

**CONSTITUTION**

**OF**

**MERIDIAN ENERGY LIMITED**

## CONTENTS

1. DEFINED TERMS .....	1
2. CONSTRUCTION.....	3
3. CONFIRMATION IN OFFICE.....	4
4. EFFECT OF THE ACT ON THIS CONSTITUTION .....	4
5. EFFECT OF THIS CONSTITUTION .....	4
6. INCORPORATION OF LISTING RULES OF EXCHANGES WHILE LISTED .....	4
7. COMPANY MUST COMPLY WITH LISTING RULES OF EXCHANGES WHILE LISTED .....	5
8. STOCK EXCHANGE RULINGS AND WAIVERS .....	6
9. FAILURE TO COMPLY WITH NZX RULES HAS LIMITED EFFECT IN SOME CASES .....	6
10. COMPLIANCE WITH PUBLIC FINANCE ACT .....	6
11. COMPANY'S SHARES .....	7
12. CLASSES OF SHARES .....	7
13. BOARD NEED NOT COMPLY WITH STATUTORY PRE-EMPTIVE RIGHTS.....	7
14. FURTHER ISSUES OF SHARES DO NOT AFFECT RIGHTS OF EXISTING SHAREHOLDERS.....	7
15. BONUS ISSUES.....	7
16. TRANSFER OF RIGHTS.....	8
17. CONSOLIDATION AND SUBDIVISION.....	8
18. SHARE REGISTER MAY BE DIVIDED .....	8
19. EQUITABLE INTERESTS IN SHARES .....	8
20. RECORD DATE FOR SHAREHOLDER VOTING .....	9
21. REGISTRATION OF SEPARATE PARCELS .....	9
22. TRANSFER OF SHARES.....	9
23. COMPANY TO RETAIN TRANSFER .....	10
24. BOARD MUST REFUSE OR DELAY A TRANSFER .....	10
25. BOARD MAY REFUSE OR DELAY TRANSFER .....	10
26. TRANSMISSION OF SHARES .....	10
27. REGISTRATION NOT TO AFFECT OTHER POWERS.....	11
28. COMPULSORY SALE OF LESS THAN MINIMUM HOLDINGS .....	11
29. BOARD MAY MAKE CALLS ON SHARES.....	11
30. FORFEITURE OF SHARES WHERE CALLS OR OTHER AMOUNTS UNPAID .....	12
31. COMPANY'S LIEN .....	12
32. COMPANY MAY ACQUIRE AND HOLD SHARES .....	12
33. COMPANY MAY ISSUE AND REDEEM SHARES .....	12
34. DISTRIBUTIONS .....	12
35. BOARD DEDUCTIONS FROM DISTRIBUTION .....	13
36. DISTRIBUTIONS DO NOT BEAR INTEREST.....	13
37. UNCLAIMED DISTRIBUTIONS .....	13

38. MEETINGS OF SHAREHOLDERS.....	14
39. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS AND INTEREST GROUPS .....	14
40. COMPOSITION .....	14
41. APPOINTMENT OF DIRECTORS .....	14
42. ROTATION OF DIRECTORS.....	15
43. TIMING OF RETIREMENT AND APPOINTMENT .....	15
44. NO SHAREHOLDING QUALIFICATION FOR DIRECTORS .....	16
45. ELECTION OF CHAIRPERSON OF THE BOARD AND TERM OF OFFICE .....	16
46. OFFICE OF DIRECTOR VACATED IN CERTAIN CASES .....	16
47. POWERS OF DIRECTORS .....	17
48. MEETINGS OF THE BOARD.....	17
49. WRITTEN RESOLUTIONS OF BOARD PERMITTED .....	17
50. WRITTEN RESOLUTIONS MAY BE IN COUNTERPARTS.....	17
51. BOARD DELEGATES TO COMPLY WITH REGULATIONS .....	17
52. COMMITTEE PROCEEDINGS .....	18
53. REIMBURSEMENT OF EXPENSES .....	18
54. REMUNERATION .....	18
55. DIRECTORS MAY APPOINT AND REMOVE ALTERNATE DIRECTORS .....	18
56. ALTERNATE DIRECTOR HAS POWERS OF APPOINTER.....	18
57. TERMINATION OF APPOINTMENT OF ALTERNATE DIRECTOR.....	19
58. BOARD MAY APPOINT MANAGING DIRECTOR .....	19
59. REMUNERATION OF MANAGING DIRECTOR .....	19
60. POWERS CONFERRED ON MANAGING DIRECTOR .....	19
61. MANAGING DIRECTOR HAS NO POWER TO APPOINT ALTERNATE MANAGING DIRECTOR.....	20
62. EXECUTIVE DIRECTORS.....	20
63. INSUFFICIENT NUMBER OF DIRECTORS.....	20
64. INDEMNITY AND INSURANCE.....	20
65. MANNER OF EXECUTION OF DEEDS .....	21
66. DISTRIBUTION OF SURPLUS ASSETS IN KIND .....	22
67. COMMUNICATION WITH SHAREHOLDERS .....	22
68. SERVICE OF NOTICES OUTSIDE NEW ZEALAND .....	22
69. SECRETARY .....	23
70. INSPECTION OF RECORDS .....	23
FIRST SCHEDULE: CALLS, FORFEITURE AND LIENS .....	24
SECOND SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS .....	28
THIRD SCHEDULE: PROCEEDINGS OF THE BOARD.....	36
FOURTH SCHEDULE: OWNERSHIP RESTRICTIONS INTERPRETATION .....	40
FIFTH SCHEDULE: OWNERSHIP RESTRICTIONS INTERPRETATION – INSTALMENT RECEIPTS.....	52

# CONSTITUTION OF MERIDIAN ENERGY LIMITED

## INTERPRETATION

### 1. DEFINED TERMS

1.1 In this constitution the following expressions have the following meanings:

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

**"ASX"** means ASX Limited or the financial market operated by ASX Limited, as the context requires;

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

**"ASX Settlement"** means ASX Settlement Pty Ltd (ABN 49 008 504 532);

**"ASX Settlement Operating Rules"** means operating rules of ASX Settlement or of any relevant organisation which is an alternative or successor to, or replacement of, ASX Settlement or of any applicable CS Facility Licensee;

**"CHESS Holding"** has the meaning given to that term in the ASX Settlement Operating Rules;

**"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, or not to be, of that class;

**"Company"** means Meridian Energy Limited;

**"constitution"** means this constitution as it may be altered from time to time in accordance with the Act;

**"Crown"** has the meaning given to that term in section 45P of the Public Finance Act;

**"CS Facility Licensee"** means a person who holds a licence under the Australian Corporations Act 2001 (Cth) that authorises the person to operate a clearing and settlement facility;

**"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;

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

**"Holding Adjustment"** has the meaning given to that term in the ASX Settlement Operating Rules;

**"Instalment Receipt"** means an instalment receipt issued under the IPO;

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

**"IPO"** has the meaning given to that term in clause 23 of the Fourth Schedule;

**"Issuer Sponsored Holding"** has the meaning given to that term in the ASX Settlement Operating Rules;

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

**"NZX Rules"** means the Listing Rules applying to the NZX main board equity securities market (or any successor to that market) as altered from time to time by NZX, subject to any ruling or waiver relevant to the Company granted by NZX from time to time;

**"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;

**"Public Finance Act"** means the Public Finance Act 1989;

**"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;
- (b) a Personal Representative; or
- (c) a representative appointed by a corporation;

**"Secretary"** means any person or persons appointed as secretary of the Company pursuant to clause 69.1, and includes a deputy secretary;

**"Security"** means a security (as that term is defined in section 2(1)(a) of the Securities Markets Act 1988) of the Company which confers a Voting Right;

**"special resolution"** means a resolution approved by a majority of 75% of the votes of those shareholders entitled to vote and voting on the question;

**"Share"** means a share in the Company, provided that for the purposes of the Fourth Schedule Share shall have the meaning given to that term in the Fourth Schedule;

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

**"shareholder"** means a holder of Shares;

**"Voting Right"** has the meaning given to that term in section 45P of the Public Finance Act; and

**"written or in writing"** in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

1.2 Subject to clause 1.1, expressions:

- (a) which are defined in the NZX Rules (whether or not expressed with an initial capital letter) have the meanings given by the NZX Rules.
- (b) which are defined in the Act (whether generally or for the purposes of one or more particular provisions) or the Securities Act 1978 (whether in section 2, or elsewhere for the purposes of a particular subsection, section or sections) have the meanings given to them by the Act or the Securities Act 1978. Where an expression is defined in the Act or the Securities Act 1978 more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.

## 2. CONSTRUCTION

In this constitution:

- (a) the table of contents, headings, and descriptions relating to sections of the Act, appear as a matter of convenience and do not affect the interpretation of this constitution;
- (b) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (c) "written" and "in writing" include any means of representing or reproducing words, figures and symbols in a tangible and visible form;
- (d) references to clauses are references to clauses in this constitution, unless stated otherwise;
- (e) where any word or expression is defined in this constitution, any other grammatical form of that word or expression has a corresponding meaning;
- (f) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations, and includes any statutory instruments, rules and orders issued under an enactment or other instrument;
- (g) a reference to an NZX Rule or the NZX Rules includes that NZX Rule or the NZX Rules as from time to time amended or substituted;
- (h) a reference to an ASX Rule or the ASX Rules includes that ASX Rule or the ASX Rules as from time to time amended or substituted;

- (i) a reference to permitted by the Act or permitted by the NZX Rules or permitted by the ASX Rules means not prohibited by the Act or not prohibited by the NZX Rules or not prohibited by the ASX Rules; and
- (j) the Schedules form part of this constitution.

## **CONFIRMATION IN OFFICE**

### **3. CONFIRMATION IN OFFICE**

All offices, elections, and appointments (including of or to the Board and committees of the Board), registers, registrations, records, instruments and delegations, and generally all acts of authority that originated under any previous constitution of the Company and are subsisting and in force on the day on which this constitution is duly adopted shall continue and be deemed to be effective and in full force under this constitution.

## **RELATIONSHIP BETWEEN CONSTITUTION AND ACT**

### **4. EFFECT OF THE ACT ON THIS CONSTITUTION**

4.1 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, in accordance with the Act, by this constitution. 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.

### **5. EFFECT OF THIS CONSTITUTION**

This constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it.

## **RELATIONSHIP BETWEEN CONSTITUTION, NZX RULES AND ASX RULES**

### **6. INCORPORATION OF LISTING RULES OF EXCHANGES WHILE LISTED**

For so long as the Company is listed on the NZX main board equity securities market (or any successor to that market):

- (a) this constitution is deemed to incorporate all provisions of the NZX Rules required under the NZX Rules to be contained or incorporated by reference in this constitution, as those provisions apply from time to time (and as modified by any waiver or ruling relevant to the Company) and such provisions shall have effect as if they were set out in full in this constitution;

- (b) if the NZX Rules or ASX Rules (if applicable) are changed so that any act or omission by the Company, which was formerly prohibited by the relevant NZX Rules or ASX Rules, is subsequently required or permitted by the change, the act or omission is deemed to be authorised by this constitution with effect from the date of the change, provided this clause shall not negate the need to comply with whichever of the NZX Rules or ASX Rules has not been so changed (subject to any waiver or ruling relevant to the Company);
- (c) shareholders must not cast a vote if prohibited from doing so by the NZX Rules and/or the ASX Rules; and
- (d) Directors must not cast a vote if prohibited from doing so by the NZX Rules and/or the ASX Rules.

## **7. COMPANY MUST COMPLY WITH LISTING RULES OF EXCHANGES WHILE LISTED**

7.1 Notwithstanding anything else in this constitution, for so long as the Company is listed on the NZX main board equity securities market (or any successor to that market):

- (a) the Company must comply with the NZX Rules (as modified by any waiver or ruling) subject to the requirements of the Act and any other applicable legislative requirements; and
- (b) if this constitution contains any provision inconsistent with the NZX Rules, as modified by any waiver or ruling relevant to the Company, then the relevant NZX Rules (as modified by any such waiver or ruling) prevail.

7.2 Where matters in this constitution are expressed in relation to the requirements and restrictions of the NZX Rules, including matters "subject to", "permitted" or "required by" the NZX Rules, those requirements and restrictions will apply only for so long as the Company is listed on the NZX main board equity securities market (or any successor to that market).

7.3 While the Company is admitted to the official list of ASX:

- (a) notwithstanding anything contained in this constitution, if the ASX Rules prohibit an act being done, the act shall not be done;
- (b) nothing in this constitution prevents an act being done that the ASX Rules require to be done;
- (c) if the ASX Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
- (e) if the ASX Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the ASX Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

7.4 Where matters in this constitution are expressed in relation to the requirements and restrictions of the ASX Rules, including matters "subject to", "permitted" or "required by"



the ASX Rules, those requirements and restrictions will apply only for so long as the Company is admitted to the official list of ASX.

## **8. STOCK EXCHANGE RULINGS AND WAIVERS**

If any act or omission which in the absence of a ruling and/or waiver from either or both of NZX or ASX would be in contravention of the NZX Rules, the ASX Rules and/or this constitution, and rulings or waivers are granted by the relevant stock exchange or stock exchanges, that act or omission will, unless a contrary intention appears in this constitution, be deemed to be authorised by this constitution and the relevant listing rules.

## **9. FAILURE TO COMPLY WITH NZX RULES HAS LIMITED EFFECT IN SOME CASES**

Any failure to comply with the NZX Rules, or failure to comply with a provision of this constitution corresponding to a provision of the NZX Rules, by the Company or shareholders does 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, except that a party to a transaction or contract who knew of the failure to comply with the NZX Rules is not entitled to enforce that transaction or contract. This clause does not affect the rights of any holder of securities against the Company or the Board arising from failure to comply with the NZX Rules or those provisions of this constitution.

