

Notice of

ADOPTION, ALTERATION
OR REVOCATION OF
CONSTITUTION

(Section 32(3), Companies Act 1993)

Form 6



10049211484

Company name

Cube Capital Limited

Company number

304625

The above named company has -

[Place a tick in the appropriate box.]

☐

adopted a constitution

Date*

☐

altered its constitution

Date*

☐

revoked its constitution

Date*

☒

revoked its previous constitution and adopted the
attached new constitution

Date*

30 June 2005

* Please insert the date on which the company adopted, altered or revoked its constitution (as the case may be)

A copy of the constitution as adopted / ~~alteration to the constitution~~ is attached to this notice.

† Delete if inapplicable

Signature of director / authorised
person:

Date 14 July 2005

Full legal name of director /
authorised person

Natalie Helen Becher

P#08
14 JUL 2005

Completed by

Natalie Helen Becher, Minter Ellison Rudd Watts

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*Optional.

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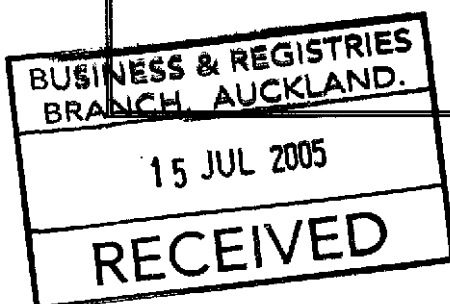
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CONSTITUTION
OF
CUBE CAPITAL LIMITED

As Adopted on 30 June 2005



SPW.

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**CONSTITUTION
OF
CUBE CAPITAL LIMITED**

NZ Reg Co No. 304625

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 by a Director as his or her alternate under section 29.

"ASX" means Australian Stock Exchange Limited.

"ASX Listing Rules" means the Listing Rules of ASX and any other rules of ASX which are applicable to the Company while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any decision, determination, ruling or dispensation given by ASX affecting the application of the Listing Rules to the Company and subject to its listing agreement with the ASX.

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

"Business Day" means a day on which NZX is open for trading.

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

"Company" means Cube Capital Limited and shall extend to the other entities required by Listing Rule 1.1.5.

"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" means:

- (a) the direct or indirect transfer of money or property, other than Shares, to or for the benefit of a Shareholder; or
- (b) the incurring of a debt to or for the benefit of a Shareholder,

in relation to Shares held by that Shareholder, whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness or by some other means.

"Interest Group", in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical; and

- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more Classes, except where action is taken in relation to some holders of Shares in a Class and not others, or a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares in that Class, in which case the holders of Shares in that Class may fall into two or more interest groups.

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

"Listing Rules" means the Listing Rules of NZX in force from time to time.

"Managing Director" means a person appointed as such by the Board from time to time pursuant to clause 30.1.

"Minimum Holding" has the meaning given to that term by the Listing Rules.

"month" means calendar month.

"NZX" means New Zealand Exchange Limited, its successors and assigns and, as the context permits, includes any duly authorised delegate of New Zealand Exchange Limited.

"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 Act.

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

"Right" means a right to acquire any Security or benefit of any kind, whether conditional or not, and whether Renounceable or not.

"Representative" means:

- (a) a person appointed as a proxy under section 25;

- (b) a Personal Representative; or
- (c) a representative appointed by a corporation under clause 26.1.

"Security" has the meaning set out in section 2 of the Securities Act 1978 and includes any option to acquire a Security, and any Right.

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

"Shareholder" means:

- (a) a person whose name is entered in the Share Register as the holder for the time being of one or more Shares;
- (b) until the person's name is entered in the Share Register, a person named as a Shareholder in an application for the registration of the Company at the time of registration of the Company; and
- (c) until the person's name is entered in the Share Register, a person who is entitled to have that person's name entered in the Share Register as a Shareholder under a registered amalgamation proposal in respect of which the Company is the amalgamated company.

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

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

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

"Treasury Stock" means Shares which have been acquired by the Company and are held by the Company as Treasury Stock in accordance with the Act (which for the avoidance of doubt does not include Equity Securities held by any associated person which is not a Subsidiary of the Company whether or not the Company classifies those securities as treasury stock in its financial statements) and includes shares falling within section 82 of the Act.

"Working Day" has the meaning set out in section 2 of the Act.

1.2 Imported definitions: In this Constitution, unless the context otherwise requires:

- (a) words or expressions which are defined in the Listing Rules (whether or not expressed with an initial capital letter) have the same meaning as given by the Listing Rules;
- (b) words or expressions which are defined in the Act (whether or not expressed with an initial capital letter) have the same meaning as given by the part of the Act that is relevant to the context in which that word or expression appears in this Constitution.

1.3 Interpretation: In this Constitution, unless the context otherwise requires:

- (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) one gender includes the other genders;
- (d) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (e) "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;
- (f) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise;
- (g) words and expressions cognate with words or expressions defined in this Constitution have meanings corresponding to those of the defined words and expressions;
- (h) words and expressions defined or explained in the Act have the same meaning in this Constitution;
- (i) a reference to a Listing Rule includes that Listing Rule as amended from time to time.

