

# CONSTITUTION

*Relating to NZPM Group Limited*

~~This document is the Constitution of NZPM Group Limited (Company) as certified as such on 6 December 2011 by Stephen Dey, the applicant for registration of the Company pursuant to the Companies Act 1993.~~

~~Certified as the Constitution of the Company~~

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~~Stephen Dey  
Applicant Secretary to the Board~~

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# CONSTITUTION OF NZPM GROUP LIMITED (*COMPANY*) UNDER THE COMPANIES ACT 1993

## 1. *Statement of Purpose*

- 1.1 The Company is a co-operative company under the Co-operative Act, carrying on co-operative activity as defined in the Co-operative Act. The principal purpose of the Company is to supply or provide its Transacting Shareholders, both directly and through any subsidiary of the Company, with goods and services and to enable its Shareholders to derive benefit through investment in the Company and through transactions with any subsidiary.

## 2. *Effect of this Constitution*

- 2.1 The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act and the Co-operative Act, except to the extent that they are negated or modified in accordance with the Act or the Co-operative Act by this Constitution.

## 3. *Definitions and Interpretation*

- 3.1 In this Constitution, unless the context otherwise requires, the following terms will have the following meanings:

<i>Act</i>	The Companies Act 1993.
<i>Appointed Director</i>	A Director appointed pursuant to clause 21.8.
<i>Board</i>	The Directors who number not less than the required quorum acting together as the board of directors of the Company.
<i>Chairperson</i>	The chairperson of the Board appointed under clause 21.16.1.
<i>Constitution</i>	This Constitution of the Company and all amendments to it from time to time.
<i>Co-operative Act</i>	The Co-operative Companies Act 1996.
<i>Development Share</i>	A Share which is issued on the terms that it is redeemable and which confers on the holder the rights set out in clause 5.4.
<i>Director</i>	A person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company.
<i>Excess Assets</i>	The assets in the hands of the liquidator (if any) after the repayment of the whole of the paid up capital of the Company to the Shareholders in accordance with clause 24.2.1(a).

<i>Financial Year</i>	The period of 12 months ending on expiration of the 31st day of March in each year.
<i>Managing Director</i>	The person appointed as the Managing Director for the time being in accordance with clause 21.10.
<i>Ordinary Share</i>	A Share which confers on the holder the rights set out in clause 5.3.
<i>Patronage Share</i>	A Share which is issued on the terms that it is redeemable and which confers on the holder the rights set out in clause 5.7.
<i>PPSA</i>	The Personal Properties Securities Act 1999.
<i>Rebate Share</i>	A Share which is issued on the terms that it is redeemable and which confers on the holder the rights set out in clause 5.6.
<i>Redeemable Preference Share</i>	A Share which is issued on the terms that it is redeemable and which confers on the holder the rights set out in clause 5.5.
<i>Share</i>	A share in the Company.
<i>Shareholder</i>	The holder for the time being of a Share.
<i>Share Register</i>	The register of Shares required to be kept in accordance with section 87 of the Act.
<i>Surplus Assets</i>	The assets in the hands of the liquidator (if any) after the payment of all the debts and liabilities of the Company, including all the costs of any winding up.
<i>Transacting Shareholder</i>	Has the same meaning as in section 4 of the Co-operative Act.
<i>Working Day</i>	A day of the week other than a Saturday, Sunday or public holiday in New Zealand on which banks are open for general banking business.

- 3.2 In the interpretation of this Constitution, unless the context otherwise requires:
- 3.2.1 Expressions defined in the Act and the Co-operative Act have the meanings so defined;
- 3.2.2 Subject to the provisions of the Co-operative Act, the Directors may decide whether any person is at any time a Transacting Shareholder of the Company;
- 3.2.3 Headings have been inserted for convenience only and do not affect the

construction of this Constitution;

- 3.2.4 References to persons include individuals, partnerships, firms, associations, corporations and unincorporated bodies of persons, government or semi-government or local body or municipal bodies, and agencies or political subdivisions of them in any case whether having separate legal personality or not;
- 3.2.5 Words in the singular will include the plural and vice versa. Words importing one gender will include the other genders;
- 3.2.6 Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 3.2.7 Reference to a statute includes all statutes amending, consolidating or replacing the statute referred to;
- 3.2.8 References to clauses and schedules are to be construed as references to the same in this Constitution;
- 3.2.9 References to currency or \$ are to New Zealand dollars unless otherwise expressly stated;
- 3.2.10 *Including* and similar terms do not imply limitation; and
- 3.2.11 *Written* and *in writing* includes any means of reproducing words, figures or symbols:
  - (a) In a tangible and visible form in any medium; or
  - (b) In a visible form in any medium by electronic means that enables them to be stored in a permanent form and be retrieved and read.