## **COMPLIANCE WITH PUBLIC FINANCE ACT**

## **10. COMPLIANCE WITH PUBLIC FINANCE ACT**

The Company must comply with all of its obligations under Part 5A of the Public Finance Act. For such time as the Company is a company listed in Schedule 5 of the Public Finance Act:

- (a) the Fourth Schedule forms part of this constitution from the date on which Shares are first Quoted;
- (b) the Fifth Schedule forms part of this constitution during the period from and including the date on which the Instalment Receipts are first Quoted and ending on the date on which the Instalment Receipts cease to be Quoted; and
- (c) in the event of any inconsistency or conflict between the Fourth Schedule and the Fifth Schedule at any time at which both the Fourth Schedule and the Fifth Schedule form part of this constitution:
  - (i) the Fifth Schedule prevails in relation to any matter relating to or concerning the Instalment Receipts or the ownership or acquisition of or interests in the Instalment Receipts; and
  - (ii) the Fourth Schedule prevails in relation to any other matter.

## **SHARES AND SHAREHOLDERS**

### **11. COMPANY'S SHARES**

At the time of adoption of this constitution, the Company has 2,563,000,000 ordinary shares, with the rights set out in section 36 of the Act. No money is payable for calls or otherwise on those ordinary shares.

### **12. CLASSES OF SHARES**

Subject to Part 5A of the Public Finance Act and this constitution, different Classes of Shares may be issued by the Company. Without limiting the Classes which may be issued, any Share may be issued upon the basis that it:

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

### **13. BOARD NEED NOT COMPLY WITH STATUTORY PRE-EMPTIVE RIGHTS**

Section 45(1) and section 45(2) of the Act do not apply to the Company.

### **14. FURTHER ISSUES OF SHARES DO NOT AFFECT RIGHTS OF EXISTING SHAREHOLDERS**

- 14.1 The Company shall, before taking action affecting the rights attached to any Shares, comply with the provisions of sections 116 and 117 of the Act.
- 14.2 Subject to this constitution, the Board may issue Shares or other Equity Securities that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares, in accordance with this constitution and Part 5A of the Public Finance Act and (for so long as the Company is listed on the NZX main board equity securities market (or any successor to that market) or admitted to the official list of ASX) the provisions of the NZX Rules and ASX Rules (as applicable). Any such issue will not be treated as an action affecting the rights attached to those existing Shares unless the terms of issue of those Shares expressly provide otherwise.

### **15. BONUS ISSUES**

- 15.1 Subject, if applicable, to the NZX Rules, ASX Rules, the Public Finance Act, and this constitution, 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 clause 15.1(a)(i),
- or partly in one way and partly in the other.

## **16. TRANSFER OF RIGHTS**

Every person to whom unissued Equity Securities are offered pursuant to an offer complying with NZX Rule 7.3.4(a) 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 issue Equity Securities in relation to which the rights have been transferred as they would have if the transfer of rights 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.

## **17. CONSOLIDATION AND SUBDIVISION**

The Board may:

- (a) consolidate and divide Shares or any class of Shares in proportion to those Shares or the Shares in that class; or
- (b) subdivide Shares or any class of Shares in proportion to those Shares or the Shares in that class.

## **18. SHARE REGISTER MAY BE DIVIDED**

The share register may be divided into 2 or more registers kept in different places.

## **19. EQUITABLE INTERESTS IN SHARES**

- 19.1 No notice of a trust, whether express, implied, or constructive, may be entered on the share register.
- 19.2 Except as required by law, by this constitution or as otherwise expressly agreed by the Company in relation to the Instalment Receipts, 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.

## **20. RECORD DATE FOR SHAREHOLDER VOTING**

The Board may determine in a notice of meeting for the purpose of voting at that meeting that those registered shareholders as at 5 p.m. on a day not more than 2 working days before the meeting will be the only persons entitled to exercise the right to vote at that meeting and only the Shares registered in the name of those shareholders at that time may be voted at that meeting.

## **21. REGISTRATION OF SEPARATE PARCELS**

A shareholder or a transferee may request the Company to register the Shares held by that person in two or more separately identifiable parcels. Where the Company agrees to such a request, the Company may, so far as it considers convenient, communicate with the shareholder, pay dividends and otherwise act in respect of such parcel, as if the separately identifiable parcels belonged to different persons.

## **22. TRANSFER OF SHARES**

- 22.1 Subject to any restrictions contained in this constitution, a shareholder or Personal Representative may transfer any Share:
- (a) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 or pursuant to a "designated settlement system" within the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989, which is applicable to the Company;
  - (b) under any other share transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which Shares are listed and which is applicable to the Company; or
  - (c) by an instrument of transfer which complies with this constitution.
- 22.2 A Share which is disposed of in a transaction which complies with the requirements of a system of transfer authorised under clause 22.1(a) or 22.1(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of the Securities Transfer Act 1991 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.
- 22.3 An instrument of transfer of Shares to which the provisions of clause 22.2 are not applicable shall:
- (a) be in any common form or any other form approved by the Company or the Share Registrar;
  - (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.
- 22.4 An instrument transferring Shares must be delivered to the Company or to the Share Registrar, together with such evidence (if any) 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.

**23. COMPANY TO RETAIN TRANSFER**

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

**24. BOARD MUST REFUSE OR DELAY A TRANSFER**

The Board must refuse or delay the registration of any transfer of Shares where the Board has actual knowledge, or believes, that registration of the transfer would or would be likely to contravene Part 5A of the Public Finance Act.

**25. BOARD MAY REFUSE OR DELAY TRANSFER**

- 25.1 The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares (subject to their terms of issue) if permitted to do so by the Act, and if applicable the ASX Rules, the NZX Rules or clause 10 of the Fourth Schedule or for so long as the Board or the Company is in the process of exercising any of their respective powers set out in the Fourth Schedule with respect to those Shares.
- 25.2 Subject to the Act (which imposes certain procedural requirements on a board), the Board may further 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 transferor fails to produce 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 Share; or
  - (c) 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.

**26. TRANSMISSION OF SHARES**

- 26.1 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.
- 26.2 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.

- 26.3 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.

## **27. REGISTRATION NOT TO AFFECT OTHER POWERS**

The registration of any transfer of Shares shall not prejudice or affect in any way the powers exercisable by the Board under the Fourth Schedule or otherwise.

## **28. COMPULSORY SALE OF LESS THAN MINIMUM HOLDINGS**

- 28.1 The Company may at any time give notice to a shareholder holding less than a Minimum Holding of Shares that if, at the expiration of 3 months after the date the notice is given, Shares then registered in the name of the holder are less than a Minimum Holding the Company may sell those Shares through NZX or in some other manner approved by NZX.
- 28.2 The Board may authorise the transfer of the Shares sold under this clause to a purchaser of the Shares through NZX or in some other manner approved by NZX, and the holder is deemed to have authorised the Company to act on behalf of the holder and to sign all necessary documents relating to the sale. For the purposes of the sale and of Rule 5.12 of the ASX Settlement Operating Rules, where the Company has given a notice that complies with Rule 5.12.2 of the ASX Settlement Operating Rules, the Company may, after the expiration of the time specified in the notice, initiate a Holding Adjustment to move the relevant Shares from that CHESS Holding to an Issuer Sponsored Holding or to take any other action the Company considers necessary or desirable to effect the sale. The purchaser is not bound to see to the application of the purchase money, nor shall the title to the Shares be affected by any irregularity or invalidity in the procedures under this constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.
- 28.3 The proceeds of the sale of any Shares sold under this clause must be applied as follows:
- (a) first, in payment of any reasonable sale expenses.
  - (b) second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Shares.
  - (c) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.
- 28.4 A certificate, signed by a Director that records that a power of sale under this clause has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

## **29. BOARD MAY MAKE CALLS ON SHARES**

The Board may make calls on any shareholder for any money that is unpaid on that shareholder's Shares and not otherwise payable at a specified time or times under this constitution or the terms of issue of those Shares or any contract for the issue of those Shares. The First Schedule governs calls on Shares.

### **30. FORFEITURE OF SHARES WHERE CALLS OR OTHER AMOUNTS UNPAID**

The Board may exercise the rights set out in the First Schedule for forfeiture of any Shares if the holder of those Shares fails to pay:

- (a) a call, or an instalment of a call, on those Shares; or
- (b) any amount that is payable under this constitution or the terms of issue of those Shares or any contract for the issue of the Shares.

### **31. COMPANY'S LIEN**

The Company has a lien on Shares and dividends in respect of such Shares on the terms set out in the First Schedule.

### **32. COMPANY MAY ACQUIRE AND HOLD SHARES**

Subject to this constitution, and if applicable, the NZX Rules, the ASX Rules and Part 5A of the Public Finance Act, the Company may:

- (a) purchase or otherwise acquire Shares issued by the Company and may hold Shares as treasury stock; and
- (b) make an offer to one or more holders of Shares to acquire Shares issued by the Company in such number or proportions as it thinks fit,

in accordance with the Act, the NZX Rules, the ASX Rules and Part 5A of the Public Finance Act.

### **33. COMPANY MAY ISSUE AND REDEEM SHARES**

Subject to this constitution, and if applicable, the NZX Rules, the ASX Rules and Part 5A of the Public Finance Act, the Company may:

- (a) issue or redeem redeemable Shares; and
- (b) exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares,

in accordance with the Act, the NZX Rules, the ASX Rules and Part 5A of the Public Finance Act.

### **34. DISTRIBUTIONS**

34.1 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.

34.2 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 34.3 shall not differentiate between shareholders as to the form in which a Distribution is made without the prior approval of the shareholders.

34.3 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.

34.4 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.

34.5 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.

34.6 Where the net amount of a Distribution payable to a shareholder is less than such minimum amount as may be determined from time to time by the Board for the purposes of this clause, the Company may, with the prior approval of that shareholder, defer payment of the Distribution to that shareholder until the earlier of:

- (a) such time as that shareholder has an aggregate entitlement to net Distributions of not less than such minimum amount; and
- (b) the date upon which that shareholder ceases to hold any Shares.

### **35. BOARD DEDUCTIONS FROM DISTRIBUTION**

The Board may, at its discretion, deduct from any dividend or other distribution payable to a shareholder any amount owed by the shareholder to the Company in respect of which the Company has a lien over the specific Shares on which the dividend or other distribution is payable. The Board must deduct from any dividend or other distribution payable to any shareholder any amount it is required by law to deduct, including withholding and other taxes.

### **36. DISTRIBUTIONS DO NOT BEAR INTEREST**

No dividend or other distribution shall bear interest against the Company unless the applicable terms of issue of a Share expressly provide otherwise.

### **37. UNCLAIMED DISTRIBUTIONS**

All dividends and other distributions unclaimed for one year after the due date for payment may be invested or otherwise made use of by the Board for the benefit of the



Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, shall pay the distribution to the person producing evidence of entitlement.

### **38. MEETINGS OF SHAREHOLDERS**

- 38.1 The Company shall hold annual meetings of shareholders in accordance with section 120 of the Act.
- 38.2 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.
- 38.3 Each meeting of shareholders shall be held at such time and place as the Board appoints.

### **39. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS AND INTEREST GROUPS**

- 39.1 The Second Schedule governs the proceedings at meetings of shareholders. The Second Schedule also governs the proceedings of meetings of any interest group required to be held by the Act, and if applicable, the NZX Rules, the ASX Rules or this constitution, with all necessary consequential modifications, except that the quorum shall be the members of the interest group holding 5% or more of the total number of Shares held by all members of that group having the right to vote at the meeting.
- 39.2 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.

## **DIRECTORS**

### **40. COMPOSITION**

- 40.1 The minimum number of Directors (other than alternate Directors) shall be 3. The maximum number of Directors (other than alternate Directors) shall be 9. The maximum number of Directors may be increased by an ordinary resolution of shareholders.
- 40.2 The minimum number of Independent Directors shall be two, or, if there are eight or more Directors, three or one-third (rounded down to the nearest whole number of Directors) of the total number of Directors, whichever is the greater.
- 40.3 The Board must identify which Directors it has determined, in its view, to be Independent Directors when required to do so by NZX Rule 3.3.3.

### **41. APPOINTMENT OF DIRECTORS**

- 41.1 Any natural person who is not disqualified under the Act and, if required under the NZX Rules or the ASX Rules (if applicable), who has been nominated within the time limits

under the NZX Rules or the ASX Rules (if applicable), may be appointed as a Director by an ordinary resolution of shareholders.

- 41.2 The Board may appoint any person who is not disqualified under the Act to be a Director to fill a casual vacancy or as an addition to the existing Directors. Any Director appointed under this clause (including any person who subsequent to his or her appointment as a Director becomes an executive Director) may hold office only until the next annual meeting (at which he or she must retire), and is then eligible for election, but must not be taken into account in determining the Directors who are to retire by rotation at that meeting.
- 41.3 The persons holding office as Directors of the Company on adoption of this constitution continue in office and are deemed to have been appointed as Directors pursuant to this constitution. Similarly the chairperson of the Board continues in office and is deemed to have been appointed as chairperson pursuant to this constitution.
- 41.4 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.
- 41.5 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.