1.4 Constitution to prevail: 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. GENERAL

- 2.1 Companies Act 1993:** The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.
- 2.2 Incorporation of Listing Rules:** For so long as the Company is listed on a market operated by NZX, those provisions of the Listing Rules which are required to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification.

- 2.3 **Compliance with Listing Rules:** For so long as the Company is a party to a listing agreement with NZX the Company shall comply with the Listing Rules, subject to:
- (a) the requirements of the Act and any other applicable legislative or regulatory requirements; and
 - (b) the terms of any Ruling given from time to time by NZX.
- 2.4 **Effect of failure to comply:** Failure to comply with any of the Listing Rules, or with clauses 23.2 or 23.3, shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, provided that:
- (a) a party to a transaction or contract who knew of the failure to comply with the Listing Rules or those clauses, as the case may be, is not entitled to enforce that transaction or contract; and
 - (b) this provision shall not affect the rights of any holder of any Securities of the Company against the Company or the Directors arising from failure to comply with the Listing Rules or any of those provisions of this Constitution.
- 2.5 **Effect of Ruling:** If NZX has given a Ruling authorising any act or omission, which in the absence of that Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission is deemed to be authorised by the Listing Rules and by this Constitution and therefore can be carried out by the Company notwithstanding such contravention or inconsistency.
- 2.6 **References to Listing Rules:** A reference in this Constitution to a specific Listing Rule includes that Listing Rule as it may be amended from time to time and any Listing Rule which may be substituted for that Listing Rule.
- 2.7 **Inconsistency with Listing Rules:** If any provision of this Constitution is inconsistent with the Listing Rules, that provision shall be deemed to be amended, or deleted, to the extent necessary to make that provision consistent with the Listing Rules.
- 2.8 **ASX Listing Rules:** The Board may from time to time decide whether to apply for, or continue or discontinue, the listing of the Company on the Official List of the ASX. Subject always to clause 2.3, if the Company is admitted to the Official List of the ASX, the following clauses apply:
- (a) Notwithstanding anything contained in this Constitution, if the ASX Listing Rules that are applicable to the Company prohibit an act being done, the act shall not be done.
 - (b) Nothing contained in this Constitution prevents an act being done that the ASX Listing Rules that are applicable to the Company require to be done.
 - (c) If the ASX Listing Rules that are applicable to the Company require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
 - (d) If the ASX Listing Rules that are applicable to the Company require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.

- (e) If the ASX Listing Rules that are applicable to the Company require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
- (f) If any provision of this Constitution is or becomes inconsistent with the ASX Listing Rules that are applicable to the Company, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

3. ISSUE OF SECURITIES

3.1 Board may issue Shares and other Securities: Subject to Listing Rule 7.3 the Board may issue Shares, Securities that are Convertible into Shares, or options to acquire Shares and other Equity Securities, to any person and in any number it thinks fit. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Shares by the Company.

3.2 Preference Shares: Subject to the Act and the Listing Rules, the Company may issue redeemable preference Shares provided that the terms of issue make provision for the redemption of the redeemable preference Shares either:

- (a) at the option of the Company;
- (b) at the option of the holders of the Shares; or
- (c) on a specified date;

for a consideration that is:

- (d) specified;
- (e) to be calculated by reference to a formula; or
- (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

3.3 Transfer of Rights: Every person to whom unissued Equity Securities are offered pursuant to an offer complying with Listing Rule 7.3.4 may decline or accept the offer, or transfer their Rights thereunder to any person or persons to whom the Equity Securities, when issued, could be transferred but the Directors have the same right to decline to accept any such transfer as they would have if the transfer were a transfer of Shares, and the provisions of this Constitution as to the transfer of Shares, with all necessary modifications, apply to transfers of Rights to unissued Equity Securities.

3.4 Consolidation and subdivision of Shares: The Board may:

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

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

3.5 Bonus issues: Subject to Listing Rule 7.3.4(b), 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 sub-clause (a)(i),

or partly in one way and partly in the other.

3.6 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.

4. RIGHTS ATTACHING TO SHARES

4.1 Types of Shares: Without prejudice to any special rights previously conferred on any Shareholders or any Class and without limiting the Classes which may be issued by the Company but subject to Listing Rule 7.3, any Share may be issued upon the basis that such Share:

- (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 terms of issue that are incorporated in this Constitution.

5. ALTERATION OF RIGHTS OF SECURITY HOLDERS

5.1 Procedure: The Company shall:

- (a) in relation to Shares, comply with the provisions of sections 116 and 117 of the Act; and
- (b) in relation to Quoted Equity Securities other than Shares (excluding those to which Listing Rule 8.3.2(b) applies), comply with the provisions of sections 116 and 117 of the Act on the basis that:
 - (i) references in those sections to "shares", are deemed to include references to all Equity Securities, and references to "holders of shares" and "shareholders" are deemed to be modified accordingly;
 - (ii) the reference in section 117 to a "special resolution", is deemed to be a reference to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting on that resolution; and

- (iii) the references in section 117 to the "constitution", are deemed to be references to the document which governs the rights attaching to those Equity Securities,

but the provisions of section 118 of the Act shall not by virtue of this sub-clause (b) be deemed to apply to any such Equity Securities.

