

**CONSTITUTION  
OF  
NEW ZEALAND LOCAL GOVERNMENT FUNDING AGENCY LIMITED**

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**CONSTITUTION**  
**OF**  
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**1. DEFINITIONS, INTERPRETATION AND GENERAL**

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

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

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

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

**"Company"** means New Zealand Local Government Funding Agency Limited.

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

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

**"Distribution"** means:

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

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

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

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

**"month"** means calendar month.

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

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

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

**"Redeemable Share"** means a redeemable Share in the Company having the rights and obligations set out in clause 3.4 of this Constitution, and issued in the circumstances contemplated by clause 6.1 of the Shareholders' Agreement.

**"Representative"** means:

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

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

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

**"Shareholders' Agreement"** means the agreement between all Shareholders of the Company dated on or about the date of the adoption of this Constitution, as it may be amended from time to time.

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

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

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

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

- (a) the table of contents, headings, and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
  - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
  - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (d) "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act have the same meaning in this Constitution;
- (f) where any word or expression is defined in this Constitution, any other grammatical form of that word or expression has a corresponding meaning;
- (g) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise.

- 1.3 **Compliance:** Each Shareholder and each Director shall act in accordance with the Act, the Shareholders' Agreement and this Constitution. No Shareholder or Director shall agree to the Company acting in a manner that contravenes the Act, the Shareholders' Agreement or this Constitution.
- 1.4 **Shareholders' Agreement to prevail:** If there is any conflict between this Constitution and the Shareholders' Agreement, the Shareholders' Agreement prevails.
- 1.5 **Constitution to prevail:** If there is any conflict between:
- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
  - (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,
- the provision, word or expression in this Constitution prevails.

## 2. LOCAL GOVERNMENT ACT 2002

- 2.1 **CCO:** The Company is, and must remain, a council-controlled organisation as defined in section 6 of the Local Government Act 2002.

## 3. SHARES

- 3.1 **Classes of Shares:** Different Classes of Shares may be issued by the Company subject to, and in accordance with, the provisions of this Constitution and the Shareholders' Agreement. Without limiting the Classes which may be issued, any Share may be issued upon the basis that it:
- (a) confers preferential rights to distributions of capital or income;
  - (b) confers special, limited or conditional voting rights;
  - (c) does not confer voting rights; or
  - (d) is redeemable in accordance with section 68 of the Act.
- 3.2 **Board may issue Shares and other securities:** The Board may issue Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares subject to, and in accordance with, this Constitution and the Shareholders' Agreement.
- 3.3 **No pre-emptive rights:** Section 45 of the Act shall not apply to the issue of any Shares.
- 3.4 **Redeemable Shares:** The terms of a Redeemable Share issued by the Company are:
- (a) a Redeemable Share shall not carry any vote (other than the right of the holder to vote at a meeting of an Interest Group with respect to an action that affects the rights attached to Redeemable Shares pursuant to section 117 of the Act, in which case the holder shall have one vote for each Redeemable Share held);

- (b) subject to clause 3.5, a Redeemable Share shall be redeemable at the option of the Company upon written notice being given to the holder;
- (c) the amount payable upon redemption of a Redeemable Share shall be NZ\$1.00, which shall be payable to the holder within 10 Working Days of the date of redemption; and
- (d) a Redeemable Share shall otherwise rank equally with an ordinary Share issued by the Company (including as to dividends and on liquidation).

3.5 **Redemption:** The Redeemable Shares may only be redeemed subject to, and in accordance with, the Shareholders' Agreement.

3.6 **Consolidation and subdivision of Shares:** The Board may with any approval required under the Shareholders' Agreement:

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

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

3.7 **Bonus issues:** The Board may, with any approval required under the Shareholders' Agreement, resolve to apply any amount which is available for Distribution in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:

- (a) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
- (b) 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.

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

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

#### 4. ALTERATION OF SHAREHOLDER RIGHTS

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

4.2 **Meetings of Interest Groups:** The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, except that the necessary quorum shall be Shareholders present in person or by Representative who:

- (a) comprise 50% by number of the Shareholders entitled to attend and vote at the Interest Group meeting;
- (b) Hold 50% or more of the Shares carrying voting rights entitled to be exercised at the meeting.

Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

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

## 5. ACQUISITION AND REDEMPTION OF COMPANY'S OWN SHARES

- 5.1 **Company may acquire, hold and redeem Shares:** The Company may:

- (a) purchase or otherwise acquire Shares from one or more Shareholders;
- (b) hold any Shares so purchased or acquired; and
- (c) redeem any redeemable Shares held by one or more Shareholders,

in accordance with the provisions, and subject to the restrictions, of the Act, this Constitution and the Shareholders' Agreement. A transfer by the Company of any Shares held by it is deemed not to be an issue of new Shares.

## 6. SHARE CERTIFICATES

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

- 6.2 **Replacement Share certificates:** The Company:

- (a) may issue a replacement certificate for any Share certificate that is worn out or defaced; and
- (b) shall issue a replacement Share certificate for one that has been lost or destroyed,

subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

## 7. EQUITABLE INTERESTS IN SHARES

- 7.1 **No notice of trusts:** No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.

- 7.2 **No recognition of equitable interests:** Except as required by law, no person shall be recognised by the Company as holding any Share upon trust and the Company shall

not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Share, or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share.

## 8. CALLS ON SHARES

8.1 **Board may make calls:** The Board may, from time to time, make such calls upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares, subject to and in accordance with the Shareholders' Agreement. A call may be made payable by instalments. The Board may revoke or postpone any call.

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

8.3 **Fixed instalments deemed calls:** An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.

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

8.5 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.

8.6 **Default interest:** If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment in accordance with the Shareholders' Agreement.

8.7 **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.

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



## 9. FORFEITURE OF SHARES

- 9.1 **Notice requiring payment of call:** If a Shareholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.
- 9.2 **Contents of notice:** The notice shall specify a further date (not earlier than 14 days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due is liable to be forfeited.
- 9.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited Share and not paid before the forfeiture.
- 9.4 **Notice of forfeiture:** When a Share has been forfeited, the Company shall give notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture, and shall enter in the Share Register details of the forfeiture.
- 9.5 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.
- 9.6 **Effect of forfeiture:** The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share, but remains liable to the Company for all money payable in respect of the forfeited Share.

## 10. LIEN ON SHARES

- 10.1 **Lien on Shares:** The Company has a first and paramount lien upon each Share, the proceeds of sale of the Share, and all Distributions made in respect of the Share, for:
- (a) all unpaid calls owing in respect of the Share and interest thereon (if any);
  - (b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived; and
  - (c) all liabilities and obligations of the Shareholder to the Company, whether solely or jointly with any other person, whether incurred or arising before or after notice to the Company of any equitable interest in any person other than the Shareholder, and whether or not the date for payment, fulfilment or discharge thereof has arrived.
- 10.2 **Waiver of lien:** Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share.

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

- 11.1 **Company may sell Shares:** The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any Shares:
- (a) unless the amount in respect of which a lien exists is due and payable;
  - (b) until the expiry of 10 Working Days after written notice demanding payment of the amount owing has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Shares;
  - (c) except at a price which is determined in accordance with clause 13.3 of the Shareholders' Agreement.
- 11.2 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale.
- 11.3 **Evidence:** A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.
- 11.4 **Sale procedure:** For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.

## 12. TRANSFER OF SHARES

- 12.1 **Right to transfer:** Subject to any restrictions contained in the Shareholders' Agreement and this Constitution, a Shareholder may transfer any Share by an instrument of transfer which complies with this Constitution.
- 12.2 **Securities Transfer Act:** A Share which is disposed of in a transaction to which the provisions of the Securities Transfer Act 1991 apply may be transferred in accordance with the provisions of that Act.
- 12.3 **Other forms of transfer:** If a Share is transferred other than in accordance with clause 12.2, the instrument of transfer shall:
- (a) be in any common form or any other form which the Board may approve;
  - (b) be signed or executed by or on behalf of the transferor; and
  - (c) if registration as holder of the Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.
- 12.4 **Delivery to Company:** An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the Share Register, together

with the Share certificate (if any) relating to the Shares to be transferred, and the transferee shall provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