## **42. ROTATION OF DIRECTORS**

- 42.1 At the annual meeting in every year at least the number of Directors required to retire at that meeting by the NZX Rules or the ASX Rules (if applicable) must retire from office, but shall be eligible for re-election at that meeting. The following Directors are exempt from this particular obligation to retire:
- (a) Directors appointed by the Board pursuant to clause 41.2 (who are offered for election under that clause); and
  - (b) one executive Director nominated by the Board.
- 42.2 The Directors to retire at an annual meeting will be those Directors who have been longest in office since their last election. Persons who became Directors on the same day must retire in the order determined by lot, unless the Board resolves otherwise.
- 42.3 The shareholders may by ordinary resolution fill the office vacated by a Director who is retiring in accordance with this clause by electing a person who is not disqualified under the Act to that office at the annual meeting at which the outgoing Director retires. If no new Director is elected and if the retiring Director (not being disqualified under the Act) is offering himself or herself for re-election, the retiring Director shall be deemed to be re-elected unless it is expressly resolved by ordinary resolution not to fill the vacated office or a resolution for the re-election of that Director is put to the meeting and lost.

## **43. TIMING OF RETIREMENT AND APPOINTMENT**

- 43.1 A retiring Director continues to hold office:
- (a) until he or she is re-elected; or

- (b) if he or she is not re-elected, until the meeting of shareholders at which he or she retires (or any adjournment of that meeting) elects someone in his or her place; or
- (c) if the meeting of shareholders does not elect someone in his or her place, until the end of the meeting or any adjournment of the meeting.

43.2 If a Director is removed from office at a meeting of shareholders by ordinary resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting.

43.3 If a person who is not already a Director is appointed or elected as a Director at a meeting of shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

#### **44. NO SHAREHOLDING QUALIFICATION FOR DIRECTORS**

There is no shareholding qualification for Directors.

#### **45. ELECTION OF CHAIRPERSON OF THE BOARD AND TERM OF OFFICE**

45.1 The Directors may elect one of their number, who must be (for such time as the Company is a company listed in schedule 5 of the Public Finance Act) a person approved for this purpose by the Minister of Finance as chairperson of the Board and determine a period for which the chairperson may hold office.

45.2 The chairperson of the Board holds that office until the expiry of any period determined by the Board; or he or she vacates that office; or the Directors elect a chairperson in his or her place.

#### **46. OFFICE OF DIRECTOR VACATED IN CERTAIN CASES**

The office of Director is vacated if the person holding that office:

- (a) is removed from office by an ordinary resolution of shareholders, 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) is absent from 6 consecutive meetings of the Board without leave being granted by a resolution of the Board and the Board resolves that the Director has vacated office; or
- (e) becomes disqualified from being a Director pursuant to the Act; or
- (f) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (g) retires from office and is not re-elected or deemed to have been re-elected under this constitution.

#### **47. POWERS OF DIRECTORS**

- 47.1 The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.
- 47.2 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.
- 47.3 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.
- 47.4 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.
- 47.5 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.

#### **48. MEETINGS OF THE BOARD**

The Third Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The third schedule to the Act does not apply to proceedings of the Board.

#### **49. WRITTEN RESOLUTIONS OF BOARD PERMITTED**

A written resolution signed or assented to by a majority of the Directors then entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. A copy of any such written resolution shall, as soon as reasonably practicable, be given to each Director who did not sign or assent to such written resolution.

#### **50. WRITTEN RESOLUTIONS MAY BE IN COUNTERPARTS**

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

#### **51. BOARD DELEGATES TO COMPLY WITH REGULATIONS**

In exercising the Board's delegated powers, any committee of Directors, Director, employee, or any other person must comply with any regulations that the Board may impose.

## **52. COMMITTEE PROCEEDINGS**

The provisions of this constitution relating to meetings and proceedings of the Board also apply to meetings and proceedings of any committee of Directors, except to the extent the Board determines otherwise.

## **53. REIMBURSEMENT OF EXPENSES**

- 53.1 A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director without requiring the prior approval of shareholders.
- 53.2 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.

## **54. REMUNERATION**

- 54.1 The Board may, subject, if applicable, to the NZX Rules and ASX Rules, exercise the power conferred by section 161 of the Act to authorise payments and other benefits to and for Directors.
- 54.2 The Board may, subject, if applicable, to the NZX Rules and ASX Rules, 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 a capacity other than that of Director.

## **55. DIRECTORS MAY APPOINT AND REMOVE ALTERNATE DIRECTORS**

Every Director may:

- (a) appoint any person who is not a Director and is not disqualified by the Act or this constitution from being a Director, and whose appointment has been approved in writing by a majority of the other Directors, to act as an alternate Director in his or her place either for a specified period, or generally during the absence or inability to act from time to time of such Director; and
- (b) remove his or her alternate Director from that office,

by giving written notice to that effect to the Company. No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate.

## **56. ALTERNATE DIRECTOR HAS POWERS OF APPOINTER**

While acting in the place of the Director who appointed him or her, an alternate Director:

- (a) has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, and participate in a meeting, of the Board, and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director);
- (b) is also subject to the same terms and conditions of appointment as that Director, except that he or she is not entitled to receive remuneration other

than such proportion (if any) of the remuneration otherwise payable to his or her appointer as the appointer may direct by notice in writing to the Company;

- (c) is not entitled to be given notice of a meeting of the Directors unless his or her appointer has given written notice to the Company requesting that notice be given to the alternate Director.

## **57. TERMINATION OF APPOINTMENT OF ALTERNATE DIRECTOR**

The appointment of an alternate Director terminates automatically if the Director who appointed him or her ceases to be a Director or if an event occurs which would cause him or her to vacate office if he or she were a Director or if a majority of the other Directors revoke the consent previously provided to that alternate Director acting. A Director retiring by rotation and being re-elected is not to be treated as having ceased to be a Director for the purposes of this clause.

## **58. BOARD MAY APPOINT MANAGING DIRECTOR**

- 58.1 The Board may appoint one of the Directors to the office of Managing Director (by whatever name called) for a term not exceeding 5 years and on such other terms as the Board thinks fit. A Managing Director may be re-appointed at any time within 3 months before expiry of a term of appointment for a further period not exceeding 5 years, and may be re-appointed for a further term of 5 years in the same manner. Subject to the terms of any agreement entered into between the Board and the Director concerned, the Board may revoke the appointment. The appointment of a Managing Director shall terminate automatically if he or she ceases to be a Director.
- 58.2 A Managing Director is subject to the same provisions as regards resignation, removal, and disqualification as the other Directors.

## **59. REMUNERATION OF MANAGING DIRECTOR**

A Managing Director will receive in addition to remuneration for services as a Director such remuneration and benefits as the Board may determine.

## **60. POWERS CONFERRED ON MANAGING DIRECTOR**

Subject to the restrictions on delegation in the Act, the Board may:

- (a) confer on a Managing Director any of the powers exercisable by the Board; and
- (b) without affecting the powers of a Managing Director to act as a member of the Board, impose such terms and conditions and such restrictions as the Board thinks fit; and
- (c) alter or revoke any of the powers it confers under this clause.

**61. MANAGING DIRECTOR HAS NO POWER TO APPOINT ALTERNATE MANAGING DIRECTOR**

The power to appoint an alternate Director conferred on Directors by this constitution does not confer on any Managing Director the power to appoint an alternate Managing Director.

**62. EXECUTIVE DIRECTORS**

No term of appointment of an executive Director shall exceed five years but this shall not preclude reappointment of an executive Director upon expiry of a term of appointment.

**63. INSUFFICIENT NUMBER OF DIRECTORS**

Directors may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below the number fixed in clause 40.1, the continuing Directors may act for the purpose of increasing the number of Directors to the minimum number or of summoning a general meeting of the Company, but for no other purpose.

**GENERAL**

**64. INDEMNITY AND INSURANCE**

64.1 Subject to clause 64.3, 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 any costs incurred by the Director in connection with an application under section 63 of the Securities Act 1978 in which the Director is relieved from liability by the Court; 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.

64.2 Subject to clause 64.3 (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 any costs incurred by him or her in connection with an application under section 63 of the Securities Act 1978 in which he or she is relieved from liability by the Court; 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.

64.3 An indemnity conferred by clause 64.1(b), or given pursuant to clause 64.2(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 64.1, or given pursuant to clause 64.2, shall not apply in respect of any liability or costs in respect of which an indemnity is prohibited by any legislation or law.

64.4 Without limiting the indemnity conferred by clause 64.1 the Company may, with the prior approval of the Board, by deed or agreement grant in favour of any Director an express indemnity to the same effect as that conferred by clause 64.1, but subject to the exceptions in clause 64.3.

64.5 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.

64.6 In clauses 64.1 to 64.5:

- (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.

## **65. MANNER OF EXECUTION OF DEEDS**

An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

- (a) two or more Directors; or



- (b) a Director, or any other person authorised by the Board, whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with the Act.

## **66. DISTRIBUTION OF SURPLUS ASSETS IN KIND**

If the Company is liquidated the liquidator may, with the approval of shareholders by ordinary resolution, but subject to any other sanction required by the Act:

- (a) divide among the shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may:
  - (i) fix such values for surplus assets as the liquidator considers to be appropriate, and
  - (ii) determine how the division will be carried out as between shareholders or different classes of shareholder;

and
- (b) vest the whole or any part of any such surplus assets in trustees upon such trusts for the benefit of such of those shareholders as the liquidator thinks fit,

but so that no shareholder is compelled to accept any Shares on which there is any liability.

## **67. COMMUNICATION WITH SHAREHOLDERS**

- 67.1 If a shareholder has notified the Company that the shareholder wishes to receive notices electronically and has provided the Company an electronic address to which notices are to be delivered, the Company must send that shareholder notices by electronic means in accordance with the notification, whether or not the notices are also sent by another method.
- 67.2 A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder named first in the register in respect of that Share.
- 67.3 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 holder at the address supplied to the Company for that purpose.
- 67.4 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.

## **68. SERVICE OF NOTICES OUTSIDE NEW ZEALAND**

If a shareholder has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand or an electronic address, then notices shall, to the extent required by the NZX Rules, be posted to such physical address or sent

electronically to such electronic address, and shall be deemed to have been received by the shareholder 24 hours after the time of posting.

**69. SECRETARY**

- 69.1 The Board may from time to time appoint one or more persons (other than a body corporate) to act as secretary or deputy secretary of the Company for such terms, at such remuneration, and upon such conditions as the Board thinks fit.
- 69.2 Subject to the Act, the Secretary has the powers conferred by this constitution (if any) and any other powers the Board may confer on the Secretary.
- 69.3 If the Board thinks fit, two or more persons may be appointed under clause 69.1 as joint Secretaries.
- 69.4 Any Secretary or joint Secretary may, at any time, be removed from office by the Board, but without prejudice to any claim for damages for breach of any contract of service between him or her and the Company.

**70. INSPECTION OF RECORDS**

- 70.1 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.
- 70.2 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).

## **FIRST SCHEDULE: CALLS, FORFEITURE AND LIENS**

### **INTERPRETATION**

#### **1 Construction**

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

### **CALLS ON SHARES**

#### **2 Shareholders must pay calls**

Every shareholder on receiving at least 10 working days' notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any Shares that shareholder holds. The Board may revoke or postpone a call, or require a call to be paid by instalments.

#### **3 Call made when Board resolution passed**

A call is regarded as having been made at the time when the Board resolution authorising the call was passed.

#### **4 Joint holders are jointly and severally liable**

The joint holders of a Share are jointly and severally liable to pay all calls for that Share.

#### **5 Unpaid calls will accrue interest**

If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. The Board may waive some or all of the payment of that interest.

#### **6 Amounts payable under terms of issue treated as calls**

Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of Shares or under a contract for the issue of Shares, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this constitution will apply as if the amount had become payable by virtue of a call made in accordance with this constitution.

#### **7 Board may differentiate between shareholders as to calls**

On the issue of Shares, the Board may differentiate between shareholders as to the amount of calls to be paid and the times of payment.

#### **8 Board may accept payment in advance for calls**

- 8.1 Where a shareholder is willing to advance some or all of the money unpaid and uncalled on any Share of that shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and that shareholder for the period between the date that the

amount is accepted and the date that the amount becomes payable pursuant to a call or the date specified for its payment.

- 8.2 The Board may at any time repay to any shareholder the whole or any portion of any money so advanced upon giving that holder at least 48 hours notice in writing and as from the date of such repayment interest (if any) shall cease to accrue on the money so repaid.
- 8.3 A shareholder is not entitled as of right to any payment of interest on any amount so paid in advance and the Board may decline to pay any interest. Any amount so paid in advance must not be taken into account in ascertaining the amount of any dividend or other distribution payable upon the Shares concerned.

## **FORFEITURE OF SHARES**

### **9 Board may by notice require forfeiture of Shares if calls unpaid**

The Board may during the time that a call, instalment, or other amount remains unpaid on a Share, serve a notice on the holder of that Share requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest and any expenses incurred by the Company by reason of non-payment.

### **10 Notice of forfeiture must satisfy certain requirements**

The notice served on a shareholder under clause 9 must specify a date not earlier than 10 working days after the date the notice is served by which the payment is to be made. The notice must also state that, in the event of non-payment by the appointed time, the Shares to which the call, instalment, or other amount relates, will be liable to be forfeited by the shareholder.

### **11 Failure to comply with notice may lead to forfeiture**

Where a valid notice under clause 9 is served on a shareholder and the shareholder fails to comply with the notice, then the Board may resolve that any Share for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited.

### **12 Board may deal with forfeited Share**

A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. However, the Board may cancel the forfeiture at any time before the sale or other disposition on such terms as the Board thinks fit if the call, instalment or other amount which remains unpaid on the Share is paid.

### **13 Shareholder whose Shares are forfeited loses rights**

A person whose Shares have been forfeited immediately ceases to be a shareholder in respect of those Shares notwithstanding any other provision of this constitution, and remains liable to pay the unpaid amount that the shareholder owes the Company, but that liability shall cease if the Company receives payment in full of all money owing for those Shares.

### **14 Evidence of forfeiture**

A certificate signed by a Director that a Share has been duly forfeited on a stated date is conclusive evidence of the facts stated in that certificate.