- 5.2 **Issue of equal ranking Equity Securities:** For the purposes of clause 5.1, the issue of further Shares or other Equity Securities which rank equally with, or in priority to, any existing Shares or other Equity Securities, whether as to voting rights, Distributions or otherwise, is deemed not to be an action affecting the rights attaching to those existing Shares or other Equity Securities.

6. ACQUISITION AND REDEMPTION OF SHARES OR OTHER EQUITY SECURITIES

- 6.1 **Company may purchase, acquire or redeem Shares:** Subject to this Constitution and the Listing Rules, the Company may purchase or otherwise acquire Shares or other Equity Securities from one or more Shareholders, and may redeem any redeemable Shares or other Equity Securities, in accordance with the provisions of the Act and this Constitution and may, subject to any requirements or restrictions imposed by law, hold any Shares or other Equity Securities so purchased, acquired or redeemed.
- 6.2 **Prohibitions on redemption:** The Company shall not redeem any Equity Securities, other than a redemption from a holder of Equity Securities who holds less than a Minimum Holding, unless the redemption is otherwise permitted by the Listing Rules or a Ruling.
- 6.3 **Company may acquire Shares on non-proportional basis:** Subject to this Constitution and the Listing Rules, the Board may make an offer to acquire Shares or other Equity Securities to one or more holders of Equity Securities issued by the Company in such number or proportion as it thinks fit, in accordance with the Act, this Constitution and the Listing Rules.

7. RESTRICTIONS ON FINANCIAL ASSISTANCE

- 7.1 **Prohibition on financial assistance:** The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued, or to be issued, by the Company unless the giving of that assistance is in accordance with the provisions of the Act and the Listing Rules.

8. SHARE CERTIFICATES

- 8.1 **Issue of Share certificates:** The Company shall not issue Share certificates during such time as the Company's Shares can be transferred by a system authorised under the Securities Transfer Act 1991 that does not require a share certificate for the transfer of Shares.

9. EQUITABLE INTERESTS IN SHARES

- 9.1 **No notice of trusts:** No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.
- 9.2 **No recognition of equitable interests:** Except as required by law and as provided 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, 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.

- 9.3 **Other Securities:** The provisions of this section 9 will apply to other Securities as if every reference in this section to "Shares" and to "Share Register" was also a reference respectively to "Securities" and "Quoted Securities Register".

10. **CALLS ON SHARES**

- 10.1 **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. No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.
- 10.2 **Time of call:** A call is deemed to be made at the time when the resolution of the Board making the call is passed.
- 10.3 **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.
- 10.4 **Notice of call:** At least 14 days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.
- 10.5 **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.
- 10.6 **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.
- 10.7 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.
- 10.8 **Default interest:** If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board determines, unless the Board waives payment of interest wholly or in part.
- 10.9 **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.

10.10 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.

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

10.12 Other Securities: The provisions of this section 10 will apply to other Securities as if every reference in this section to "Shares" was also a reference to "Securities".

11. FORFEITURE OF SHARES

11.1 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.

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

11.3 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.

11.4 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.

11.5 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.

11.6 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.

12. LIEN ON SHARES

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

(a) all unpaid calls owing in respect of the Share and interest thereon (if any); and

- (b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived.
- 12.2 **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 13.2.
13. **SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN**
- 13.1 **Company may sell Shares:** The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any Share:
- (a) unless the amount in respect of which a lien exists is due and payable; and
 - (b) until the expiry of 14 days after written notice demanding payment of the amount has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Share.
- 13.2 **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.
- 13.3 **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.
- 13.4 **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.
- 13.5 **Other Securities:** The provisions of sections 10, 11, 12 and 13 will apply to other Securities as if every reference in those sections to "Shares" was also a reference to "Securities".
14. **TRANSFER OF SHARES**
- 14.1 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share:
- (a) by an instrument of transfer which complies with this Constitution; or
 - (b) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company.
- 14.2 **Securities Transfer Act:** A Share which is disposed of in a transaction to which the provisions of the Securities Transfer Act 1991 apply may be transferred in accordance

with the provisions of that Act. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of that Act if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the Share Registrar.

14.3 Other forms of transfer: An instrument of transfer of Shares to which the provisions of clause 14.2 are not applicable shall:

- (a) be in any common form or any other form approved by the Company;
- (b) be signed or executed by or on behalf of the transferor;
- (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.

14.4 Delivery to Company: An instrument transferring Shares must be delivered to the Company or to the Share Registrar, together with the Share certificate (if any) relating to those Shares, and the transferee shall provide such evidence as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

14.5 Board may refuse to register: Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse to register a transfer of any Share if:

- (a) the Company has a lien on the Share;
- (b) in the case of a transfer by an instrument in writing, it is not accompanied by the relevant Share certificate (if any);
- (c) the transferor fails to produce such evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share; or
- (d) registration of the transfer (together with registration of any further transfer or transfers then held by the Company and awaiting registration) would result in less than a Minimum Holding of Shares of the relevant Class standing in the name of the transferee;

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

14.6 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.