#### **4. *Company Name***

- 4.1 An application to change the name of the Company will not be made without the prior approval of a special resolution.

#### **5. *Shares***

- 5.1 *Issue of Shares and Classes of Shares:* The Board may, subject to the Act, the Co-operative Act and this Constitution, issue Shares of any class at any time, to any person and in such numbers as the Board thinks fit. The Board may in the terms of issue of any or all classes of Shares negate, alter or add to the rights attaching to any Share specified in section 36(1) of the Act.
- 5.2 *Terms of Issue:* Without limiting the classes of Shares that may be issued, Shares in the Company may be issued on terms that they:
  - 5.2.1 Are convertible; or
  - 5.2.2 Are redeemable; or
  - 5.2.3 Confer preferential rights to distributions of capital; or

- 5.2.4 Confer preferential rights to distributions of income; or
- 5.2.5 Confer special, limited or conditional voting rights; or
- 5.2.6 Do not confer any of the following rights:
  - (a) Voting rights; or
  - (b) In respect of a meeting of Shareholders other than the annual meeting of the Company:
    - (i) Rights to receive notices of meetings; or
    - (ii) Rights to attend meetings; or
    - (iii) Rights to form a quorum; or
- 5.2.7 Have a nominal value; or
- 5.2.8 Possess any combination of two or more of the above characteristics.

### 5.3 *Ordinary Shares:*

- 5.3.1 Ordinary Shares will have a nominal value of \$1, unless that value is altered in accordance with the Co-operative Act, and will confer on the holder:
  - (a) The voting rights specified in clause 20; and
  - (b) The right to receive rebates authorised by the Board based on trading with Plumbing World Limited or any other subsidiary of the Company; and
  - (c) The right to receive dividends authorised by the Board; and
  - (d) The right to share in the distribution of the Surplus Assets of the Company and the Excess Assets of the Company on liquidation as specified in clause 24; and
  - (e) The right of surrender contained in the Co-operative Act.
- 5.3.2 No Ordinary Share may be transferred if the transfer would result in the transferor and/or the transferee holding less than the minimum number of Shares (of any class) that the transferor or the transferee is required to hold following the transfer. If the transferor transfers all the Ordinary Shares held by that Shareholder, the transferor will not be required to hold any Shares of any class following that transfer.

### 5.4 *Development Shares:*

- 5.4.1 Development Shares will have a nominal value of \$1 unless that value is altered in accordance with the Co-operative Act, and will confer on the holder:
  - (a) No voting rights;

- (b) No rights, by virtue of the holder holding Development Shares, to receive notices of, or to attend or speak at or convene any meeting of the Company other than the annual meeting of the Company; and
  - (c) No rights to receive rebates based on trading with Plumbing World Limited or any other subsidiary of the Company; and
  - (d) The right to receive dividends authorised by the Board; and
  - (e) The right to share in the distribution of the Surplus Assets of the Company and the Excess Assets of the Company on liquidation as specified in clause 24; and
  - (f) Any other rights provided in the terms of issue of those Development Shares.
- 5.4.2 No Development Share may be transferred if the transfer would result in the transferor and/or the transferee holding less than the minimum number of Shares (of any class) that the transferor or the transferee is required to hold following the transfer.
- 5.4.3 The Development Shares held by a Shareholder must be transferred or redeemed (at the option of the Shareholder) on the transfer of any Ordinary Shares held by that Shareholder if, following that transfer, that Shareholder will not hold the minimum number of Ordinary Shares required to be held by any Transacting Shareholder.
- 5.4.4 The Development Shares held by a Shareholder will be redeemed on the surrender of any Ordinary Shares held by that Shareholder if, following that surrender, that Shareholder will not hold the minimum number of Ordinary Shares required to be held by any Transacting Shareholder.
- 5.4.5 Subject to the terms of this Constitution, the Board may issue Development Shares at different times and with different terms. Any Development Shares which differ from any other issue of Development Shares will constitute a separate class of Development Shares. Any variations or differences in the terms of issue of Development Shares will be deemed not to be an alteration of the rights of the holders of previously issued Development Shares.