## 15 **Company may sell forfeited Share**

The Company may receive the consideration, if any, given for a forfeited Share following a sale or disposition, and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of, and register that person as the holder of the Share. That person is not bound to see to the application of the purchase money, if any, nor is the title to the Share affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or disposal of that Share. Any residue after satisfaction of unpaid calls, instalments, premiums or other amounts and interest, and expenses, shall be paid to the previous holder, or to his or her executors, administrators or assigns.

## 16 **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.

## 17 **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.

## **LIEN ON SHARES**

## 18 **Company's lien**

The Company has a lien, ranking in priority over all other equities, on:

- (a) all Shares registered in the name of a shareholder; and
  - (b) all dividends authorised in respect of such Shares; and
  - (c) the proceeds of sale of such Shares,
- for:
- (d) unpaid calls and instalments payable in respect of any such Shares; and
  - (e) interest on any such calls or instalments; and
  - (f) sale expenses owing to the Company in respect of any such Shares; and

- (g) any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other legislation in respect of the Shares of that shareholder, whether or not the due date for payment thereof has passed.

#### **19 Waiver of lien**

Registration of a transfer of Shares on which the Company has any lien will operate as a waiver of the lien, unless the Company gives notice to the contrary to the transferee prior to registration.

#### **20 Company may sell Share on which it has a lien**

The Company may sell a Share on which it has a lien in such manner as the Board thinks fit, where:

- (a) the lien on the Share is for a sum which is presently payable; and
- (b) the registered holder of the Share, or the person entitled to it on his or her death or bankruptcy, has failed to pay that sum within 10 working days after the Company has served that registered holder written notice demanding payment of that sum.

#### **21 Company may transfer Share and apply proceeds**

- 21.1 The Company may receive the consideration given for a Share sold under clause 20, and may execute a transfer of the Share in favour of the person to whom the Share is sold, and register that person as the holder of the Share discharged from all calls due prior to the purchase.
- 21.2 The purchaser is not bound to see to the application of the purchase money, and the purchaser's title to the Share is not affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.
- 21.3 The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, shall (subject to a like lien for sums not presently payable that existed upon the Share before the sale) be paid to the person who held the Share immediately before the date of sale or to his or her executors, administrators or assigns.

## **SECOND SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

### **INTERPRETATION**

#### **1 Construction**

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.2 A reference in this Schedule to a shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a shareholder, a representative of a corporate shareholder, an attorney of a shareholder, and any person who may lawfully act on behalf of a shareholder.

### **NOTICE**

#### **2 Written notice must be given to shareholders, Directors and auditors**

- 2.1 Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every Director and any auditor of the Company not less than 10 working days before the meeting.
- 2.2 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; or
  - (b) to a holder of any other Equity Security, shall be sent in the same manner, as though that holder were a shareholder.

#### **3 Notice must state nature of business**

The notice must:

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- (b) state the text of any special resolution to be submitted to the meeting; and
- (c) state in the case of special resolutions required by sections 106(1)(a), 106(1)(b) or 106(1)(c) of the Act, the right of a shareholder under section 110 of the Act; and
- (d) state 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; and
- (e) contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice; and
- (f) for so long as the Company is listed on the NZX main board equity securities market (or any successor to that market) or admitted to the official list of ASX, comply with the requirements of the NZX Rules and the ASX Rules (as applicable).

#### **4 Proxy form must be sent with notice**

A proxy form must be sent by mail or electronically with each notice of meeting.

## **5 Irregularities in notice may be waived**

Any 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.

## **6 Company's accidental failure to send notice does not invalidate meeting**

The accidental omission to send notice of a meeting to, or the failure to receive notice by, any person entitled to that notice, does not invalidate the proceedings at that meeting.

## **7 Notice of an adjournment**

7.1 If a meeting is adjourned for less than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place.

7.2 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

## **MEETING AND QUORUM**

## **8 Methods of holding meetings**

8.1 A meeting of shareholders may be held by a quorum of the shareholders:

- (a) being assembled together at the time and the place appointed for the meeting; or
- (b) participating in the meeting by means of audio, audio and visual, or electronic communication, to the extent permitted by the Act and if applicable the NZX Rules and/or the ASX Rules; or
- (c) by a combination of both the methods described in clauses (a) and (b) above.

8.2 The Company is not required to hold meetings of shareholders in the manner specified in clauses 8.1(b) or 8.1(c). Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so. To avoid 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.

## **9 Business to be transacted only if a quorum is present**

Subject to clauses 11 and 12, business may be transacted at a meeting of shareholders only if a quorum is present at the time when the meeting proceeds to business.

## **10 Quorum for shareholders' meeting**

A quorum for a meeting of shareholders is present if:

- (a) during the period in which Instalment Receipts are Quoted, 2 or more shareholders are present having the right to vote at the meeting; and



- (b) at all other times, 3 or more shareholders are present having the right to vote at the meeting.

**11 Meeting convened at shareholders' request dissolved if no quorum**

If a quorum is not present within 30 minutes after the time appointed for the meeting convened on the written request of shareholders holding Shares together carrying at least 5 percent of the voting rights entitled to be exercised, the meeting will be dissolved automatically.

**12 Other meetings to be adjourned if no quorum**

If a quorum is not present within 30 minutes after the time appointed for a meeting (other than a special meeting convened under the Act or a meeting of an interest group), the meeting will be adjourned to the same day in the following week at the same time and place, or to such other day, time, and place as the Directors may appoint. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present will constitute a quorum.

**CHAIRPERSON**

**13 Chairperson of Board to be chairperson of meeting**

The chairperson of the Board, if one has been elected by the Directors and is present at a meeting of shareholders, will chair the meeting.

**14 Directors may elect chairperson if chairperson of Board not available**

If no chairperson of the Board has been elected or, if at any meeting of shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or is unwilling to act, the Directors present may elect one of their number to be chairperson of the meeting.

**15 As a last resort shareholders may elect chairperson**

If at any meeting of shareholders, no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may elect one of their number to be chairperson of the meeting.

**16 Chairperson's power to adjourn meeting**

**16.1 The chairperson of a meeting at which a quorum is present:**

- (a) may adjourn the meeting with the consent of the shareholders present who are entitled to attend and vote at that meeting; and
- (b) must adjourn the meeting if directed by the meeting to do so.

**16.2 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.**

**17 Chairperson may dissolve or adjourn unruly meetings**

The chairperson may adjourn or dissolve the meeting if in his or her opinion the meeting has become so unruly, disorderly, or inordinately protracted, that the business of the meeting cannot be conducted in a proper and orderly manner. The chairperson may exercise this power without the consent of the meeting and without giving reasons.

**18 Dissolved meetings - unfinished business**

If the chairperson proposes to dissolve a meeting pursuant to clause 17, and there is any item of unfinished business of the meeting which in his or her opinion requires to be voted upon, then that item shall be dealt with by the chairperson directing it to be put to the vote by a poll without further discussion.

**VOTING**

**19 Voting by show of hands or voice vote at meeting**

In the case of a meeting of shareholders held under clause 8.1(a), unless a poll is demanded, voting at the meeting will be by a show of hands or by voice vote, as the chairperson may determine.

**20 Voting by voice if audio-conference meeting**

In the case of a meeting of shareholders held under clause 8.1(b) or 8.1(c), unless a poll is demanded, voting at the meeting will be by any method permitted by the chairperson of the meeting.

**21 Voting by electronic means**

To the extent permitted by the Act, and if applicable, the NZX Rules and the ASX Rules, the Company may allow shareholders to vote by signifying their assent or dissent by electronic means (including, for the avoidance of doubt, voting on a personal computer, with such vote being transmitted to the meeting), instead of the shareholder voting by another method permitted by the Act or this constitution.

**22 Votes of joint holders**

Where two or more persons are registered as the holders of a Share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

**23 Shareholder loses certain voting rights if calls unpaid**

If a sum due to the Company in respect of any Share registered in a shareholder's name has not been paid then that Share may be voted at a meeting of an interest group but not at any other meeting of shareholders.

**24 Chairperson not allowed casting vote**

In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson does not have a casting vote.

**25 Chairperson's declaration of result**

Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote or by such other manner as the chairperson may have decided under clause 19 or clause 20 is carried by the requisite majority or lost, shall be conclusive evidence of that fact.

**POLLS**

**26 Poll may be demanded by chairperson or shareholder**

At a meeting of shareholders, a poll may be demanded, either before or after a vote by show of hands or voice vote, by:

- (a) the chairperson, at his or her absolute discretion; or
- (b) at least 5 shareholders having the right to vote at the meeting; or
- (c) a shareholder or shareholders having the right to exercise at least 10 percent of the total votes entitled to be exercised on the business to be transacted at the meeting; or
- (d) a shareholder or shareholders holding Shares that confer a right to vote at the meeting and on which the total amount paid up is at least 10 percent of the total amount paid up on all the Shares that confer that right,

and shall be taken in such manner as the chairperson directs.

## **27 Time at which polls to be taken**

A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. A poll demanded on any other question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

## **28 Counting votes cast in a poll**

- 28.1 If a poll is taken, votes must be counted according to the votes attached to the Shares of each shareholder present and voting in person or by Representative.
- 28.2 Each shareholder present in person or by Representative has:
  - (a) in respect of each fully paid Share held by that shareholder, one vote; and
  - (b) in respect of each Share held by that shareholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Share were fully paid equivalent to the proportion which the amount paid (excluding amounts credited as paid) on that Share bears to the total amount paid and payable thereon (excluding amounts credited as paid and amounts paid in advance of calls).
- 28.3 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.

## **29 Declaration of poll result**

- 29.1 The chairperson of the meeting may declare the result of a poll either at or after the meeting, and when the outcome of the poll is known, may do so regardless of whether all votes have been counted.
- 29.2 The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

## **30 Proxy allowed to demand a poll**

The instrument appointing a proxy to vote at a meeting confers authority to demand, or join in demanding a poll, and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

**31 Auditor of Company to be scrutineer**

The auditor of the Company (including employees and agents of the auditor) for the time being, or if the auditor of the Company is unable or unwilling to act, then such person as the chairperson nominates, shall act as scrutineer for the purposes of a poll.

**SHAREHOLDER PROPOSALS**

**32 Shareholder proposals by written notice**

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

**PROXIES**

**33 Proxies permitted**

A shareholder may either exercise the right to vote by being present in person or represented by proxy.

**34 Proxy to be treated as shareholder**

A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

**35 Appointment of proxy must be in writing or approved electronic format and specify restrictions**

35.1 A proxy must be appointed by a notice in writing that is signed by or, in the case of an electronic notice, sent by the shareholder, or by appointing the proxy online as per the Company's instructions in a notice of meeting, and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a shareholder of the Company.

35.2 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.

**36 Notice of proxy to be produced at least 48 hours before meeting**

No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

**37 Form of notice of proxy**

37.1 A notice appointing a proxy shall be in such form as the Board may direct.

- 37.2 Proxy forms must as a minimum (so far as the subject matter and form of resolutions reasonably permits) provide for four-way voting (for, against, abstention or proxy discretion) on all resolutions, enabling the shareholder to instruct the proxy as to the casting of the vote, and must not be sent with any name or office (e.g. "chairman of Directors") filled in as proxy holder.
- 37.3 So far as reasonably practicable, resolutions must be framed in a manner which facilitates four-way voting instructions for proxy holders.

**38 Vote by proxy valid where no notification before meeting of disqualified proxy**

Where:

- (a) the shareholder has died or become incapacitated; or
- (b) the proxy, or the authority under which the proxy was executed, has been revoked; or
- (c) the Share in respect of which the notice of proxy is given has been transferred,

before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

**POSTAL VOTES**

**39 Postal votes are permitted only at Board's option**

- 39.1 A shareholder may exercise the right to vote at a meeting by casting a postal vote only if the Board, prior to the giving of notice of a meeting, has so determined and, if the Board so determines, the provisions of clause 7 of the first schedule to the Act shall apply.
- 39.2 To avoid doubt, a postal vote may be cast using electronic means permitted by the Board.

**CORPORATE REPRESENTATIVES**

**40 Corporations may act by representative**

A body corporate which is a shareholder may appoint a representative to attend any meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. The representative shall be entitled to attend and be heard at a meeting of shareholders as if the representative were the shareholder.

**MINUTES**

**41 Board must keep minutes of proceedings**

The Board must ensure that minutes are kept of all proceedings at meetings of shareholders and that a record is kept of all written resolutions of shareholders. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

**OTHER PROCEEDINGS**

**42 Shareholder participation by electronic means**

42.1 For the purposes of this Schedule, a shareholder, or the shareholder's proxy or representative, may, to the extent permitted by the Act and if applicable, the NZX Rules and the ASX Rules, 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).

42.2 To avoid doubt, participation in a meeting includes participation in any manner specified in this Schedule or permitted by this constitution.

**43 Chairperson may regulate other proceedings**

Except as provided in this Schedule, the chairperson of a meeting of shareholders may regulate the proceedings at the meeting.

**44 Voting 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, or other person of a similar nature appointed by that court, voting in person or by proxy.

**45 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.

### **THIRD SCHEDULE: PROCEEDINGS OF THE BOARD**

#### **NOTICE OF MEETING**

##### **1 Director's power to convene meetings**

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

##### **2 Notice to be sent to Director's address**

The notice of meeting must be in writing (whether printed and/or in electronic format) and must be:

- (a) delivered by hand to the Director; or
- (b) sent to the address or facsimile number which the Director provides to the Company for that purpose; or
- (c) sent by electronic means in accordance with any request made by the Director to the Company from time to time for such purpose; or
- (d) if an address or facsimile number is not provided, and an electronic means of delivery not requested, delivered to his or her last place of employment or residence or facsimile number or email address known to the Company; or
- (e) given to the Director in person by telephone or other oral communication.