14.7 Company to retain transfer: If the Company registers an instrument of transfer it shall retain the instrument.

14.8 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, and may be kept by one or more Share Registrars.

14.9 Compulsory disposal when holding less than Minimum Holding: The Board may at any time give notice to a Shareholder holding less than a Minimum Holding of Shares of any Class requiring them to purchase additional shares in the Company such that if at the expiration of three months after the date the notice is given the Shareholder still holds less than a Minimum Holding of Shares of that Class, the Board may exercise the power of sale of those Shares set out in this clause. If that power of sale becomes exercisable:

- (a) The Board may arrange for the sale of the relevant Shares on behalf of the Shareholder, through the NZSX, or in some other manner approved by NZX.
- (b) The Shareholder shall be deemed to have authorised the Company to act on behalf of the Shareholder in relation to the sale of the relevant Shares, and to sign all necessary documents relating to such sale.
- (c) The Company shall account to the Purchaser for the net proceeds of sale (after deduction of reasonable sale expenses) which shall be held on trust by the Company for, and paid (together with interest at such rate (if any) as the Board deems appropriate) to, the Shareholder, on surrender of the certificate (if any) relating to the relevant Shares.
- (d) The title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of the Company shall be a good discharge to the purchaser for the purchase price.

14.10 Where Shareholder cannot be located: If the Company reasonably determines that a Shareholder no longer resides at, or cannot be contacted by posting to, the address supplied by that Shareholder to the Company (including by failure of that Shareholder to respond within two months to two or more requests to reply to the Company, whether before or after the date of adoption of this provision) then the Company may thereafter treat that Shareholder as **"Gone No Address"** or **"GNA"** and the following provisions will apply to that Shareholder and the Shares then registered in that Shareholder's name:

- (a) The Board may arrange for the transfer of the Shares registered in the name of the Shareholder to a wholly-owned subsidiary of the Company (**"TrustSub"**).
- (b) The GNA Shareholder shall be deemed to have authorised the Company to act on behalf of the GNA Shareholder in relation to the transfer of the relevant Shares, and to sign all necessary documents relating to such transfer.
- (c) TrustSub shall hold the relevant Shares on trust for the GNA Shareholder in accordance with the provision of this clause.
- (d) During the period that such Shares are held by TrustSub, the provisions of clause 16.9 shall continue to apply to any dividend paid as if such Shares were registered in the name of the relevant GNA Shareholder but, except as provided by this clause, the GNA Shareholder will not be recognised otherwise as a Shareholder for the purposes of this Constitution.
- (e) At any time while the relevant Shares are held by TrustSub the GNA Shareholder may by notice to the Company establish his or her rights in relation to the Shares, notify the Company a current address for communications from the Company and request that the Shares are re-transferred to the GNA Shareholder. On receipt of such request, the Company will register a transfer of the shares from TrustSub to the GNA Shareholder.

- (f) If Shares transferred from a GNA Shareholder have been held on trust by TrustSub for 3 years or more, TrustSub may, but is not obliged to, sell those Shares on NZSX and thereafter the net proceeds of sale shall be held on the same trust for the GNA Shareholder (and be subject to the provisions of the Unclaimed Money Act 1971, as applicable).
- (g) The title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of TrustSub shall be a good discharge to the purchaser for the purchase price.

14.11 Securities other than Shares: The provisions of this section 14 shall apply, with any necessary modifications, to Securities of the Company other than Shares except to the extent (if any) provided otherwise by the terms of issue of such Securities, by the Listing Rules, or by law.

15. TRANSMISSION OF SHARES

15.1 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.

15.2 Rights of Personal Representatives: A Personal Representative of a Shareholder:

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

15.3 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.

15.4 Other Securities: The provisions of this section 15 will apply to other Securities as if every reference to "Shares" and "Shareholder" was also a reference respectively to "Securities" and "registered holder of Securities".

16. DISTRIBUTIONS

16.1 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 including without limitation clause 15.2, 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.

- 16.2 Form of Distribution:** Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit but, except as provided in clause 16.3 or by the terms of any scheme then in operation by the Company for the issue of shares in lieu of a Distribution as provided by clause 3.6, the Board shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.
- 16.3 Currency of payment:** The Board, if it thinks fit, may differentiate between Shareholders as to the currency in which any Distribution is to be paid. In exercising its discretion the Board may have regard to the registered address of a Shareholder, the register on which a Shareholder's Shares are registered and such other matters (if any) as the Board considers appropriate. If the Board determines to pay a Distribution in a currency other than New Zealand currency, the amount payable shall be converted from New Zealand currency in such manner, at such time, and at such exchange rate, as the Board thinks fit.
- 16.4 Entitlement to dividends:** The Board shall not authorise a dividend:
- (a) in respect of some but not all the Shares in a Class; or
 - (b) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class,
- unless the amount of the dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under this Constitution or under the terms of issue of the Share, but a Shareholder may waive that Shareholder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of the Shareholder.
- 16.5 Deduction of money:** The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.
- 16.6 Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. 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.
- 16.7 No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.
- 16.8 Payment of small dividend amounts:** Where the net amount of a dividend payable to a Shareholder is less than such minimum amount as may be determined from time to time by the Board for the purposes of this clause, the Company may, with the prior approval of that Shareholder, defer payment of the dividend to that Shareholder until the earlier of:
- (a) such time as that Shareholder has an aggregate entitlement to net dividends of not less than such minimum amount; and
 - (b) the date upon which that Shareholder ceases to hold any Shares.

