) of the information communicated by electronic means).

14.3 **Exercise of power by meeting or written resolution:** A power reserved to the Shareholders by the Act or by this Constitution may be exercised either:

- (a) at a meeting of Shareholders; or
- (b) by a resolution in writing signed in accordance with section 122 of the Act.

14.4 **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 Ordinary Resolution.

15. MEETINGS OF SHAREHOLDERS

15.1 **Annual meetings:** The Company shall hold annual meetings of shareholders in accordance with section 120 of the Act unless, in the case of any annual meeting, everything required to be done at that meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.

15.2 **Special meetings:** A special meeting of Shareholders entitled to vote on an issue:

- (a) may be called by the Board at any time; and
- (b) shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

15.3 **Time and place of meetings:** Each meeting of Shareholders shall be held at such time and place as the Board appoints.

16. NOTICE OF MEETINGS OF SHAREHOLDERS

16.1 **Written notice:** Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director, and to the auditor (if any) of the Company, not less than 10 working days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.

16.2 **Contents of notice:** A notice of meeting shall state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any Special Resolution to be submitted to the meeting;
- (c) in the case of Special Resolutions required by sections 106(1)(a) or 106(1)(b) of the Act, the rights of a Shareholder under section 110 of the Act.

- 16.3 **Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 16.4 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any person, does not invalidate the proceedings at that meeting.
- 16.5 **Notice of adjourned meeting:** If a meeting of Shareholders is adjourned for less than 21 working days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 16.1.

17. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

- 17.1 **Requirement for quorum:** Subject to clause 17.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 17.2 **Quorum:** Subject to clause 17.3, a quorum for a meeting of Shareholders is 5 Shareholders present in person or by Representative.
- 17.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called by the Board on the written request of Shareholders entitled to exercise that right, the meeting is dissolved; and
 - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Board may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.
- 17.4 **Adjournment of meeting:** The chairperson may, with the consent of a meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.

18. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 18.1 **Chairperson:** If the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.
- 18.2 **Directors may appoint chairperson:** If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after 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 elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.

- 18.3 **Shareholders may appoint chairperson:** If at any meeting of Shareholders, no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

19. VOTING AT MEETINGS OF SHAREHOLDERS

- 19.1 **Voting at meeting in one place:** In the case of a meeting of Shareholders held under clause 14.1(a), unless a poll is demanded in accordance with clause 20.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

- 19.2 **Voting at audio/visual meeting:** In the case of a meeting of Shareholders held under clause 14.1(b) or 14.1(c), unless a poll is demanded in accordance with clause 20.1, voting at the meeting shall be by any method permitted by the chairperson of the meeting.

- 19.3 **Postal votes:** Shareholders may not exercise the right to vote at a meeting by casting postal votes.

- 19.4 **Entitlement to vote:** A Shareholder may exercise the right to vote either in person or by Representative.

- 19.5 **Number of votes:** Subject to clause 19.9 and to any rights or restrictions for the time being attached to any Class of Shares:

- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote; and
- (b) on a poll every Shareholder present in person or by Representative has one vote in respect of each Share held by that Shareholder.

- 19.6 **Declaration by chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 20.1.

- 19.7 **Chairperson's casting vote:** In the case of an equality of votes, the chairperson of a meeting of Shareholders is entitled to a casting vote.

- 19.8 **Joint Shareholders:** Where two or more persons are registered as joint Shareholders, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

- 19.9 **No vote when amount owing on Share:** A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

20. POLLS

- 20.1 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:

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

20.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

20.3 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of a poll is deemed to be a resolution of the meeting at which the poll is demanded.

20.4 **When poll taken:** A poll demanded on the election of a chairperson of a 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 directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

20.5 **Votes:** On a poll:

- (a) votes may be given either personally or by Representative;
- (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares; and
- (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

21. PROXIES

21.1 **Right to appoint:** A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting and to demand or join in demanding a poll, as if the proxy were the Shareholder.

21.2 **Multiple proxies:** A Shareholder may appoint more than one proxy for a particular meeting, provided that more than one proxy is not appointed to exercise the rights attached to a particular Share held by the Shareholder.