##### **3 Notice to contain certain details**

The notice of meeting must include the date, time and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters. In the case of a meeting by means of audio, or audio and visual, communication, the notice of meeting must specify the manner in which each Director may participate in the proceedings of the meeting.

##### **4 Period of notice required to be given to Directors**

4.1 At least five days' notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given. Any such shorter notice may be given by telephone communication to each Director at the telephone number provided to the company by each Director provided that written notice shall be given to the Directors within the shorter notice period where it is practicable to do so.

4.2 A notice of meeting given to a Director pursuant to this clause is deemed to be given:

- (a) in the case of oral communication, at the time of notification;
- (b) in the case of delivery, when handed to the Director or when delivered to the address of the Director;
- (c) in the case of posting, three days after it is posted;
- (d) 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;  
or

(e) in the case of electronic means, at the time of transmission.

- 4.3 If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with this Schedule but the Director cannot be contacted, notice of the meeting shall be deemed to have been duly given to that Director

## **5 Absent Directors**

If a Director, who is for the time being absent from New Zealand, supplies the Company with a facsimile number or means of electronic communication to or through which notices are to be sent to him or her during his or her absence, then notice must be given to that Director. Otherwise notice need not be given to any Director for the time being absent from New Zealand. However, if he or she has an alternate Director who is in New Zealand, then notice must be given to that person.

## **6 Directors may waive irregularities in notice**

Any irregularity in the notice of a meeting, or failure to comply with clauses 2 to 5 of this Schedule is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

## **MEETING AND QUORUM**

## **7 Methods of holding meetings**

A meeting of the Board may be held by a number of Directors who constitute a quorum either:

- (a) by being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Directors participating can simultaneously hear each other throughout the meeting; or
- (c) by a combination of the methods described in clauses 7(a) and 7(b) of this Schedule.

## **8 Quorum for Board meeting**

Unless otherwise determined by the Board, the quorum necessary for the transaction of business at a meeting of the Board is a majority of the Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

## **9 Meeting adjourned if no quorum**

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum. Notice of the adjourned meeting must be given to the Directors at least 24 hours prior to the date of the adjourned meeting.



## **CHAIRPERSON**

### **10 Chairperson to chair meetings**

The chairperson of the Board will chair all meetings of the Board. 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, then the Directors present may elect one of their number to be chairperson of the meeting.

## **VOTING**

### **11 Voting on resolutions**

Each Director has one vote. Subject to clause 8 of this Schedule, 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 it. A Director must not vote where that Director is not permitted to vote by this constitution, or if applicable the NZX Rules or the ASX Rules. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

### **12 Interested Directors**

12.1 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 12.4.

12.2 Subject to clause 12.3 of this Schedule, a Director shall not vote on a Board resolution in respect of any matter in which that Director is interested (as that term is defined in the Act), nor shall the Director be counted in the quorum for the purposes of that matter.

12.3 Notwithstanding the above, a Director may vote in respect of and be counted in the quorum for the Board for the purposes of a matter in which that Director 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.

12.4 Notwithstanding any rule of law or equity to the contrary, but subject, if applicable, to the NZX Rules, ASX Rules, and 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.

**13 Chairperson does not have a casting vote**

In the case of an equality of votes, the chairperson of the Board shall not have a casting vote.

**MINUTES**

**14 Board must keep minutes of proceedings**

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

**OTHER PROCEEDINGS**

**15 Board may regulate other proceedings**

Except as set out in this Schedule, the Board may regulate its own procedure.

## FOURTH SCHEDULE: OWNERSHIP RESTRICTIONS INTERPRETATION

### 1

#### Definitions

In this Schedule, unless the context otherwise requires:

**"Affected Shares"** means any Shares in respect of which the Board has determined under clause 13, in its discretion, that a person has a Relevant Interest in contravention of clause 5;

**"Affected Shareholder"** has the meaning given to that term in clauses 23 and 24;

**"Approved Nominee"** means a person to whom the exemption contained in section 45U of the Public Finance Act applies and who is in compliance with all requirements of that section;

**"Breach Shares"** has the meaning given to that term in clauses 23 and 24;

**"Cancellation Notice"** has the meaning given to that term in clause 23;

**"Class"** means a class of Shares (whether Quoted or not) having attached to them identical rights, privileges, limitations and conditions;

**"IPO"** has the meaning given to that term in clause 23;

**"Maximum Specified Percentage"** means the percentages set out in section 45S of the Public Finance Act;

**"Minimum Crown Percentage"** means the percentage set out in section 45R of the Public Finance Act;

**"Other Holder"** has the meaning given to that term in clause 8;

**"Non-Notifying Holder"** has the meaning given to that term in clause 12;

**"Notifying Holder"** has the meaning given to that term in clause 6;

**"Possible Interest Holder"** has the meaning given to that term in clause 8;

**"Relevant Interest"** has the meaning given to that term in section 45P of the Public Finance Act; and

**"Share"** means a share in the Company or any other security (as that term is defined in section 2(1)(a) of the Securities Markets Act 1988) of the Company which confers a Voting Right.

### 2

#### Construction

In this Schedule, unless the context requires otherwise:

- (a) capitalised terms which are not otherwise defined in this Schedule have the meanings given to them in this constitution of which this Schedule forms part; and
- (b) a reference to a clause is reference to a clause in this Schedule.

## **COMPLIANCE WITH PART 5A OF THE PUBLIC FINANCE ACT**

- 3 None of the Company, the Board or any registered holder of Shares may act in a manner that contravenes Part 5A of the Public Finance Act.

## **LIMITATION ON ISSUES, ACQUISITIONS AND REDEMPTIONS OF SHARES**

- 4 The Company must not issue, acquire or redeem any Shares if:
- (a) such issue, acquisition or redemption, would result in the Crown holding less than the Minimum Crown Percentage of a Class of Shares; or
  - (b) the Company has actual knowledge that such issue, acquisition or redemption will result in any person other than the Crown having a Relevant Interest in Shares that comprise more than the Maximum Specified Percentage of a Class of Shares unless the person is an Approved Nominee and has a Relevant Interest in the relevant Shares in accordance with the requirements of section 45U of the Public Finance Act.

## **LIMITATION ON OWNERSHIP BY PERSONS OTHER THAN THE CROWN**

### **5 Limitation on ownership**

No person, other than the Crown, may have a Relevant Interest in Shares that comprises more than the Maximum Specified Percentage of a Class of Shares unless the person is an Approved Nominee and has a Relevant Interest in the relevant Shares in accordance with the requirements of section 45U of the Public Finance Act.

### **6 Notification of contravention of limitation on ownership**

If a registered holder of Shares (a Notifying Holder):

- (a) has or acquires a Relevant Interest in Shares in contravention of clause 5; or
- (b) knows or believes that a person who has a Relevant Interest in Shares held by the Notifying Holder has, or may have, a Relevant Interest in Shares in contravention of clause 5,

the Notifying Holder must notify the Company in writing of such contravention, or possible contravention, immediately it becomes aware of the same and in that notice must, to the extent known to the Notifying Holder, advise the Company of:

- (c) where paragraph (a) of this clause applies:
  - (i) the number and Class of Shares in which the Notifying Holder has a Relevant Interest in contravention of clause 5; and
  - (ii) the name(s) and address(es) of the registered holder(s) of any Shares in which the Notifying Holder has a Relevant interest, where the Notifying Holder is not the registered holder of those Shares, and the name and address of any other person who has a Relevant Interest in any such Shares; and
- (d) where paragraph (b) of this clause applies:
  - (i) the name and address of the person who has, or may have, a Relevant Interest in Shares in contravention of clause 5;

- (ii) the number and Class of the Shares held by the Notifying Holder in which that person has a Relevant Interest; and
- (iii) the names of any other persons who are registered as the holders of Shares in which that person also has a Relevant Interest and the nature of any such Relevant Interest, if and to the extent known by the Notifying Holder.

The Company must provide to the Crown a copy of any notice provided to it under this clause as soon as is practicable.

## 7 Automatic suspension of rights where contravention of limitation on ownership

If a person has a Relevant Interest in any Shares in contravention of clause 5 (irrespective of whether or not the registered holder of any such Shares has acted (knowingly or otherwise) in contravention of clause 5):

- (a) no vote may be cast (whether by voice, show of hands, on a poll or in any other manner) in respect of any of the Shares in which that person has a Relevant Interest in contravention of clause 5 (being, for the avoidance of doubt, the Shares in a Class of Shares in which the person has a Relevant Interest in excess of the Maximum Specified Percentage) on any matter arising for determination at any meeting of the holders of the relevant Class of Shares, or any meeting at which the holders of the relevant Class of Shares are entitled to vote (and any such vote cast at any such meeting will be disregarded); and
- (b) the registered holder of the Shares in which that person has a Relevant Interest in contravention of clause 5 will not be entitled to receive, in respect of the Shares in a Class of Shares in which the person has a Relevant Interest in excess of the Maximum Specified Percentage, any dividend or other distribution authorised by the Board in respect of the Class of Shares of which those Shares form part.

## 8 Power to require declaration of holding

If the Board has actual knowledge, or believes, that a person:

- (a) has or may have a Relevant Interest in Shares in contravention of clause 5; or
  - (b) will have, or is likely to have, following the registration of a transfer of Shares that has been lodged with or presented to the Company for registration (including under a share or other security transfer system approved under the Securities Transfer Act 1991 or pursuant to a "designated settlement system" within the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989), a Relevant Interest in Shares in contravention of clause 5,
- (each, a "**Possible Interest Holder**"),

the Company must require each Possible Interest Holder that is a registered holder of Shares and any other person that is registered as a holder of Shares in which the Board knows or believes that a Possible Interest Holder has, or may have, a Relevant Interest (an "**Other Holder**") to lodge with the Company within 14 days of the date on which such notice is given by the Company, a statutory declaration by that Possible Interest Holder or Other Holder (or such other documentary evidence as may be required by the Board) as to the following matters (to the extent known to the Possible Interest Holder or Other Holder, as the case may be):

- (c) the number and Class of Shares in which the Possible Interest Holder has a Relevant Interest;
- (d) the name and address of any other person who has a Relevant Interest in the Shares in (c) above in contravention of clause 5, the number and Class of Shares concerned and the nature of that Relevant Interest;
- (e) the names and addresses of the registered holders of any Shares in which the Possible Interest Holder has a Relevant Interest, where the Possible Interest Holder is not the registered holder of those Shares, and the name and address of any other person who has a Relevant Interest in any such Shares;
- (f) the name and address of any other person who has, or may have, a Relevant Interest in Shares in contravention of clause 5, the number and Class of Shares concerned and the nature of that Relevant Interest, and the names of the registered holders of those Shares; and
- (g) such other information as the Board may require for the purposes of determining whether there has been a contravention of clause 5.

The Company must provide to the Crown a copy of any statutory declaration or other documentary evidence provided to it under this clause as soon as is practicable.

## **9 Disclosure register**

The Company:

- (a) must keep a register containing all information obtained by it from notices, statutory declarations and other documentary evidence provided under clauses 6 and 8; and
- (b) must provide to the Crown a copy of the whole or any part of that register on request in writing from the Crown.

## **10 Power to refuse to register**

In addition to any other grounds the Board may have under this constitution or otherwise for declining to register any transfer of Shares, the Board may decline to register a transfer of Shares:

- (a) if the Company has required the transferee by notice in writing under clause 8 to lodge with the Company a statutory declaration or other documentary evidence in accordance with that clause and:
  - (i) that declaration or other documentary evidence has not been received by the Company from the transferee within 14 days of the date on which such notice was given by the Company; or
  - (ii) that declaration or other documentary evidence has been received by the Company but has not been completed to the reasonable satisfaction of the Board or is otherwise unsatisfactory to the Board (in its discretion) or in the opinion of the Board is or may be materially incorrect or misleading; or
- (b) if the Board has actual knowledge, or believes, that the transfer of those Shares will result in a contravention of clause 5,

and the Board resolves to exercise its powers under this clause within 30 days after receipt or presentation of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee (with a copy to the Crown) within seven days of the resolution being passed by the Board.

#### **11 Registration of transfer not to affect rights of the Board**

The registration of any transfer will not prejudice or affect in any way the provisions of, or the powers exercisable by the Board or the Company under, this Schedule.

#### **AFFECTED SHARES**

#### **12 Notification that Shares may be Affected Shares**

Where:

- (a) the registered holder of any Shares:
  - (i) has not or may not have, in the opinion of the Board, complied with clause 6 in all material respects; or
  - (ii) has not lodged any statutory declaration or other documentary evidence required by the Company under clause 8 within the 14 day period specified in clause 8 or that declaration or documentary evidence has been received by the Company but has not been completed to the reasonable satisfaction of the Board or is otherwise unsatisfactory to the Board (in its discretion) or in the opinion of the Board is or may be materially incorrect or misleading,
- (a "Non-Notifying Holder"); or
- (b) the Board is of the opinion, in its discretion, that any declaration or documentary evidence provided to the Company under clause 8, or any other information held by or known to the Board, reveals that any person has, or may have, a Relevant Interest in Shares in contravention of clause 5,

the Company shall promptly give notice in writing to the Non-Notifying Holder, or to each registered holder of Shares in which the Board is of the opinion that a person may have a Relevant Interest in contravention of clause 5, (with a copy to the Crown) notifying them:

- (c) that, in the opinion of the Board, Shares held by that person may be Affected Shares and the grounds for such opinion;
- (d) of the consequences should the Board determine that any such Shares are Affected Shares (including, in particular, the consequences under clause 15 should the Board also determine that any contravention of clause 5 was not inadvertent); and
- (e) that they may make representations in writing to the Company as to the matters set out in the notice within seven days of receiving the notice. The Company must provide a copy of any such representations received by it to the Crown as soon as is practicable.