- 16.9 **Unclaimed Distributions:** *Dividends or other monetary Distributions* unclaimed for more than one year after having been authorised, may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for more than five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board shall nevertheless, at any time after such forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement.

17. EXERCISE OF POWERS OF SHAREHOLDERS

- 17.1 **Alternative forms of meeting:** A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can reasonably be expected to be able to hear each other simultaneously throughout the meeting.

- 17.2 **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 an Ordinary Resolution.

18. MEETINGS OF SHAREHOLDERS

- 18.1 **Annual meetings:** The Company shall hold an annual meeting in each calendar year, in addition to any other meetings in that year, not later than:

- (a) 6 months after the balance date of the Company; and
- (b) 15 months after the previous annual meeting.

- 18.2 **Time and place of annual meeting:** Each annual meeting shall be held at such time and place as the Board appoints.

- 18.3 **Special meetings:** All meetings of Shareholders, other than annual meetings, shall be called special meetings.

- 18.4 **Calling of special meetings:** A special meeting:

- (a) may be called by the Board at any time;
- (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.

- 18.5 **Equity Security holders entitled to attend:** Equity Security holders of all Classes are entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to the holders of all Securities entitled to vote at meetings of Shareholders but are not entitled to vote at any such meeting unless the terms of the relevant Equity Securities so provide.

- 18.6 **Meetings of Interest Groups:** A meeting of the Shareholders constituting an Interest Group may be called by the Board at any time. All the provisions of this Constitution

relating to meetings of Shareholders shall apply, with all necessary modifications, to meetings of Interest Groups, except that:

- (a) the necessary quorum for a meeting is one Shareholder having the right to vote at the meeting, present in person or by Representative;
- (b) any Shareholder in the relevant Interest Group, present in person or by Representative, may demand a poll; and
- (c) if the Board so elects, one meeting may be held of Shareholders constituting more than one Interest Group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of the Shareholders in each Interest Group.

19. NOTICE OF MEETINGS OF SHAREHOLDERS

19.1 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 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.

19.2 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;
- (b) the text of any Special Resolution to be submitted to the meeting; and
- (c) that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder.

19.3 Form of resolutions: So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.

19.4 Waiver of notice irregularity: An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

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

19.6 Notice of adjourned meeting: If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 19.1.

20. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

20.1 Requirement for quorum: Subject to clause 20.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

- 20.2 **Quorum:** Subject to clause 20.3, a quorum for a meeting of Shareholders is five Shareholders having the right to vote at the meeting present in person or by Representative.
- 20.3 **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;
 - (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 notifies to NZX 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.
- 20.4 **Regulation of procedure:** Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the procedure at meetings of Shareholders.
- 20.5 **Adjournment of meeting:** The chairperson may (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.
- 20.6 **Dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefor, dissolve the meeting.
- 20.7 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the chairperson pursuant to clause 20.6, the unfinished business of the meeting shall be deemed to have been dealt with as follows:
- (a) in respect of a resolution concerning the approval or authorisation of a Distribution; that the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution;
 - (b) in respect of a resolution concerning the remuneration of the auditors; that the Board be authorised to fix the remuneration of the auditors;
- 20.8 **Taking of a poll prior to dissolution:** If a meeting is dissolved by the chairperson pursuant to clause 20.6, the chairperson may, as part of that decision, direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll, in accordance with clause 24.4, without further discussion whereupon such poll shall be conducted immediately and the meeting deemed dissolved on conclusion of the taking of such poll.

21. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 21.1 **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.

21.2 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.

21.3 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.

22. VOTING AT MEETINGS OF SHAREHOLDERS

22.1 Voting at meeting in one place: In the case of a meeting of Shareholders held under clause 17.1(a), unless a poll is demanded in accordance with clause 24.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

22.2 Voting at audio/visual meeting: In the case of a meeting of Shareholders held under clause 17.1(b), unless a poll is demanded in accordance with clause 24.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

22.3 Postal votes: Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.

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

22.5 Number of votes: Subject to clauses 23.1 and 23.2 and to any rights or restrictions for the time being attached to any Share:

- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
- (b) on a poll every Shareholder present in person or by Representative has:
 - (i) in respect of each fully paid Share held by that Shareholder, one vote; and
 - (ii) each Share which is not fully paid shall carry only a fraction of the vote or votes which would be exercisable if that Share were fully paid. The fraction must be 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 22.5, a Share which is not fully paid is not of the same Class as a fully paid Share.