## 5.5 *Redeemable Preference Shares:*

- 5.5.1 Redeemable Preference Shares will have a nominal value of \$1 unless that value is altered in accordance with the Co-operative Act, and will confer on the holder:
- (a) No voting rights;
  - (b) No rights, by virtue of the holder holding Redeemable Preference Shares, to receive notices of, or to attend or speak at or convene any meeting of the Company other than the annual meeting of the Company; and

- (c) No rights to receive rebates based on trading with Plumbing World Limited or any other subsidiary of the Company; and
- (d) The right to receive dividends authorised by the Board; and
- (e) The right to share in the distribution of the Surplus Assets of the Company on liquidation as specified in clause 24; and
- (f) Any other rights provided in the terms of issue of those Redeemable Preference Shares.

5.5.2 Subject to the terms of this Constitution, the Board may issue Redeemable Preference Shares at different times and with different terms. Any Redeemable Preference Shares which differ from any other issue of Redeemable Preference Shares will constitute a separate class of Redeemable Preference Shares. Any variations or differences in the terms of issue of Redeemable Preference Shares will be deemed not to be an alteration of the rights of the holders of previously issued Redeemable Preference Shares.

#### 5.6 *Rebate Shares:*

5.6.1 Rebate Shares will have a nominal value of \$1 unless that value is altered in accordance with the Co-operative Act and will confer on the holder:

- (a) No voting rights;
- (b) No rights, by virtue of holding Rebate Shares, to receive notices of, or to attend or speak at or convene any meeting of the Company other than the annual meeting of the Company; and
- (c) No rights to receive dividends or rebates based on trading with Plumbing World Limited or any other subsidiary of the Company; and
- (d) The right to share in the distribution of the Surplus Assets of the Company on liquidation as specified in clause 24.

5.6.2 Subject to the terms of this Constitution, the Board may issue Rebate Shares at different times and with different terms. Any Rebate Shares which differ from any other issue of Rebate Shares will constitute a separate class of Rebate Shares. Any variations or differences in the terms of issue of Rebate Shares will be deemed not to be an alteration of the rights of the holders of previously issued Rebate Shares.

#### 5.7 *Patronage Shares:*

5.7.1 Patronage Shares will have a nominal value of \$1 unless that value is altered in accordance with the Co-operative Act, and will confer on the holder:

- (a) No voting rights;
- (b) No rights, by virtue of holding Patronage Shares, to receive



notices of, or to attend or speak at or convene any meeting of the Company other than the annual meeting of the Company; and

- (c) No rights to receive rebates based on trading with Plumbing World Limited or any other subsidiary of the Company; and
- (d) The right to receive dividends authorised by the Board; and
- (e) The right to share in the distribution of the Surplus Assets of the Company on liquidation as specified in clause 24; and
- (f) Any other rights provided in the terms of issue of those Patronage Shares.

5.7.2 Subject to the terms of this Constitution, the Board may issue Patronage Shares at different times and with different terms. Any Patronage Shares which differ from any other issue of Patronage Shares will constitute a separate class of Patronage Shares. Any variations or differences in the terms of issue of Patronage Shares will be deemed not to be an alteration of the rights of the holders of previously issued Patronage Shares.

5.8 *Pre-Emptive Rights:* The requirements of section 45 of the Act regarding the issue of Shares and the pre-emptive rights of existing Shareholders are negated by this Constitution.

5.9 *Shares in Lieu of Dividends:* Without prejudice to the generality of clause 5.1 the Board may in its discretion implement and maintain, on such terms and conditions as it determines from time to time, a dividend or distribution reinvestment plan for the benefit of Shareholders or any class of Shareholders whereby such Shareholders are given any of the following options:

5.9.1 Instead of taking in cash the whole or any part of any dividend which is declared on any Shares held by them, to invest such cash in subscribing for unissued Shares payable by instalments or in paying up in full or by instalments any unpaid or partly paid Shares held by them, on the terms and conditions of any such plan; or

5.9.2 To forego their entitlement to any dividend declared on any Shares held by them and take instead fully paid bonus Shares on the terms and conditions of any such plan; or

5.9.3 Any other option in respect of the whole or any part of any dividend on any Shares held by them as the Board may determine,

provided that participation in any such plan will be available to all Shareholders of the same class on the same terms, subject to such minimum investment as the Board may determine. The Board may in its discretion terminate any such plan which is in operation.