#### **13 Final determination of Affected Shares**

Within:

- (a) 14 days of the date of a notice given by the Company under clause 12 (if no representations are received by the Company within the time referred to in clause 12(e)); or
- (b) 14 days of receiving any representations in writing pursuant to clause 12(d),

as the case may be, the Board must determine whether a person has a Relevant Interest in Shares in contravention of clause 5 (with the result that such Shares will be Affected Shares) and, if so, whether the contravention was inadvertent. The determination of the Board, including any determination whether to consider any representations and other evidence of a registered holder of the relevant Shares and the weight to be placed on the same, is binding on each registered holder and is not subject to challenge, appeal or review. In making its determination, the Board may take into account such evidence or other information as it deems appropriate in its discretion. The Company must promptly give notice in writing (with a copy to the Crown) to each registered holder of Shares who received a notice under clause 12 following any final determination made by the Board under this clause. That notice must state:

- (c) whether the Board has determined that Shares held by that registered holder are Affected Shares;
- (d) if so, the number of Shares in each Class of Shares held by that registered holder that the Board has determined are Affected Shares (being, for the avoidance of doubt, the Shares in the relevant Class of Shares held by that registered holder in which a person has a Relevant Interest in excess of the Maximum Specified Percentage); and
- (e) whether the Board is or is not satisfied that the contravention of clause 5 was inadvertent.

A determination of the Board under this clause that some or all of the Shares held by a registered holder are or are not Affected Shares does not prevent the Board from subsequently making a different determination as to whether any such Shares are Affected Shares.

#### **14 Inadvertent contravention**

If the Board makes a determination under clause 13 that Shares are Affected Shares but that any contravention of clause 5 was inadvertent, the registered holder(s) of those Affected Shares:

- (a) will not (unless the notice given by the Board under clause 13 is withdrawn) be entitled to exercise the votes attached to those Affected Shares (being, for the avoidance of doubt, the Shares in the relevant Class of Shares in which a person has a Relevant Interest in excess of the Maximum Specified Percentage, as determined by the Board under clause 13) at any meeting of the holders of the relevant Class of Shares or at any meeting at which the holders of the relevant Class of Shares are entitled to vote (including at any meeting of an interest group) and any such vote cast at any such meeting is to be disregarded. This voting restriction is without prejudice to the right of any such registered holder to attend any meeting referred to in this clause;
- (b) will not (unless the notice given by the Board under clause 13 is withdrawn) be entitled to receive, in respect of those Affected Shares (being, for the avoidance of doubt, the Shares in the relevant Class of Shares in which a person has a Relevant Interest in excess of the Maximum Specified



Percentage, as determined by the Board under clause 13), any dividend or other distribution authorised by the Board in respect of the Class of Shares of which the Affected Shares form part; and

- (c) must (unless the notice given by the Board under clause 13 is withdrawn), within the period required under section 45T(1)(b) of the Public Finance Act, ensure that Shares, or Relevant Interest(s) in Shares, are disposed of such that the Affected Shares cease to be Affected Shares and if the Board is not satisfied that such a disposal has been made or if made the disposal has not otherwise resulted in there no longer being a contravention of clause 5, the Company must arrange for the sale of Affected Shares on behalf of the registered holder:
  - (i) in the case of Shares that are Quoted, on the NZX main board equity securities market (or any successor market on which the Shares are Quoted); or
  - (ii) in the case of Shares that are not Quoted, by such means as the Board determines,

such that the relevant Shares are no longer Affected Shares.

#### **15 Contravention where Board not satisfied breach was inadvertent**

If the Board makes a determination under clause 13 that Shares are Affected Shares and that any contravention of clause 5 was not inadvertent or does not have sufficient information to determine if the contravention of clause 5 was not inadvertent, the registered holder(s) of those Affected Shares:

- (a) subject to the proviso to this clause, will not (unless the notice given by the Board under clause 13 is withdrawn) be entitled to exercise the votes attached to any Shares held by it that are of the same Class as the Affected Shares at any meeting of the holders of the relevant Class of Shares or at any meeting at which the holders of the relevant Class of Shares are entitled to vote (including at any meeting of an interest group) and any such vote cast at any such meeting is to be disregarded. This voting restriction is without prejudice to the right of any such registered holder to attend any meeting referred to in this clause;
- (b) subject to the proviso to this clause, will not (unless the notice given by the Board under clause 13 is withdrawn) be entitled to receive any dividend or other distribution authorised by the Board in respect of any Shares held by it that are of the same Class as the Affected Shares; and
- (c) must (unless the notice given by the Board under clause 13 is withdrawn), within the period required under section 45T(1)(b) of the Public Finance Act, ensure that Shares, or Relevant Interest(s) in Shares, are disposed of such that the Affected Shares cease to be Affected Shares and if the Board is not satisfied that such a disposal has been made or if made the disposal has not otherwise resulted in there no longer being a contravention of clause 5, the Company must arrange for the sale of the Affected Shares on behalf of the registered holder:
  - (i) in the case of Shares that are Quoted, on the NZX main board equity securities market (or any successor market on which the Shares are Quoted); or

- (ii) in the case of Shares that are not Quoted, by such means as the Board determines,

such that the relevant Shares are no longer Affected Shares.

If a registered holder of Affected Shares to which this clause applies is an Approved Nominee, paragraphs (a) and (b) of this clause shall apply only in respect of Shares held by the Approved Nominee on behalf of a person who has a Relevant Interest in Shares in contravention of clause 5.

#### 16 **Validity of resolutions etc unaffected**

Notwithstanding clauses 7, 14(a) and 15(a), no resolution of, or proceeding at, a meeting of the shareholders of the Company or at any meeting of the holders of Shares in an interest group) or the holders of any Class of Shares shall be deemed to be invalid on the grounds that:

- (a) a registered holder of Affected Shares cast a vote in breach of those clauses, provided any such vote was counted by (or on behalf of) the Company in good faith and without knowledge that it was cast in contravention of those clauses; or
- (b) a registered holder of Shares was prohibited from casting a vote or votes because the Board had determined in accordance with clause 13 that the registered holder held Affected Shares in circumstances where it is subsequently determined that the relevant Shares were not, or were not all, Affected Shares.

#### 17 **Appointment of Company as agent and attorney**

For the purposes of clauses 14 and 15, the registered holder of any Affected Shares will be deemed to have appointed, and does hereby irrevocably appoint, the Company as its agent and its attorney, in each case with full authority to act on its behalf in relation to the sale of the Affected Shares and to sign all documents relating to such sale and transfer of the Affected Shares and the Board may register a transfer of the Affected Shares so sold, whether or not the transfer has been properly completed and whether or not it is accompanied by the certificates (if any) for the Affected Shares. For the purposes of the sale and of Rule 5.12 of the ASX Settlement Operating Rules, where the Company has given a notice that complies with Rule 5.12.2 of the ASX Settlement Operating Rules, the Company may, after the expiration of the time specified in the notice, initiate a Holding Adjustment to move all Shares held by the registered holder of the Affected Shares from that CHESS Holding to an Issuer Sponsored Holding or a certificated holding and effect a transfer to give effect to the sale of the relevant number of Shares held by the registered holder. The person to whom such Shares are transferred will not be bound to see to the application of the purchase money, nor will his, her or its title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale of those Shares. The net proceeds of sale, after deduction of any brokerage, other costs of sale and other costs incurred by the Company in connection with the sale (including, for the avoidance of doubt, all costs reasonably incurred by the Company or the Board in investigating whether there had been a contravention of clause 5 and all other costs reasonably incurred by the Company or the Board in connection with that contravention), will be held on trust by the Company for and be paid (together with interest at such rate (if any) as the Board deems appropriate) to the former registered holder on surrender of the certificate (if any) for the Affected Shares and otherwise as soon as practicable after the sale has been completed.

## 18 Identifying Affected Shares

When:

- (a) deciding which Shares are to be identified for the purposes of any notice given by the Company under clause 12; or
- (b) making a determination as to whether Shares are Affected Shares under clause 13,

the Board is to have regard to which Relevant Interests, in its opinion, have caused the contravention of clause 5 to arise (or be capable of arising) and otherwise is to have regard to such other criteria as it may, in its discretion, consider appropriate and equitable.

## 19 Withdrawal or amendment of notice

If the Board considers that any notice issued by the Company under clause 12 or 13 should be withdrawn (because it no longer believes that the Shares to which the notice applied may be, or are, (as the case may be) Affected Shares) or amended, it may do so, and must give notice of the withdrawal or amendment to the registered holder of the relevant Shares and give a copy of such notice to the Crown. No withdrawal or amendment of any notice issued under clause 12 or 13 will affect the operation of clauses 5, 6 or 7.

## 20 No liability

Subject to the obligation of the Company to pay the net proceeds from the sale of Affected Shares to the former registered holder of the same, none of the Company, any Director, any officer, any employee of the Company, or the Crown is to have any liability of any nature to any person (including any registered holder of any Shares or any person who has a Relevant Interest in any Shares) for or in connection with the exercise or purported exercise of any of the powers permitted by this Schedule or otherwise in connection with the provisions of this Schedule.

## RIGHTS OF THE CROWN

21 Where the Crown suspects that any person may be a Non-Notifying Holder or has, or may have, a Relevant Interest in Shares in contravention of clause 5, the Crown may, by notice in writing to the Board or the Company (as the case may be), require that:

- (a) the Company exercise its power under clause 8 to require that a statutory declaration or other evidence be delivered to the Board irrespective of whether or not the Board has the knowledge or belief referred to in that clause;
- (b) if the Company has given a notice to a Non-Notifying Holder or other registered holder of Shares under clause 12, the Board make a determination under, and in accordance with, clause 13 as to whether or not any Shares held by that Non-Notifying Holder or other registered holder are Affected Shares; or
- (c) the Company exercise a power of sale that has arisen under clause 14 or 15,

and the Company and the Board, as applicable, will comply (as promptly as is reasonably practicable in the circumstances) with any such notice and keep the Crown informed as to the actions taken and expected to be taken by the Company or the Board (as the case may be) and issues arising therefrom. For the avoidance of doubt, the giving of a notice by the Crown under clause 21(b) or 21(c) does not prevent the Board

from subsequently giving a notice under clause 19 withdrawing or amending the notice initially given by the Company under clause 12 or 13.

## TERMS OF ISSUE OF OTHER SECURITIES

- 22 If the Company issues any Securities other than shares in the Company then the Board must ensure that the terms of issue of those other Securities include or otherwise incorporate clauses 1 to 21 (inclusive) of this Schedule, with such amendments as may be necessary to reflect the nature of the relevant Securities.

## CANCELLATION OF SALE OF SHARES BY THE CROWN

### 23 Cancellation for misrepresentation

The Crown may cancel the sale of Shares (the "**Breach Shares**") to a shareholder (the "**Affected Shareholder**") under the initial public offering of Shares by the Crown ("**IPO**"), by giving notice in writing (the "**Cancellation Notice**") to the Company and to the Affected Shareholder at the address provided to the Crown for that purpose by the Company (being the address for the Affected Shareholder recorded on the Company's share register), if the Affected Shareholder misrepresented its entitlement to apply for, and be sold, Shares under the IPO as a New Zealand Applicant (as defined in the offer document for the IPO) on its application for Shares under the IPO. (For the purposes of clauses 23 to 28 (inclusive), the Shares held by the Affected Shareholder as at the date of the Cancellation Notice, up to the number of Shares sold to the Affected Shareholder under the IPO, will be deemed to be Breach Shares, with the result that the provisions of clauses 23 to 28 (inclusive) are to apply to them, irrespective of whether or not those Shares were acquired by the Affected Shareholder under the IPO or after the IPO was completed unless the Affected Shareholder has previously sold, transferred or otherwise disposed of all of the Shares held by it to a person who is not an Associated Person of that Affected Shareholder before acquiring further Shares).

### 24 Subsequent disposal of Breach Shares

If the Affected Shareholder has subsequently transferred, sold or otherwise disposed of some or all of the Breach Shares to an Associated Person of that Affected Shareholder:

- (a) the Crown's right to cancel the sale of Breach Shares under clause 23 will extend, to the extent necessary, to Shares held by that Associated Person, who will also be deemed to be an "Affected Shareholder" for the purposes of clauses 23 to 28 (inclusive), (with the result that the provisions of those clauses are to apply to it as if it were an "**Affected Shareholder**"); and
- (b) Shares held by that Associated Person will be deemed to be Breach Shares if and to the extent necessary to enable the Crown to exercise its rights under clauses 23 to 28 (inclusive) in respect of the total number of Shares sold to the Affected Shareholder under the IPO (irrespective of whether the Associated Person has acquired Shares other than from that Affected Shareholder) provided that the:
  - (i) Crown has given a notice in writing to the Associated Person at the address provided to the Crown for that purpose by the Company (being the address for the Associated Person of the Affected Shareholder recorded on the share register) that the relevant shares are held by it are deemed to be "Breach Shares"; and
  - (ii) number of Shares held by the Associated Person that are deemed to be "Breach Shares" is not to exceed the number of Shares transferred to the Associated Person by the Affected Shareholder.