- 22.6 **Vote of overseas protected persons:** A Shareholder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Shares held by that Shareholder, by his or her committee, manager, curator bonis, or other person of a similar nature appointed by that court, voting in person or by proxy.
- 22.7 **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 24.1.
- 22.8 **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.

23. RESTRICTIONS ON VOTING

- 23.1 **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.
- 23.2 **Voting restrictions:** Notwithstanding anything to the contrary in this Constitution or the Listing Rules or the Act, a person is not entitled to cast a vote in favour of a resolution when that person is disqualified from doing so by virtue of the voting restrictions specified in the Listing Rules.
- 23.3 **Deadline for challenge:** Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a vote at a meeting in breach of clause 23.2, no resolution of, or proceeding at, that meeting may be impugned on the basis of a breach of that clause. Any objection by a holder of Securities to the accuracy or completeness of any list of holders of Securities who are disqualified from voting on a resolution pursuant to clause 23.2, which has been supplied by the Company to NZX or to any holder of Equity Securities on request pursuant to the Listing Rules shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.

24. POLLS

- 24.1 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:
- (a) the chairperson; or
 - (b) not less than five Shareholders having the right to vote at the meeting; or
 - (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.

- 24.2 **When poll may be demanded:** A poll may be demanded either before or immediately after the declaration by the chairperson of the result of the vote in respect of a resolution. The demand for a poll may be withdrawn.
- 24.3 **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.
- 24.4 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.
- 24.5 **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;
 - (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.
- 24.6 **Scrutineers:** Except as may be required by NZX pursuant to the Listing Rules, the chairperson of the meeting shall appoint the scrutineers for the purpose of any poll.
- 24.7 **Declaration of result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers setting out the maximum number of votes that could be cast at the meeting and stating that sufficient votes to determine the result of the resolution have been counted.

25. PROXIES

- 25.1 **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.
- 25.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term not exceeding 12 months. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant meeting reasonably permit) provide for two way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the vote.
- 25.3 **Proxy form to be sent with notice of meeting:** The Company shall send a form of notice of appointment of proxy to every Shareholder entitled to attend and vote at a meeting, with the notice convening the meeting.
- 25.4 **Proxy form must not name proxy:** The Company shall not issue any form of notice of appointment with the name of the proxy filled in as proxy holder, either by name or by reference to an office which that proxy holds. The Company may indicate in a

footnote that certain persons or officers are willing to act as a proxy if a Shareholder desires to appoint them or any of them.

25.5 Production of notice: No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or by the Share Registrar at such address as is specified for that purpose in the form of notice of appointment or in the notice convening the meeting, not later than 48 hours before the start of the meeting.

25.6 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, or 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, or by the Share Registrar, before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

26. CORPORATE REPRESENTATIVE

26.1 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.

27. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

27.1 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.

27.2 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 no such resolution is binding on the Board.

28. DIRECTORS

28.1 Number of Directors: The minimum number of Directors is three. The maximum number of Directors is to be fixed by the Directors in accordance with the Listing Rules, but must not be more than 6 unless the Shareholders determine otherwise by Ordinary Resolution. The Directors must not determine a maximum which is less than the number of directors in office at the time the determination takes effect. At least two Directors must be persons who are ordinarily resident in New Zealand.

28.2 Appointment by Shareholders: Subject to clause 28.1, a person may be appointed as a Director at any time by an Ordinary Resolution.

28.3 Appointment by Board: Subject to clause 28.1, the Board may at any time appoint a person to be a Director. A Director so appointed holds office only until the next annual meeting of the Company but is eligible for re-election at that meeting.

- 28.4 **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 as Directors pursuant to this Constitution.
- 28.5 **Exception to Rotation:** For the purposes of the NZX Listing Rules relating to rotation of directors, one Director who is also an employee of the company (whether or not a Managing Director) is not required to retire by rotation. If there is more than one Director who is also an employee of the Company (whether or not a Managing Director) the Board may nominate which one of those Directors is not liable to retire by rotation.
- 28.6 **Re-election of retiring Director:** A Director retiring by rotation at a meeting shall, if standing for re-election, be deemed to have been re-elected unless:
- (a) some other person is elected to fill the vacated office; or
 - (b) it is resolved not to fill the vacated office; or
 - (c) a resolution for the re-election of that Director is put to the meeting and lost.
- 28.7 **Restriction on appointment of several Directors by single resolution:** A single resolution for the appointment of two or more persons as Directors shall not be moved unless a separate resolution that it be so moved has first been passed by the meeting without any vote being cast against it but nothing in this clause prevents the election of two or more Directors by ballot or poll.
- 28.8 **Vacation of office:** A Director ceases to be a Director if he or she:
- (a) is removed from office by an Ordinary Resolution; or
 - (b) 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
 - (c) 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
 - (d) becomes disqualified from being a Director pursuant to the Act; or
 - (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
 - (f) has for more than six months been absent without approval of the Board from all meetings of the Board held during that period.