5.10 *Rebate:* The Board may from time to time as it thinks fit, declare a rebate payable to any Transacting Shareholder in accordance with section 30 of the Co-operative Act or otherwise howsoever as the Board may from time to time determine. Nothing in this clause 5.10 will apply to any Shareholder holding only Redeemable Preference Shares and/or Rebate Shares. For the purpose of

this clause 5.10 only, a Transacting Shareholder will be deemed to include a Shareholder who transacted with the Company or with any subsidiary of the Company at any time during the financial year in respect of which a rebate is declared, notwithstanding that their Ordinary Shares have been surrendered pursuant to clause 8.

- 5.11 *Dividends:* Notwithstanding anything to the contrary in this Constitution but subject to section 53 of the Act, dividends (whether interim or final) other than rebates may at the discretion of the Directors be paid to some but not necessarily all Shareholders who would otherwise be entitled thereto, and to some Shareholders at higher or lower rates than other Shareholders, in each case by reference to the class of Shares held by a Shareholder and in accordance with the amounts paid on the Shares in respect of which the dividend is authorised.
- 5.12 *Minimum Holdings of Ordinary Shares and Development Shares:* The Board may at any time and from time to time determine:
- 5.12.1 The minimum number of Ordinary Shares and the minimum number of Development Shares required to be held by any Transacting Shareholder; and
- 5.12.2 Where the Board determines in accordance with clause 12.1 to refrain from requiring payment in full on each Share on allotment, the minimum payments to be made by any Shareholder to the Company in consideration of the purchase of Ordinary Shares and/or the Development Shares and the frequency of those payments.
- 5.13 *Patronage Shareholding:* The Board may at any time and from time to time determine the minimum number of Patronage Shares (if any) which each Transacting Shareholder must purchase and hold. When making a determination, the Board will consider and make reference to the transactions between the Transacting Shareholders and the Company or a subsidiary of the Company, including the value of the transactions.

## **6. *Acquisition by the Company of its Own Shares***

- 6.1 *Acquisition by Company:* The Company may purchase or otherwise acquire Shares issued by it in accordance with the Act.
- 6.2 *Special Offers by Company:* The Company may make an offer to one or more Shareholders to acquire Shares issued by it, in accordance with section 60(1)(b)(ii) of the Act.
- 6.3 *Company May Hold its Own Shares:* The Company may hold any of its own Shares acquired under sections 59 or 112 of the Act, or surrendered under section 18 of the Co-operative Act.
- 6.4 *Additional Power of Surrender Shares:* The powers conferred by clauses 6.1, 6.2 and 6.3 are in addition to the powers of the Company to surrender Shares pursuant to the Co-operative Act and to this Constitution.

## **7. *Redemption of Shares***

7.1 *Redeemable Shares:* Subject to the terms of issue of any Shares, the Company may redeem Shares issued on the terms that the Shares are redeemable in accordance with the Act:

7.1.1 At its option in relation to all Shareholders of the same class or in relation to one or more Shareholders; or

7.1.2 At the option of the holder of the Share; or

7.1.3 On a date for redemption specified by a special resolution which alters this Constitution by adding such a date,

in each case for the consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified and independent person as provided by section 68 of the Act.

7.2 This provision does not affect the rights to redeem or surrender any Shares otherwise contained in this Constitution or pursuant to rights attaching to such Shares.

## **8. *Surrender of Ordinary Shares***

8.1 *By Agreement:* Where a Transacting Shareholder has ceased to transact with the Company, the Board may at any time resolve to accept an offer by that Shareholder to surrender that Shareholder's Ordinary Shares.

8.2 *At the Option of the Shareholder:* For the purposes of section 20(3) of the Co-operative Act, the period for which a Shareholder has not been transacting and as a result of which he or she may require the Company to accept a surrender of Ordinary Shares will be determined by the Board at its discretion from time to time.