## 25 **Effect of Cancellation Notice**

If the Crown gives a Cancellation Notice under clause 23 and, if applicable, a notice to an Associated Person of an Affected Shareholder under clause 24(b)(i), then the following provisions are to apply:

- (a) the relevant Affected Shareholder will cease to have the right to sell, transfer or otherwise dispose of the Breach Shares, or any interest in them, with effect on and from the date of the Cancellation Notice;
- (b) on receipt of the Cancellation Notice, the Company shall:
  - (i) immediately direct the registrar of the share register to place a block on the Breach Shares to prevent the relevant Affected Shareholder from transferring the Breach Shares; and
  - (ii) as soon as reasonably practicable, sell the relevant Breach Shares on the NZX main board equity securities market (or any successor market on which the Breach Shares are Quoted) on behalf of the relevant Affected Shareholder and pay to it the lesser of:
    - (A) the sale price for the relevant Breach Shares less the costs incurred by the Crown and the Company in connection with the cancellation of the sale, and the subsequent sale, of the Breach Shares; and
    - (B) the offer price at which Shares were allotted to investors under the IPO less the costs of the Company and the Crown in connection with the cancellation of the sale, and the subsequent sale, of the Breach Shares,

with any excess amount being payable to the Crown.

## 26 **Appointment of Company as agent and attorney**

For the purposes of clause 25, each and every Affected Shareholder will be deemed to have appointed, and does hereby irrevocably appoint, the Company as its agent and its attorney, in each case with full authority to act on its behalf in relation to the sale of Breach Shares under clause 25 and to sign all documents relating to such sale of Breach Shares and the Board shall (subject to clause 10) register a transfer of Breach Shares so sold, whether or not the sale has been properly completed and whether or not it is accompanied by the certificates (if any) for those Breach Shares. For the purposes of the sale and of Rule 5.12 of the ASX Settlement Operating Rules, where the Company has given a notice that complies with Rule 5.12.2 of the ASX Settlement Operating Rules, the Company may, after the expiration of the time specified in the notice, initiate a Holding Adjustment to move all Shares held by the registered holder of the Affected Shares from that CHESS Holding to an Issuer Sponsored Holding or a certificated holding and effect a transfer to give effect to the sale of the relevant number of Shares held by the registered holder.

## 27 **Title not affected by irregularity**

The purchaser's title to Breach Shares sold to it pursuant to clause 25(b)(ii) will not be affected by any irregularity or invalidity in the proceedings relating to the sale of those Breach Shares.

## 28 **No liability**

Subject to the obligation of the Company to pay the net proceeds from the sale of Breach Shares to the Affected Shareholder and any deemed Affected Shareholder pursuant to clause 25(b)(ii), none of the Crown, the Company, any Director, any officer or any employee of the Company is to have any liability to an Affected Shareholder or deemed Affected Shareholder (or any person who has a Relevant Interest in the relevant Breach Shares) for or in connection with the exercise or purported exercise of any of the powers permitted by clauses 23 to 27 (inclusive) or otherwise in connection with the provisions of clauses 23 to 27 (inclusive).

## **GENERAL**

### **29 Notices**

- (a) A notice required to be given to a person under this Schedule may be given in the manner set out in section 391 of the Act, provided that where the Crown has provided the Company with an address for service (which address will be recorded in the share register) then notices to, or copies of notices that must be provided to, the Crown are to be given, or provided, to the Crown at that address.
- (b) The Company is not obliged to give any notice required under this Schedule to any person if it does not know either the identity or address of the person.
- (c) The absence of such a notice in such circumstances, and any accidental error in or failure to give any notice to any person to whom notice is required to be given under this Schedule will not prevent the implementation of or invalidate any procedure under this Schedule.

### **30 Decisions final, conclusive and binding**

Any resolution or determination of, or decision or declaration or exercise of any discretion or power by, the Company or the Board under or pursuant to this Schedule is to be final and conclusive; and any disposal or transfer made, or other thing done, by or on behalf of, or on the authority of, the Company or the Board pursuant to this Schedule is to be conclusive and binding on all persons concerned and is not open to challenge, appeal or review, whether as to its validity or otherwise on any ground whatsoever.

### **31 Certificate conclusive**

A certificate signed by a Director and countersigned by a second Director that a power of sale under clause 14, 15 or 25 has arisen and is exercisable by the Board, or that a Share has been duly transferred under clause 14, 15 or 25 on the date stated therein, is conclusive evidence of the facts stated therein.

## FIFTH SCHEDULE: OWNERSHIP RESTRICTIONS INTERPRETATION – INSTALMENT RECEIPTS

### 1 Definitions

In this Schedule, unless the context otherwise requires:

**"Affected Securities"** means any Instalment Receipts in respect of which the Board has determined under clause 13, in its discretion, that a person has a Relevant Interest in contravention of clause 5;

**"Approved Nominee"** means a person to whom the exemption contained in section 45U of the Public Finance Act applies and who is in compliance with all requirements of that section;

**"Australian Trust Deed"** means the trust deed between the Crown and the Australian Trustee relating to Instalment Receipts;

**"Australian Trustee"** means The Trust Company (Australia) Limited or any other person that is for the time being acting as trustee under the Australian Trust Deed

**"Class"** means a class of Shares (whether Quoted or not) having attached to them identical rights, privileges, limitations and conditions;

**"Fully Paid Shares"** means fully paid ordinary Shares;

**"Instalment Receipt Holder"** means a registered holder of Instalment Receipts;

**"Instalment Receipt Register"** means the register of Instalment Receipts;

**"Instalment Receipt Registrar"** means the registrar of the Instalment Receipt Register;

**"Maximum Specified Percentage"** means the percentages set out in section 45S of the Public Finance Act;

**"Minimum Crown Percentage"** means the percentage set out in section 45R of the Public Finance Act;

**"Non-Notifying Holder"** has the meaning given to that term in clause 12;

**"Notifying Holder"** has the meaning given to that term in clause 6;

**"NZ Trust Deed"** means the trust deed between the Crown and the NZ Trustee relating to Instalment Receipts;

**"NZ Trustee"** means the New Zealand Guardian Trust Company Limited or any other person that is for the time being acting as trustee under the NZ Trust Deed;

**"Other Holder"** has the meaning given to that term in clause 8;

**"Possible Interest Holder"** has the meaning given to that term in clause 8;

**"Relevant Interest"** has the meaning given to that term in section 45P of the Public Finance Act;

**"Share"** means a share in the Company or any other security (as that term is defined in section 2(1)(a) of the Securities Markets Act 1988) of the Company which confers a Voting Right;

**"Trust Deed"** means the NZ Trust Deed or the Australian Trust Deed (as the case may be); and

**Trustee** means the NZ Trustee or the Australian Trustee (as the case may be).

## 2 **Construction**

In this Schedule, unless the context requires otherwise:

- (a) capitalised terms which are not otherwise defined in this Schedule have the meanings given to them in the constitution of which this Schedule forms part; and
- (b) a reference to a clause is reference to a clause in this Schedule.

## **COMPLIANCE WITH PART 5A OF THE PUBLIC FINANCE ACT**

- 3 None of the Company, the Board, the Crown, any Trustee or any registered holder of Instalment Receipts may act in a manner that contravenes Part 5A of the Public Finance Act.

## **LIMITATION ON ISSUES, ACQUISITIONS AND REDEMPTIONS OF SHARES**

- 4 The Company must not issue, acquire or redeem any Shares if:
  - (a) such issue, acquisition or redemption, would result in the Crown holding less than the Minimum Crown Percentage of a Class of Shares; or
  - (b) the Company has actual knowledge that such issue, acquisition or redemption will result in any person other than the Crown having a Relevant Interest in more than the Maximum Specified Percentage of a Class of Shares unless the person is an Approved Nominee and has a Relevant Interest in the relevant Shares in accordance with the requirements of section 45U of the Public Finance Act.

## **LIMITATION ON OWNERSHIP BY PERSONS OTHER THAN THE CROWN**

### 5 **Limitation on ownership**

No person, other than the Crown, may have a Relevant Interest in Instalment Receipts if that Relevant Interest results in the person having a Relevant Interest in more than the Maximum Specified Percentage of the Fully Paid Shares unless the person is an Approved Nominee and has a Relevant Interest in the relevant Fully Paid Shares in accordance with the requirements of section 45U of the Public Finance Act.

### 6 **Notification of contravention of limitation on ownership**

If an Instalment Receipt Holder (a **"Notifying Holder"**):

- (a) has or acquires a Relevant Interest in Instalment Receipts in contravention of clause 5; or



- (b) knows or believes that a person who has a Relevant Interest in Instalment Receipts held by the Notifying Holder has, or may have, a Relevant Interest in Instalment Receipts in contravention of clause 5,

the Notifying Holder must notify the Company in writing of such contravention, or possible contravention, immediately it becomes aware of the same and in that notice must, to the extent known to the Notifying Holder, advise the Company of:

- (c) where paragraph (a) of this clause applies:
  - (i) the number of Instalment Receipts in which the Notifying Holder has a Relevant Interest in contravention of clause 5; and
  - (ii) the name(s) and address(es) of the registered holder(s) of any Instalment Receipts in which the Notifying Holder has a Relevant Interest, where the Notifying Holder is not the registered holder of those Instalment Receipts, and the name and address of any other person who has a Relevant Interest in any such Instalment Receipts; and
- (d) where paragraph (b) of this clause applies:
  - (i) the name and address of the person who has, or may have, a Relevant Interest in Instalment Receipts in contravention of clause 5;
  - (ii) the number of Instalment Receipts held by the Notifying Holder in which that person has a Relevant Interest; and
  - (iii) the names of any other persons who are registered as the holders of Instalment Receipts in which that person also has a Relevant Interest and the nature of any such Relevant Interest, if and to the extent known by the Notifying Holder.

The Company must provide to the Crown and the Trustees a copy of any notice provided to it under this clause as soon as is practicable.

## **7 Automatic suspension of rights where contravention of limitation on ownership**

If a person has a Relevant Interest in any Instalment Receipts in contravention of clause 5 (irrespective of whether or not the registered holder of the Instalment Receipts has acted (knowingly or otherwise) in contravention of clause 5):

- (a) no vote may be cast, and no direction may be given to any Trustee to cast a vote, (whether by voice, show of hands, on a poll or in any other manner) in respect of any of the Fully Paid Shares corresponding to the Instalment Receipts in which that person has a Relevant Interest in contravention of clause 5 (being, for the avoidance of doubt, the Fully Paid Shares in which the person has a Relevant Interest in excess of the Maximum Specified Percentage) on any matter arising for determination at any meeting of the holders of the Fully Paid Shares, or any meeting at which the holders of the Fully Paid Shares are entitled to vote (and any such vote cast at any such meeting will be disregarded); and
- (b) the registered holder of the Instalment Receipts in which that person has a Relevant Interest in contravention of clause 5 will not be entitled to receive, in respect of the Fully Paid Shares in which the person has a Relevant Interest in excess of the Maximum Specified Percentage, any dividend or other distribution authorised by the Board in respect of the Fully Paid Shares.

## 8 Power to require declaration of holding

If the Board has actual knowledge, or believes, that a person:

- (a) has or may have a Relevant Interest in Instalment Receipts in contravention of clause 5; or
- (b) will have, or is likely to have, following the registration of a transfer of Instalment Receipts that has been lodged with or presented to the Company for registration (including under a share or other security transfer system approved under the Securities Transfer Act 1991 or pursuant to a "designated settlement system" within the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989), a Relevant Interest in Instalment Receipts in contravention of clause 5,

(each, a "**Possible Interest Holder**"),

the Company must require each Possible Interest Holder that is a registered holder of Instalment Receipts and any other person that is registered as a holder of Instalment Receipts in which the Board knows or believes that a Possible Interest Holder has, or may have, a Relevant Interest (an "**Other Holder**") to lodge with the Company within 14 days of the date on which such notice is given by the Company, a statutory declaration by that Possible Interest Holder or Other Holder (or such other documentary evidence as may be required by the Board) as to the following matters (to the extent known to the Possible Interest Holder or Other Holder, as the case may be):

- (c) the number of Instalment Receipts in which the Possible Interest Holder has a Relevant Interest;
- (d) the name and address of any other person who has a Relevant Interest in the Instalment Receipts in (c) above in contravention of clause 5, the number of Instalment Receipts concerned and the nature of that Relevant Interest;
- (e) the names and addresses of the registered holders of any Instalment Receipts in which the Possible Interest Holder has a Relevant Interest, where the Possible Interest Holder is not the registered holder of those Instalment Receipts, and the name and address of any other person who has a Relevant Interest in any such Instalment Receipts;
- (f) the name and address of any other person who has, or may have, a Relevant Interest in Instalment Receipts in contravention of clause 5, the number of Instalment Receipts concerned and the nature of that Relevant Interest, and the names of the registered holders of the Instalment Receipts; and
- (g) such other information as the Board may require for the purposes of determining whether there has been a contravention of clause 5.

The Company must provide to the Crown and the Trustees a copy of any statutory declaration or other documentary evidence provided to it under this clause as soon as is practicable.

## 9 Disclosure register

The Company:

- (a) must keep a register containing all information obtained by it from notices, statutory declarations and other documentary evidence provided under clauses 6 and 8; and

- (b) must provide to the Crown or any Trustee a copy of the whole or any part of that register on request in writing from the Crown or that Trustee (as applicable).

#### 10 **Power to refuse to register**

In addition to any other grounds the Company may have for requesting the Instalment Receipt Registrar to decline to register any transfer of Instalment Receipts, the Company may request the Instalment Receipt Registrar to decline to register a transfer of Instalment Receipts:

- (a) if the Company has required the transferee by notice in writing under clause 8 to lodge with the Company a statutory declaration or other documentary evidence in accordance with that clause and:
  - (i) that declaration or other documentary evidence has not been received by the Company from the transferee within 14 days of the date on which such notice was given by the Company; or
  - (ii) that declaration or other documentary evidence has been received by the Company but has not been completed to the reasonable satisfaction of the Board or is otherwise unsatisfactory to the Board (in its discretion) or in the opinion of the Board is or may be materially incorrect or misleading; or
- (b) if the Company has actual knowledge, or believes, that the transfer of those Instalment Receipts will result in a contravention of clause 5,

and the Company shall exercise its powers under this clause within 30 days after receipt or presentation of the relevant transfer, and the Company shall give written notification to the transferor and to the transferee (with a copy to the Crown and the Trustees) within seven days of the Company so exercising those powers.