- 12.5 **Board may refuse to register:** Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may (and shall in the circumstances referred to in clauses 12.5(a) and 12.5(b)) refuse to register a transfer of any Share if:
- (a) the transfer is not in accordance with the Shareholders' Agreement, or would result in a breach of the Shareholders' Agreement;
  - (b) the transfer is not in accordance with law, or would result in a breach of law;
  - (c) the instrument of transfer is not accompanied by the relevant Share certificate (if any) and such other evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share; or
  - (d) the Board, in its absolute discretion, believes that registration of the transfer would not be in the best interests of the Company,

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

- 12.6 **When transfer effective:** A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.
- 12.7 **Company to retain transfer:** If the Company registers a transfer it shall retain the instrument of transfer.
- 12.8 **Multiple registers:** The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places.

### 13. DISTRIBUTIONS

- 13.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test, may, where permitted by the Shareholders' Agreement and subject to the Act and this Constitution, authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.
- 13.2 **Form of Distribution:** Subject to the Shareholders' Agreement and the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit, but shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.
- 13.3 **Entitlement to dividends:** Subject to section 107 of the Act (relating to unanimous consent to certain actions), the Board shall not authorise a dividend:
- (a) in respect of some but not all the Shares in a Class; or
  - (b) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class,

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

- 13.4 **Proportionate amounts:** If the issue price of any Share is not fully paid, the amount of any dividend in respect of that Share shall be in proportion to the amount of the issue price which has been paid at the time of authorisation of the dividend.
- 13.5 **Deduction of amounts due:** The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.
- 13.6 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.
- 13.7 **No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

#### 14. EXERCISE OF POWERS OF SHAREHOLDERS

- 14.1 **Alternative forms of meeting:** A meeting of Shareholders may be held either:
- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.
- 14.2 **Exercise of power by meeting or written resolution:** A power reserved to the Shareholders by the Act, by this Constitution or under the Shareholders' Agreement may be exercised either:
- (a) at a meeting of Shareholders; or
  - (b) by a resolution in writing signed in accordance with section 122 of the Act.
- 14.3 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Shareholders' Agreement, the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by Ordinary Resolution.

#### 15. MEETINGS OF SHAREHOLDERS

- 15.1 **Annual meetings:** The Company shall hold annual meetings of Shareholders in accordance with section 120 of the Act unless, in the case of any annual meeting, everything required to be done at that meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.
- 15.2 **Special meetings:** A special meeting of Shareholders entitled to vote on an issue:

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

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

## 16. NOTICE OF MEETINGS OF SHAREHOLDERS

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

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

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

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

16.4 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any person, does not invalidate the proceedings at that meeting.

16.5 **Notice of adjourned meeting:** If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 16.1.

## 17. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

17.1 **Requirement for quorum:** Subject to clause 17.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

17.2 **Quorum:** Subject to clause 17.3, a quorum for a meeting of Shareholders is Shareholders present in person or by Representative who:

- (a) comprise 50% by number of the Shareholders entitled to attend and vote at the meeting ; and
- (b) hold 50% or more of the Shares carrying voting rights entitled to be exercised at the meeting.

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

## 18. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

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

## 19. VOTING AT MEETINGS OF SHAREHOLDERS

- 19.1 **Voting at meeting in one place:** In the case of a meeting of Shareholders held under clause 14.1(a), unless a poll is demanded in accordance with clause 20.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.
- 19.2 **Voting at audio/visual meeting:** In the case of a meeting of Shareholders held under clause 14.1(b), unless a poll is demanded in accordance with clause 20.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 19.3 **Postal votes:** Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first

schedule to the Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.

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

19.5 **Number of votes:** Subject to clauses 3.4(a) and 19.9:

- (a) where voting is by show of hands or by voice every Shareholder which is a holder of ordinary Shares (but not a Shareholder which holds only other Classes of Shares), and which is present in person or by Representative, has one vote;
- (b) on a poll every Shareholder present in person or by Representative has:
  - (i) one vote in respect of each fully paid ordinary Share (but no other Share) held by that Shareholder; and
  - (ii) in respect of each ordinary Share (but no other Share) held by that Shareholder which is not fully paid, a fraction of the vote which would be exercisable if that Share were fully paid equivalent to the proportion which the amount paid (excluding amounts paid in advance on that Share) bears to the total amount paid and payable thereon.