8.3 *At the Option of the Company:* The Company may require any Shareholder to surrender to the Company any or all Ordinary Shares held by that Shareholder if:

8.3.1 The Shareholder has ceased to be a Transacting Shareholder; or

8.3.2 The Shareholder has failed to comply in a material respect with requirements relating to transactions with the Company or any subsidiary of the Company contained in any contract between the Company and the Shareholder and/or any contract between a subsidiary of the Company and the Shareholder.

8.4 *At the Option of the Board:* The Board may require any Shareholder to surrender to the Company any or all Ordinary Shares held by that Shareholder if:

8.4.1 The Shareholder fails to comply with requirements relating to transactions with the Company or any subsidiary of the Company from time to time prescribed by the Board and the Board has resolved that such surrender is in the best interests of the Company; or

- 8.4.2 The Shareholder is bringing the Company or any subsidiary of the Company into disrepute, or is causing significant loss or disruption to the business and the Board resolves that such surrender is in the best interests of the Company; or
- 8.4.3 It is fair and equitable in the circumstances and the Board has resolved that such surrender is in the best interests of the Company.

**9. *Consideration for Surrendered Ordinary Shares***

- 9.1 *Standard Consideration:* The consideration for the surrender of Ordinary Shares will be as determined in accordance with section 22(1) and (2) of the Co-operative Act.
- 9.2 *Consideration Procedure:* For the purposes of section 22(1)(b) of the Co-operative Act, the Board may nominate a fair and reasonable level of consideration having regard to the following matters:
  - 9.2.1 The amount which the Ordinary Shares would be worth if the Company had at the time of the valuation passed a resolution for the Company to be wound up voluntarily; and
  - 9.2.2 The value of the Ordinary Shares on the assumption that the Company would continue to operate as a going concern; and
  - 9.2.3 The amounts (if any) which have been paid by the Company on any previous voluntary surrenders of Ordinary Shares; and
  - 9.2.4 The future prospects of the Company having regard to the likelihood or otherwise of the continuation in the normal course of satisfactory trading with Shareholders and others; and
  - 9.2.5 The ability of the Company to meet the cost of surrender and its effect on the remaining Transacting Shareholders; and
  - 9.2.6 Whether the failure of the Company is imminent; and
  - 9.2.7 Whether the Shareholder is under any obligation or liability as a guarantor or surety under any instrument given by him or her in respect of any obligation incurred by or liability of the Company; and
  - 9.2.8 Any other matter which the Board reasonably considers has a bearing on the fair value of the Ordinary Shares.
- 9.3 The Board will notify the Shareholder of the nominated price.
- 9.4 If the Shareholder considers that the nominated price is not fair and reasonable, the Shareholder will notify the Company within 10 Working Days of receiving notice of the price, and section 112A of the Act will apply, as if the nominated price were a price fixed by the Board under section 112 of the Act.
- 9.5 *Payment of Consideration:* The consideration owed by the Company for any surrender of Ordinary Shares to the Company will be payable at a date decided by the Board, such date to be no later than 5 years after surrender of the Ordinary

Shares is accepted or deemed to take effect.

## **10. Transfer of Shares**

10.1 *Form of Transfer:* The Board may from time to time prescribe the form of transfer of Shares.

10.2 *Execution of Form of Transfer:* The form of transfer will be executed by or on behalf of the transferor and the transferee.

10.3 *Delivery of Form of Transfer:* The form of transfer must be delivered to the registered office of the Company.

10.4 *Delay or Refusal to Register Transfers:* The Board may delay or refuse to register a transfer by entry of the name of the transferee on the Share Register where:

10.4.1 The Company has a lien on any Share included in the transfer; or

10.4.2 A call is due and unpaid or any other money is due to the Company and unpaid in respect of any Share included in the transfer; or

10.4.3 Any other money is due to the Company and/or any subsidiary of the Company by the holder of the Shares and unpaid; or

10.4.4 The form of transfer and any other documentation required has not been provided or has not been duly executed; or

10.4.5 The Board is of the opinion that the proposed transferee is not a desirable person to become a Shareholder; or

10.4.6 The Board resolves that it is not in the best interests of the Company to register the transfer; or

10.4.7 The Board is of the opinion that, in respect of a transfer of Ordinary Shares, that it is not likely that the transferee will become a Transacting Shareholder; or

10.4.8 The transferee would cause the Company to become subject to any regulatory or statutory control; or

10.4.9 The transfer would result in the transferor and/or the transferee holding less than the minimum number of Shares (of any class) that the transferor or the transferee is required to hold (provided that the transferor will not be required to hold any Shares of any class following a transfer if the transferor transfers all the Ordinary Shares held by that Shareholder); or

10.4.10 The Board is of the opinion that effecting the transfer would be a breach of the law.

The Board will not be bound or required to state the reason for any refusal to register a transfer.