#### 11 **Registration of transfer not to affect rights of the Board**

The registration of any transfer will not prejudice or affect in any way the provisions of, or the powers exercisable by the Board, the Company or the Crown under this Schedule.

### **AFFECTED SECURITIES**

#### 12 **Notification that Instalment Receipts may be Affected Securities**

Where:

- (a) an Instalment Receipt Holder:
  - (i) has not or may not have, in the opinion of the Board, complied with clause 6 in all material respects; or
  - (ii) has not lodged any statutory declaration or other documentary evidence required by the Company under clause 8 within the 14 day period specified in clause 8 or that declaration or documentary evidence has been received by the Company but has not been completed to the reasonable satisfaction of the Board or is otherwise

unsatisfactory to the Board (in its discretion) or in the opinion of the Board is or may be materially incorrect or misleading,

(a "Non-Notifying Holder"); or

- (b) the Board is of the opinion, in its discretion, that any declaration or documentary evidence provided to the Company under clause 8, or any other information held by or known to the Board, reveals that any person has, or may have, a Relevant Interest in Instalment Receipts in contravention of clause 5,

the Company shall promptly give notice in writing to the Non-Notifying Holder, or to each registered holder of Instalment Receipts in which the Board is of the opinion that a person may have a Relevant Interest in contravention of clause 5, (with a copy to the Crown and the Trustees) notifying them:

- (c) that, in the opinion of the Board, Instalment Receipts held by that person may be Affected Securities and the grounds for such opinion;
- (d) of the consequences should the Board determine that any such Instalment Receipts are Affected Securities (including, in particular, the consequences under clause 15 should the Board also determine that any contravention of clause 5 was not inadvertent); and
- (e) that they may make representations in writing to the Company as to the matters set out in the notice within seven days of receiving the notice. The Company must provide a copy of any such representations received by it to the Crown and the Trustees as soon as is practicable.

### 13 Final determination of Affected Securities

Within:

- (a) 14 days of the date of a notice given by the Company under clause 12 (if no representations are received by the Company within the time referred to in clause 12(e)); or
- (b) 14 days of receiving any representations in writing pursuant to clause 12(d),

as the case may be, the Board must determine whether a person has a Relevant Interest in Instalment Receipts in contravention of clause 5 (with the result that such Instalment Receipts will be Affected Securities) and, if so, whether the contravention was inadvertent. The determination of the Board, including any determination whether to consider any representations and other evidence of a registered holder of the relevant Instalment Receipts and the weight to be placed on the same, is binding on each registered holder and is not subject to challenge, appeal or review. In making its determination, the Board may take into account such evidence or other information as it deems appropriate in its discretion. The Company must promptly give notice in writing (with a copy to the Crown and the Trustees) to each registered holder of Instalment Receipts who received a notice under clause 12 following any final determination made by the Board under this clause. That notice must state:

- (c) whether the Board has determined that Instalment Receipts held by that registered holder are Affected Securities;
- (d) if so, the number of Instalment Receipts held by that registered holder that the Board has determined are Affected Securities (being, for the avoidance of doubt, the Instalment Receipts corresponding to Fully Paid Shares in which the

person has a Relevant Interest in excess of the Maximum Specified Percentage); and

- (e) whether the Board is or is not satisfied that the contravention of clause 5 was inadvertent.

A determination of the Board under this clause that some or all of the Instalment Receipts held by a registered holder are or are not Affected Securities does not prevent the Board from subsequently making a different determination as to whether any such Instalment Receipts are Affected Securities.

#### **14 Inadvertent contravention**

If the Board makes a determination under clause 13 that Instalment Receipts are Affected Securities but that any contravention of clause 5 was inadvertent, the registered holder(s) of those Affected Securities:

- (a) will not (unless the notice given by the Board under clause 13 is withdrawn) be entitled to give directions to any Trustee to exercise the votes attached to the Fully Paid Shares corresponding to the Instalment Receipts determined by the Board to be Affected Securities at any meeting of the holders of the Fully Paid Shares or at any meeting at which the holders of the Fully Paid Shares are entitled to vote (including at any meeting of an interest group) and any vote cast at any such meeting by any Trustee in respect of those Fully Paid Shares is to be disregarded. This restriction on giving directions to vote is without prejudice to the right of any such registered holder to attend any meeting referred to in this clause;
- (b) will not (unless the notice given by the Board under clause 13 is withdrawn) be entitled to receive, in respect of the Fully Paid Shares corresponding to the Instalment Receipts determined by the Board to be Affected Securities, any dividend or other distribution authorised by the Board in respect of the Fully Paid Shares; and
- (c) must (unless the notice given by the Board under clause 13 is withdrawn), within the period required under section 45T(1)(b) of the Public Finance Act, ensure that Instalment Receipts, or Relevant Interest(s) in Instalment Receipts, are disposed of such that the Affected Securities cease to be Affected Securities and if the Board is not satisfied that such a disposal has been made or if made the disposal has not otherwise resulted in there no longer being a contravention of clause 5, the Company must give notice to that effect, together with advice of the number of Instalment Receipts required to be sold to ensure the relevant Instalment Receipts are no longer Affected Securities, to the Crown (with a copy to the Trustees), in which case the Crown shall direct the applicable Trustee to sell the number of Instalment Receipts specified by the Company in accordance with the applicable Trust Deed.

#### **15 Contravention where Board not satisfied breach was inadvertent**

If the Board makes a determination under clause 13 that Instalment Receipts are Affected Securities and that any contravention of clause 5 was not inadvertent or does not have sufficient information to determine if the contravention of clause 5 was not inadvertent, the registered holder(s) of those Affected Securities:

- (a) subject to the proviso to this clause, will not (unless the notice given by the Board under clause 13 is withdrawn) be entitled to give directions to any Trustee to exercise the votes attached to the Fully Paid Shares corresponding to any Instalment Receipts held by it at any meeting of the holders of the Fully

Paid Shares or at any meeting at which the holders of the Fully Paid Shares are entitled to vote (including at any meeting of an interest group) and any vote cast at any such meeting by any Trustee in respect of those Fully Paid Shares is to be disregarded. This restriction on giving directions to vote is without prejudice to the right of any such registered holder to attend any meeting referred to in this clause;

- (b) subject to the proviso to this clause, will not (unless the notice given by the Board under clause 13 is withdrawn) be entitled to receive any dividend or other distribution authorised by the Board in respect of the Fully Paid Shares corresponding to any Instalment Receipts held by it; and
- (c) must (unless the notice given by the Board under clause 13 is withdrawn), within the period required under section 45T(1)(b) of the Public Finance Act, ensure that Instalment Receipts, or Relevant Interest(s) in Instalment Receipts, are disposed of such that the Affected Securities cease to be Affected Securities and if the Board is not satisfied that such a disposal has been made or if made the disposal has not otherwise resulted in there no longer being a contravention of clause 5, the Company must give notice to that effect, together with advice of the number of Instalment Receipts required to be sold to ensure the relevant Instalment Receipts are no longer Affected Securities, to the Crown (with a copy to the Trustees), in which case the Crown shall direct the applicable Trustee to sell the number of Instalment Receipts specified by the Company in accordance with the applicable Trust Deed.

If a registered holder of Affected Securities to which this clause applies is an Approved Nominee, paragraphs (a) and (b) of this clause shall apply only in respect of Instalment Receipts held by the Approved Nominee on behalf of a person who has a Relevant Interest in Instalment Receipts in contravention of clause 5.

## 16 **Validity of resolutions etc unaffected**

Notwithstanding clauses 7, 14(a) and 15(a), no resolution of, or proceeding at, a meeting of the shareholders of the Company or at any meeting of any interest group comprising or including the holders of Fully Paid Shares shall be deemed to be invalid on the grounds that:

- (a) a registered holder of Affected Securities gave directions to any Trustee, or any Trustee cast a vote, in breach of those clauses, provided any such vote was counted by (or on behalf of) the Company in good faith and without knowledge that it was cast in contravention of those clauses; or
- (b) a registered holder of Affected Securities was prohibited from giving directions to any Trustee to cast a vote or votes because the Board had determined in accordance with clause 13 that the registered holder held Affected Securities in circumstances where it is subsequently determined that the relevant Shares were not, or were not all, Affected Securities.

## 17 **Appointment of Trustees as agent and attorney**

If any Trustee is given a direction by the Crown under clause 14(c) or clause 15(c) to sell any Affected Securities, that Trustee shall arrange for those Affected Securities to be sold in accordance with the provisions of the applicable Trust Deed, and shall pay to the Company the amount deducted by the Trustee from the proceeds of such sale on account of the costs reasonably incurred by the Company and the Board in investigating whether there had been a contravention of clause 5 and all other costs reasonably incurred by the Company or the Board in connection with that contravention.

## 18. Identifying Affected Securities

When:

- (a) deciding which Instalment Receipts are to be identified for the purposes of any notice given by the Company under clause 12; or
- (b) making a determination as to whether Instalment Receipts are Affected Securities under clause 13; or
- (c) specifying the number of Instalment Receipts to be sold under clause 14 or clause 15,

the Board is to have regard to which Relevant Interests, in its opinion, have caused the contravention of clause 5 to arise (or be capable of arising) and otherwise is to have regard to such other criteria as it may, in its discretion, consider appropriate and equitable.

## 19 Withdrawal or amendment of notice

If the Board considers that any notice issued by the Company under clause 12 or 13 should be withdrawn (because it no longer believes that the Instalment Receipts to which the notice applied may be, or are, (as the case may be) Affected Securities) or amended or that any notice issued by the Company under clause 14 or 15 should be withdrawn (because it is now satisfied that a disposal has been made resulting in there no longer being a contravention of clause 5) or amended, it may do so, and must give notice of the withdrawal or amendment to the registered holder of the relevant Instalment Receipts and give a copy of such notice to the Crown and the Trustees. No withdrawal or amendment of any notice issued under any of clauses 12 to 15 will affect the operation of clauses 5, 6 or 7.

## 20 No liability

None of any Trustee, the Company, any Director, any officer, any employee of the Company, or the Crown is to have any liability of any nature to any person (including any registered holder of any Instalment Receipts or any person who has a Relevant Interest in any Instalment Receipts) for or in connection with the exercise or purported exercise of any of the powers permitted by this Schedule or otherwise in connection with the provisions of this Schedule.

## RIGHTS OF THE CROWN

21 Where the Crown suspects that any person may be a Non-Notifying Holder or has, or may have, a Relevant Interest in Instalment Receipts in contravention of clause 5, the Crown may, by notice in writing to the Board or the Company (as the case may be), require that:

- (a) the Company exercise its power under clause 8 to require that a statutory declaration or other evidence be delivered to the Board irrespective of whether or not the Board has the knowledge or belief referred to in that clause; or
- (b) if the Company has given a notice to a Non-Notifying Holder or other registered holder of Instalment Receipts under clause 12, the Board make a determination under, and in accordance with, clause 13 as to whether or not any Instalment Receipts held by that Non-Notifying Holder or other registered holder are Affected Securities; or

- (c) if the Board is not satisfied that a disposal required under clause 14(c) or clause 15(c) has been made or if made the disposal has not otherwise resulted in there no longer being a contravention of clause 5, the Company give notice to that effect to the Crown under clause 14(c) or clause 15(c),

and the Company and the Board, as applicable, will comply (as promptly as is reasonably practicable in the circumstances) with any such notice and keep the Crown informed as to the actions taken and expected to be taken by the Company or the Board (as the case may be) and issues arising therefrom. For the avoidance of doubt, the giving of a notice by the Crown under clause 21(b) does not prevent the Board from subsequently giving a notice under clause 19 withdrawing or amending the notice initially given by the Company under clause 12 or 13.

## **TERMS OF ISSUE OF OTHER SECURITIES**

- 22 If the Company issues any Securities other than shares in the Company then the Board must ensure that the terms of issue of those other Securities include or otherwise incorporate clauses 1 to 21 (inclusive) of this Schedule, with such amendments as may be necessary to reflect the nature of the relevant Securities.

## **GENERAL**

### **23 Notices**

- (a) A notice required to be given to a person under this Schedule may be given in the manner set out in section 391 of the Act, provided that where the Crown has provided the Company with an address for service (which address will be recorded in the share register) then notices to, or copies of notices that must be provided to, the Crown are to be given, or provided, to the Crown at that address.
- (b) The Company is not obliged to give any notice required under this Schedule to any person if it does not know either the identity or address of the person.
- (c) The absence of such a notice in such circumstances, and any accidental error in or failure to give any notice to any person to whom notice is required to be given under this Schedule will not prevent the implementation of or invalidate any procedure under this Schedule.

### **24 Decisions final, conclusive and binding**

Any resolution or determination of, or decision or declaration or exercise of any discretion or power by, the Company, the Board, the Crown or any Trustee under or pursuant to this Schedule is to be final and conclusive; and any disposal or transfer made, or other thing done, by or on behalf of, or on the authority of, the Company, the Board, the Crown or any Trustee pursuant to this Schedule is to be conclusive and binding on all persons concerned and is not open to challenge, appeal or review, whether as to its validity or otherwise on any ground whatsoever.

### **25 Certificate conclusive**

A certificate signed by a director or authorised signatory of the Company as to the matters set out in clause 14 or 15, or that an Instalment Receipt has been duly transferred as a consequence of the circumstances described in clause 14 or 15 on the date stated therein, is conclusive evidence of the facts stated therein.