29. **ALTERNATE DIRECTORS**

- 29.1 **Power to appoint:** A Director may from time to time by written notice to the Company appoint any person, who is not already a Director and who is approved by a majority of the other Directors, to be that Director's alternate. No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this section 29.
- 29.2 **Rights of Alternate Director:** Unless otherwise specified by the terms of his or her appointment, an Alternate Director:

- (a) is entitled, in the absence or unavailability of the Director who appointed him or her (the "**Appointor**"), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
- (b) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor;
- (c) is not entitled to be given notice of a meeting of the Directors unless the Appointor has given written notice to the Company requesting that notice be given to the Alternate Director.

29.3 Remuneration and expenses: An Alternate Director is not entitled to any remuneration from the Company in his or her capacity as an Alternate Director but is entitled to be reimbursed by the Company for all expenses incurred in attending meetings of the Directors and in the discharge of his or her duties, to the same extent as if he or she were a Director.

29.4 Cessation of appointment: An Alternate Director ceases to be an Alternate Director:

- (a) if the Appointor ceases to be a Director, or revokes the appointment by written notice to the Company; or
- (b) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director; or
- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

30. MANAGING DIRECTORS

30.1 Appointment: The Board may from time to time appoint one or more Directors to the office of *Managing Director* for such period not exceeding five years, and on such terms, as the Board thinks fit and, subject to the terms of any agreement entered into in any particular case, may at any time revoke such appointment.

30.2 Resignation: A Managing Director is subject to the same provisions as regards resignation, removal, and disqualification as the other Directors, and if a Managing Director ceases to hold the office of Director from any cause he or she automatically ceases to be a Managing Director, but shall otherwise continue as an officer, employee, or otherwise as provided by any agreement in any particular case.

30.3 Remuneration: A Managing Director is entitled to receive such remuneration for his or her services as an employee (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Board may determine.

31. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

31.1 Power to authorise: The Board may not exercise the power conferred by section 161 of the Act to authorise any payment of remuneration to Directors in their capacity as Directors, without the prior approval of an Ordinary Resolution. Each such resolution shall express the Directors' remuneration as either:

- (a) a monetary sum per annum, being the maximum payable to all Directors taken together; or

- (b) a monetary sum per annum payable to each person from time to time holding office as a Director.

The remuneration of the Directors shall, unless the Board resolves otherwise, be deemed to accrue from day to day.

- 31.2 **Power to increase:** If at any time while the approved remuneration of the Directors is expressed in accordance with clause 31.1(a), the total number of Directors holding office is increased, the amount of remuneration then payable in accordance with that clause may be increased by the Board by such amount as is necessary to enable the Company to pay the additional Director or Directors by way of remuneration a fee not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).
- 31.3 **Notice of proposed increase:** No resolution which increases the amount of the Director's remuneration shall be moved at a meeting of Shareholders unless notice of the amount of increase has been given in the notice of meeting.
- 31.4 **Payment of expenses:** Notwithstanding the provisions of clause 31.1, Directors are entitled to be paid for all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board, or any committee of the Board, or meetings of Shareholders, or in connection with the business of the Company.
- 31.5 **Special remuneration:** 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 work in any capacity other than that of Director.

32. INDEMNITY AND INSURANCE

- 32.1 **Indemnity of Directors:** Subject to clause 32.3, 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.

- 32.2 **Other indemnities:** Subject to clause 32.3, every director of a related company, or an employee of the Company or a related company 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 by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, and costs

incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

32.3 Exceptions: An indemnity conferred by clause 32.1(b) or clause 32.2(b), shall not apply in respect of:

- (a) any criminal liability; or
- (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.

32.4 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; or
- (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 in which he or she is acquitted.

32.5 Definitions: In this section 32:

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

33. POWERS OF DIRECTORS

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

33.2 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.

33.3 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.

33.4 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.

- 33.5 **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 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.

34. **INTERESTS OF DIRECTORS**

- 34.1 **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 34.2.

- 34.2 **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 199(2) of the Act (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.

- 34.3 **Interested Directors may not vote:** A Director who is Interested in a transaction entered into, or to be entered into, by the Company:

- (a) may attend a meeting of the Board at which any matter relating to the transaction arises but shall not be included among the Directors present at the meeting for the purposes of a quorum and may not vote on any matter relating to the transaction except as provided in clause 34.4;
- (b) may sign a document relating to the transaction on behalf of the Company, and may 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.

- 34.4 **Exception to voting prohibition:** Notwithstanding the provisions of clause 34.3(a), a Director may be included among the Directors present at the meeting for the purposes of a quorum and vote in respect of a matter in which he or she is Interested if that 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.

35. PROCEEDINGS OF BOARD

35.1 **Third schedule of 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.

35.2 **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 a conference between Directors some or all of whom are in different places, provided that each Director who participates is able:
 - (i) to hear each of the other participating Directors addressing the meeting; and
 - (ii) if he or she so wishes, to address each of the other participating Directors simultaneously, whether directly, by conference telephone or by another form of communications equipment (whether in use when this Constitution is adopted or developed subsequently) or by a combination of such methods.