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

19.7 **Chairperson's casting vote:** The chairperson of a meeting of Shareholders is not entitled to a casting vote.

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

19.9 **No vote when amount owing on Share:** A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share where such voting is prohibited by, or in accordance with, the Shareholders' Agreement.

## 20. POLLS

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

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

- 20.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 20.3 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of a poll is deemed to be a resolution of the meeting at which the poll is demanded.
- 20.4 **When poll taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.
- 20.5 **Votes:** On a poll:
- (a) votes may be given either personally or by Representative;
  - (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares;
  - (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

## 21. PROXIES

- 21.1 **Right to appoint:** A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting and to demand or join in demanding a poll, as if the proxy were the Shareholder.
- 21.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term.
- 21.3 **Production of notice:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or at such other address as is specified for that purpose in the notice convening the meeting, not later than 48 hours before the start of the meeting.
- 21.4 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

## 22. CORPORATE REPRESENTATIVE

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



## 23. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

- 23.1 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause.
- 23.2 **Management review by Shareholders:** The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but the resolution will not be binding on the Board.

## 24. APPOINTMENT AND REMOVAL OF DIRECTORS

- 24.1 **Initial directors:** The Directors at the date of this Constitution are Craig Hamilton Stobo, Paul Joseph Anderson, John Richard Avery, Mark Alan Butcher, Philip Wade Cory-Wright and Abigail Kate Foote, who continue in office and are deemed to have been appointed pursuant to this constitution.
- 24.2 **Appointment and removal:** Directors shall be appointed, elected, re-elected and removed, and shall retire, in accordance with the Shareholders' Agreement.
- 24.3 **Restriction on multiple appointments by single resolution:** A single resolution for the appointment of two or more persons as Directors shall not be moved unless a separate resolution that it be so moved has first been passed by the meeting without any vote being cast against it but nothing in this clause prevents the election of two or more Directors by ballot or poll.
- 24.4 **Vacation of office:** A Director ceases to be a Director if he or she:
- (a) is removed or retires from office (without being re-elected) in accordance with the Shareholders' Agreement; or
  - (b) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
  - (c) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
  - (d) becomes disqualified from being a Director pursuant to the Act; or
  - (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally.
- 24.5 **Alternate directors:** Each Director shall have power from time to time to appoint, by notice to the Company, any person who is not already a Director, and who is approved by a majority of the other Directors, to act as an alternate Director in his or her place. The following provisions shall apply to an alternate Director:
- (a) The appointment may at any time be revoked by notice to the Company given by the appointor or by a majority of the other Directors, and is automatically revoked when the appointor vacates office.

- (b) The alternate Director is not entitled to any remuneration in his or her capacity as an alternate Director additional to that of the Director in whose place he or she acts.
- (c) Unless otherwise provided by the terms of the appointment, the alternate Director, while acting in that capacity:
  - (i) has the same rights, powers and privileges (including, without limitation, the power to sign resolutions of Directors, and the power to execute documents on behalf of the Company, but excluding the power to appoint an alternate Director); and
  - (ii) shall discharge all the duties and obligations,
    - of the Director in whose place he or she acts.
- (d) Any notice of appointment or revocation of appointment under this clause may be comprised in one or more separate notices, each signed or purporting to be signed by one or more of the persons exercising the relevant right, shall be given by delivering the notice or by sending it through the post or by facsimile or other electronic means of communication to the Company at its registered office, and shall be effective from the time of receipt of the notice by the Company.

## **25. REMUNERATION AND OTHER BENEFITS OF DIRECTORS**

- 25.1 **Power to authorise:** The Board may not exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section to or in respect of a Director in his or her capacity as such, without first obtaining any approvals required under the Shareholders' Agreement.

## **26. INDEMNITY AND INSURANCE**

- 26.1 **Indemnity of Directors:** Subject to clause 26.3, 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.

26.2 **Other indemnities:** Subject to clause 26.3 (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, or costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

26.3 **Exceptions:** An indemnity conferred by clause 26.1(b), or given pursuant to clause 26.2(b), shall not apply in respect of:

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

An indemnity conferred by clause 26.1, or given pursuant to clause 26.2, shall not apply in respect of any liability or costs in respect of which an indemnity is prohibited by any legislation or law.