21.3 **Notice of appointment:** A proxy shall be appointed by written notice signed by, or in the case of an electronic notice, sent by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term.

21.4 **Production of notice:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or at such other address as is specified for that purpose in the notice convening the meeting, not later than 48 hours before the start of the meeting. If written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney must accompany the notice.

21.5 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

22. CORPORATE REPRESENTATIVE

22.1 **Appointment of representative:** A corporation which is a Shareholder may appoint a person to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

23. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

23.1 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause.

23.2 **Management review by Shareholders:** The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting, but the resolution will not be binding on the Board.

24. APPOINTMENT AND REMOVAL OF DIRECTORS

24.1 **Number of Directors:** The number of Directors shall not at any time be less than two nor more than seven. The Board may increase the maximum number of directors by resolution.

24.2 **Appointment:** Subject to clause 24.1, a person may be appointed (or removed) as a Director at any time by Ordinary Resolution or by written notice to the Company signed by the holder or holders of a majority of the Shares which confer the right to vote at meetings of Shareholders. Two or more persons may be appointed as Directors by a single resolution or notice. There is no shareholding qualification for Directors.

24.3 **Existing Directors to continue:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed pursuant to this Constitution.

24.4 **Removal:** A Director may at any time be removed from office by Ordinary Resolution or by written notice to the Company signed as provided in clause 24.2.

24.5 **Notice of appointment and removal:** Any notice to the Company pursuant to clause 24.2 or 24.4 appointing or removing a Director must:

- (a) be signed, or purport to be signed, by the person exercising such right;

- (b) in the case of joint Shareholders, be signed, or purport to be signed, by all of those Shareholders;
- (c) if given by a Shareholder which is a corporation, be signed, or purport to be signed, on behalf of the corporation by any director or other person holding equivalent office; and
- (d) be given to the Company by delivering the notice, or by sending the notice through the post or by electronic means of communication, to its registered office,

and may be comprised in one or more separate notices, each signed or purporting to be signed by one or more persons. A notice shall, unless otherwise specified, be effective from the time of receipt of the notice by the Company at its registered office.

24.6 Vacation of office: A Director ceases to be a Director if he or she:

- (a) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- (b) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (c) becomes disqualified from being a Director pursuant to the Act; or
- (d) is removed from office in accordance with clause 24.4; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally.

25. ALTERNATE DIRECTORS

25.1 Alternate Directors: Every Director may:

- (a) Appoint any person who is not disqualified by the Act from being a Director to act as an Alternate Director in their place; and
- (b) remove that person from office,

by giving written notice to that effect to the Company.

25.2 Powers of Alternate Directors: While acting in the place of the Director who appointed them, an Alternate Director has all the powers, rights, duties and privileges of that Director. They are also subject to the same terms and conditions of appointment as that Director, except in respect of remuneration.

25.3 Termination: The appointment of an Alternate Director ceases automatically if the Director who appointed them ceases to be a Director.

26. MANAGING DIRECTORS

- 26.1 **Appointment and removal:** The Board may from time to time appoint one or more Directors to the office of managing director for such period, and on such terms, as the Board thinks fit and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment. A managing director shall be subject to the same provisions as to vacation of office as apply to the other Directors and, if a managing director ceases for any reason to hold office as a Director, he or she shall immediately cease to hold the office of managing director.

27. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

- 27.1 **Power to authorise:** The Board may exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section.

28. INDEMNITY AND INSURANCE

- 28.1 **Indemnity of Directors:** Subject to clause 28.3 every Director shall be indemnified by the Company:

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

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

- 28.2 **Other indemnities:** Subject to clause 28.3, (and to any limitations contained in any deed or agreement relating to the indemnity), the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or a related company:

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

- 28.3 **Exceptions:** An indemnity conferred by clause 28.1(b), or given pursuant to clause 28.2(b), shall not apply in respect of:

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

An indemnity conferred by clause 28.1, or given pursuant to clause 28.2, shall not apply in respect of any liability or costs in respect of which an indemnity is prohibited by any legislation or law.

28.4 **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:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity;
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her in defending any criminal proceedings that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee and in which he or she is acquitted.