Where two or more Directors participate from New Zealand in a meeting held in this way, the meeting shall be deemed to take place in New Zealand at the place agreed between such Directors. Where one Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place from where that Director participates. Where no Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place where the chairman of the meeting participates.

Any Director may, by prior notice to a senior officer of the Company, indicate that he or she wishes to participate in the meeting in the abovementioned manner in which event the Director shall procure that an appropriate conference facility is arranged. A Director participating in this way is deemed to be present in person at the meeting and shall be counted in the quorum and entitled to vote to the extent otherwise allowed by this Constitution.

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

35.4 **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 or as provided in clause 35.5):

- (a) Not less than two business days' notice of a meeting of the Board shall be sent to each Director in all circumstances, unless:
 - (i) the Director waives that right; or
 - (ii) a shorter period of notice is required to enable the Board to comply with its obligations under the Listing Rules; or
 - (iii) the issue which is to be the subject of the meeting is, in the reasonable opinion of a majority of the Directors, a matter of urgency, in which event

such notice as is practicable in the circumstances shall be still sought to be given to each such Director.

- (b) Notice to a Director of a meeting of the Board may be:
 - (i) given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (v) sent by another form of communications equipment in accordance with any request made by the Director from time to time for such purpose.
- (c) A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of conference telephone or by another form of communications equipment, the manner in which each Director may participate in the proceedings of the meeting.
- (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;
 - (iii) in the case of posting, at the time of receipt which in the absence of proof to the contrary shall be considered to be three days after it is posted;
 - (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
 - (v) in the case of another form of communications equipment, at the time of transmission.

35.5 Director may convene meeting: Without limiting the provisions of clauses 35.3 or 35.4, a Director has the right at any time to convene a meeting of the Board, or to require a senior officer of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than seven days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.

35.6 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.

- 35.7 **Quorum:** Subject to clause 34.3, a quorum for a meeting of the Board may be fixed by the Directors from time to time, and unless so fixed shall be three Directors. No business may be transacted at a meeting of Directors if a quorum is not present.
- 35.8 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and so long as the number of Directors holding office is less than the minimum number fixed by clause 28.1, the continuing Directors may act only for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Shareholders.
- 35.9 **Election of chairperson:** The Directors may from time to time elect a chairperson and (if they think fit) a deputy chairperson, of their meetings, and determine the period for which they respectively are to hold office. The chairperson, or failing the chairperson the deputy chairperson (if any), shall preside at all meetings of the Directors but if no such chairperson or deputy chairperson is elected, or if at any meeting the chairperson or deputy chairperson is not 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.
- 35.10 **Voting:** Subject to clauses 34.3 and 34.4, every Director has one vote. The chairperson shall 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.
- 35.11 **Written resolution:** A resolution in writing, signed or assented to by all of the Directors (other than a Director who has been granted a leave of absence and has not appointed an Alternate Director) entitled to vote is as valid and effective as if passed at a meeting of the Board provided that the Directors signing or assenting to the resolution would constitute a quorum and would have power to pass the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. 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.
- 35.12 **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.
- 35.13 **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.
- 35.14 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board and its committees. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

36. METHOD OF CONTRACTING

36.1 **Deeds and material contracts:** A deed or material contract 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) any Director, together with any other person authorised by the Board whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company.

37. INSPECTION OF RECORDS

37.1 **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.

37.2 **Inspection by Shareholders:** No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders (who are not also Directors).

38. NOTICES

38.1 **Method of service:** All notices, reports, accounts and other documents required to be sent:

- (a) to a Shareholder, shall be sent in the manner provided in section 391 of the Act;
- (b) to a holder of any other Equity Security, shall be sent in the same manner, as though that holder were a Shareholder.

38.2 **Service of notices overseas:** If the holder of a Share or other Quoted Security has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that holder at such address by airmail or by courier and shall be deemed to have been received by that holder 48 hours after the time of posting.

38.3 **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.

38.4 **Joint Shareholders:** A notice may be given by the Company to the joint holders of an Equity Security by giving the notice to the joint holder named first in the register in respect of that Equity Security.

38.5 **Shareholder deceased or bankrupt:** If the holder of an Equity Security 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 holder at the address supplied to the Company for that purpose.

38.6 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 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.

38.7 By electronic means: Where a legal requirement under the Companies Act 1993 is reproduced in this Constitution, the provision of the Constitution that reproduces that legal requirement may be met by using electronic means in accordance with the Electronic Transactions Act 2002 in the same manner as is required by the Electronic Transactions Act 2002 to meet that legal requirement under the Companies Act 1993. In this clause, "legal requirement" has the same meaning given to it by the Electronic Transactions Act 2002.

39. LIQUIDATION

39.1 Distribution of assets: If the Company is liquidated the liquidator may, with the approval of Shareholders and any other sanction required by the Act:

- (a) divide among 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 that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

This Constitution was adopted by Special Resolution of the Company on 30 June 2005



Director