26.4 **Insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a director or employee of a related company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her in defending any criminal proceedings 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.

26.5 **Definitions:** In this clause 26:

- (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.

## 27. POWERS OF DIRECTORS

- 27.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.
- 27.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required either by the Shareholders' Agreement, the Act or this Constitution to be exercised by the Shareholders.
- 27.3 **Delegation of powers:** Subject to the Shareholders' Agreement, 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.
- 27.4 **Appointment of attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
- 27.5 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

## 28. INTERESTS OF DIRECTORS

- 28.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 28.2.
- 28.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:
- (a) contract with the Company in any capacity;
  - (b) be a party to any transaction with the Company;
  - (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
  - (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
  - (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

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

28.3 **Interested Directors may vote, etc:** Subject to the Shareholders' Agreement, a Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

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

as if the Director were not Interested in the transaction.

## 29. PROCEEDINGS OF BOARD

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

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

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

29.3 **Procedure:** Except as provided in the Shareholders' Agreement and this Constitution, the Board may regulate its own procedure.

29.4 **Convening of Meeting:** A Director, or an employee of the Company at the request of a Director, may convene a meeting of the Board by giving notice in accordance with clause 29.5.

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

- (a) Not less than two days' notice of a meeting shall be given to each Director (other than a Director who has waived that right).
- (b) Notice to a Director of a meeting may be:
  - (i) given to the Director in person by telephone or other oral communication;
  - (ii) delivered to the Director;
  - (iii) posted to the address given by the Director to the Company for such purpose;

- (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
  - (v) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
- (c) It is not necessary to give notices of meetings to an alternate Director, unless the Director who appointed that person has given written notice to the Company requiring that such notices be given.
- (d) A notice of meeting shall:
- (i) specify the date, time and place of the meeting;
  - (ii) in the case of a meeting by means of audio, or audio and visual, communication, specify the manner in which each Director may participate in the proceedings of the meeting; and
  - (iii) give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, unless this is already known to all the Directors or is impracticable in any particular circumstances.
- (e) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
- (i) in the case of oral communication, at the time of notification;
  - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
  - (iii) in the case of posting, three days after it is posted;
  - (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
  - (v) in the case of electronic means, at the time of transmission.
- (f) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with this clause but the Director cannot be contacted, notice of the meeting shall be deemed to have been duly given to that Director.

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

29.7 **Quorum:** A quorum for a meeting of the Board is 80% of the Directors (rounded down to the nearest whole number) entitled to attend and vote at the meeting (whether on some or all of the resolutions). No business may be transacted at a meeting of Directors if a quorum is not present.

29.8 **Chairperson:** The Directors may elect one of their number as chairperson of the Board and determine the period for which he or she is to hold office. If no chairperson is elected or if, at a meeting of the Board, the chairperson is not present within

15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

- 29.9 **Voting:** Every Director has one vote. The chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.
- 29.10 **Written resolution:** A written resolution, signed or assented to by all the Directors entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Board duly convened and held provided those Directors would constitute a quorum at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered in the Records.
- 29.11 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.
- 29.12 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 29.13 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

### 30. METHOD OF CONTRACTING

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

## 31. INSPECTION OF RECORDS

- 31.1 **Inspection by Directors:** Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.
- 31.2 **Inspection by Shareholders:** No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders who are not also Directors.

## 32. NOTICES

- 32.1 **Reports, etc to Shareholders:** Annual reports, notices and other documents required to be sent to a Shareholder shall be sent in the manner provided in section 391 of the Act.
- 32.2 **Accidental omissions:** The failure to send an annual report, notice, or other document to a Shareholder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.
- 32.3 **Joint Shareholders:** A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share.
- 32.4 **Waiver by Shareholders:** Subject to section 212(2) of the Act, a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

## 33. LIQUIDATION

- 33.1 **Distribution of assets:** If the Company is liquidated the liquidator may, with the approval of Shareholders by Special Resolution and any other sanction required by the Shareholders' Agreement and Act:
- (a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
  - (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.