28.5 **Definitions:** In this clause 27.1:

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

29. POWERS OF DIRECTORS

29.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

29.2 **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 to be exercised by the Shareholders.

29.3 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the second schedule to the Act.

29.4 **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 specified 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.

29.5 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, may ratify the purported exercise of a power (or omission) which was, is or will otherwise be a breach of this constitution or the Act by Special Resolution. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

30. INTERESTS OF DIRECTORS

30.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 30.2

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

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

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

30.3 **Interested Directors may vote, etc:** A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

- (a) vote on any matter relating to the transaction;
- (b) attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- (c) sign a document relating to the transaction on behalf of the Company; and
- (d) do any other thing in his or her capacity as a Director in relation to the transaction,

as if the Director were not Interested in the transaction.

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

31. PROCEEDINGS OF BOARD

31.1 **Third schedule to Act not to apply:** The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

31.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, audio and visual or electronic communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting; or
- (c) by a combination of the methods described in sub-clauses (a) and (b) above.

31.3 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure.

31.4 **Convening of Meeting:** A Director, or an employee of the Company at the request of a Director, may convene a meeting of the Board by giving notice in accordance with clause 31.5.

31.5 **Notice of meeting:** The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings):

- (a) Not less than one days' notice of a meeting shall be given to each Director (other than a Director who has waived that right).
- (b) Notice to a Director of a meeting may be:
 - (i) given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director; or
 - (iii) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
- (c) A notice of meeting shall:
 - (i) specify the date, time and place of the meeting;
 - (ii) in the case of a meeting by means of audio, or audio and visual, communication, specify the manner in which each Director may participate in the proceedings of the meeting; and
 - (iii) give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, unless this is already known to all the Directors or is impracticable in any particular circumstances.

- (d) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
 - (i) in the case of oral communication, at the time of notification;
 - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director; or
 - (iii) in the case of electronic means, at the time of transmission.
- (e) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with this clause but the Director cannot be contacted, notice of the meeting shall be deemed to have been duly given to that Director.

31.6 **Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during or after the meeting) to the waiver.

31.7 **Quorum:** A quorum for a meeting of the Board is two Directors. No business may be transacted at a meeting of Directors if a quorum is not present, provided that if quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the chairperson will adjourn the meeting to a specified day, time and place, the day being within the next seven days. If at the adjourned meeting a quorum isn't present within 30 minutes after the time appointed for the meeting, the directors present will constitute a quorum.

31.8 **Chairperson:** The Directors may elect one of their number as chairperson of the Board and determine the period for which he or she is to hold office. If no chairperson is elected or if, at a meeting of the Board, the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

31.9 **Voting:** Every Director has one vote. The chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of the resolution. 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.

31.10 **Written resolution:** A written resolution, signed or assented to by a majority of the Directors entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including electronic communication such as email) in similar form, each signed or assented to by one or more Directors (whose assent may be given by electronic communication, including by email). A copy of any such resolution shall be entered in the Records. The Company shall, within seven days after any resolution is passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.

31.11 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

- 31.12 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 31.13 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting unless they are shown to be inaccurate.
- 31.14 **Board may regulate other proceedings:** Except as set out in this Constitution, the Board may regulate its own procedure.

32. METHOD OF CONTRACTING

- 32.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:
- (a) two or more Directors; or
 - (b) if there is only one Director, by that Director whose signature must be witnessed; or
 - (c) a Director, or any person authorised by the Board, whose signature must be witnessed; or
 - (d) one or more attorneys appointed by the Company.
- 32.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.
- 32.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

33. NOTICES

- 33.1 **Reports, etc to Shareholders:** Annual reports, notices and other documents required to be sent to a Shareholder shall be sent in the manner provided in section 391 of the Act.
- 33.2 **Accidental omissions:** The failure to send an annual report, notice, or other document to a Shareholder 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.
- 33.3 **Joint Shareholders:** A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share.
- 33.4 **Shareholder deceased or bankrupt:** If a Shareholder dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Act to the Personal Representative of the Shareholder at the address supplied to the Company for that purpose.

33.5 **Waiver by Shareholders:** Subject to section 212(2) of the Act, 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 thereafter 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.