## **10.5 Share Certificates:**

- 10.5.1 Where a share certificate has been issued a transfer of the Shares to which it relates must not be registered by the Company unless the form of transfer is accompanied by the share certificate relating to the Shares, or evidence satisfactory to the Board as to its loss or destruction.
- 10.5.2 Where a share certificate has been sent to the Company to enable registration of a transfer of Shares, the share certificate will be cancelled and no further share certificate will be issued except at the request of the transferee.
- 10.6 *Closure of Share Register:* The Share Register may be closed during such times as the Directors think fit, not exceeding in aggregate 30 days in each year.
- 10.7 *Custody of Form of Transfer:* All forms of transfer will when registered be retained by the Company, but any form of transfer which the Board refused to register will be returned to the person who delivered the form to the Company within one month after the date of such refusal.
- 10.8 *Share Register:* The Company may divide its Share Register into two or more registers kept in different places and will maintain any such registers in accordance with the Act.

## **11. *Certificates***

- 11.1 A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares. The Company will, within 20 Working Days of delivery of an application for a share certificate to the registered office of the Company, issue a certificate to the Shareholder specifying the name of the Company and the class and number of Shares to which the certificate relates. The Company will not be bound to issue more than one certificate in respect of any Share held jointly by several persons, and delivery of a share certificate to one of several joint holders will be sufficient delivery to all holders. The Company will be bound only to issue certificates for Shares held by Shareholders in multiples of 1,000. Subject to clause 11.2 the cost of complying with the requirements of this clause 11.1 will be met by the Company.
- 11.2 If a share certificate is defaced, lost or destroyed it may be replaced on such terms (if any) as to evidence and indemnity and the payment of such charges as the Board may in each case think fit.

## **12. *Calls***

- 12.1 Unless otherwise expressly determined by the Board or specified in the terms of issue of a Share, the whole of the money payable on every Share will be due and payable to the Company immediately on allotment, without any call being formally made. The Board may, however, for as long as a Shareholder is a Transacting Shareholder:
- 12.1.1 Refrain from requiring immediate payment of the money payable on allotted Ordinary Shares, Development Shares and/or Patronage Shares; and

12.1.2 Deduct on account of the money payable by the Shareholder to the Company amounts by way of instalments, in such amounts and at such frequency as the Directors thinks fit at any time and from time to time, from any moneys due by the Company to the Shareholder until the whole amount of the money payable by the Shareholder on Ordinary Shares, Development Shares and/or Patronage Shares held by him or her has been paid,

provided that if any Shareholder ceases or fails to be a Transacting Shareholder the Board may serve upon him or her notice in writing to immediately pay to the Company the amount due by him or her on any or all of the Shares held by him or her, and that amount will immediately become due and payable to the Company.

- 12.2 Subject to clause 12.1, the Board may at any time and from time to time make calls as it thinks fit upon any Shareholder in respect of all money unpaid on the Shares held by that Shareholder and which is not by the conditions of allotment of the relevant Shares made payable at fixed times. Each Shareholder will pay the amount of every call so made on him or her to the persons and at the times and places appointed by the Board. A call may be made payable by instalments.
- 12.3 Fourteen (14) days' notice of any call will be given specifying the time and place of payment and the person or persons to whom the call will be paid. The Board may deduct from any money due by the Company (whether in respect of a dividend, rebate or otherwise) to any Shareholder, the whole or any part of the amount due by the Shareholder to the Company for or in respect of arrears of calls on the Shares held by the Shareholder.
- 12.4 The joint holders of a Share will be jointly and severally liable to pay all calls.
- 12.5 A call shall be deemed to have been made at the time when a resolution of the Board authorising the call was passed and may be required to be paid by instalments.
- 12.6 If the call payable in respect of any Share is not paid on or before the day appointed for payment, the holder of the Share will be liable to pay interest on the same at such rate as the Board may determine from the day appointed for payment to the time of actual payment, but the Board will be at liberty to waive payment of that interest wholly or in part.
- 12.7 Where Shares have been issued with all of the consideration due on allotment, the Board may treat any amounts not paid on allotment as a debt owing to the Company from the date of allotment and the Shareholder will be liable to pay interest at the rate determined from time to time by the Board.
- 12.8 The Board may make a call on any unpaid amounts owing in respect of Shares to which clause 12.7 applies in the manner prescribed in clauses 12.1 to 12.6, provided that any interest payable under clause 12.6 will be additional to interest payable under clause 12.7.
- 12.9 On the trial or hearing of any action for the recovery of any money due for any call, it will be sufficient to prove that:

12.9.1 The name of the Shareholder sued is entered in the Share Register as the holder or one of the holders of the Shares in respect of which the debt accrued; and

12.9.2 That the Board resolution making the call is duly recorded in the minute book; and

12.9.3 That notice of the call was duly given to the Shareholder sued,

and proof of these matters will be conclusive evidence of the debt. It will not be necessary to prove the appointment or qualification of the Directors who made the call nor any other matter whatsoever.

12.10 Notwithstanding anything in this Constitution but subject to any applicable rule of law, the Board may, if it deems it advisable so to do, call up the balance due by any Shareholder upon his or her Shares without the necessity of making a similar call on all or any of the other Shareholders.

12.11 In the event that any Shareholder is in default in respect of the payment of any call or instalment of a call due in respect of any Shares held by the Shareholder and such default will have subsisted for a period of four months then, until such default is remedied, the Shareholder in default will not be entitled to a vote at any meeting of the Company.

### **13. *Forfeiture of Shares***

13.1 If any Shareholder fails to pay any call or instalment of a call on or before the day appointed for payment the Board may at any time thereafter during such time as the call or instalment remains unpaid serve notice upon the Shareholder requiring him or her to pay the call or instalment, together with interest and any expenses that may have accrued by reason of the non- payment.

13.2 The notice will:

13.2.1 Name a further day (not being less than 10 days from the date of the notice) on or before which the call or instalment and all interest and expenses (if any) that have accrued by reason of the non-payment are to be paid; and

13.2.2 Name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable; and

13.2.3 State that, in the event of non-payment at or before the time and at the place appointed, the Shares in respect of which the call or instalment is made will be liable to be forfeited.

13.3 If the Shareholder does not comply with requirements of any such notice, any Shares in respect of which the notice has been given may at any time thereafter, before payment of all calls or instalments, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the Board to that effect. The forfeiture will include all dividends declared in respect of the forfeited Share and not paid before the forfeiture.



- 13.4 Any Share or Shares so forfeited will be deemed to be the property of the Company, and may be disposed of in such manner as the Board thinks fit and as this Constitution permits.
- 13.5 Any Shareholder whose Shares have been forfeited will cease to be a Shareholder in respect of the forfeited Shares, but will nevertheless be liable to pay and will immediately pay the Company all calls, instalments, interest and expenses owing upon or in respect of the Shares at the time of the forfeiture, together with interest thereon from the time of forfeiture until payment at such rate as the Board may from time to time determine; but his or her liability will cease if and when the Company receives payment in full of the amount owing by the Shareholder.
- 13.6 A statutory declaration in writing that the declarant is a Director of the Company, and that a Share in the Company has been duly forfeited on a date stated in the declaration, will be conclusive evidence of the facts in the statutory declaration, stated as against all persons claiming to be entitled to the Share.
- 13.7 The Company may receive the consideration, if any, given for a Share on any sale or disposition of that Share, and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of. The person to whom the Company sells or disposes the Share will then be registered as the holder of the Share, and will not be bound to see to the application of the purchase money, if any, nor will his or her title to the Share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the Share.
- 13.8 The provisions of this Constitution as to forfeiture will apply in the case of non-payment of any sum which, by the terms of issue of a Share, becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.
- 13.9 If all calls, instalments of a call, and interest due in respect of any forfeited Share are paid before the Share has been disposed of, together with such sum as the Directors may require to repay expenses incurred in respect of the non-payment, the forfeiture may be remitted by the Board at its discretion. If the forfeiture is remitted by the Board and an entry of that remittance made in the minutes of the Board, the Share will then revert to the person entitled to it before the forfeiture and be held by him or her thereafter in the same manner as if no such forfeiture had taken place.

#### **14. *Transmission of Shares***

- 14.1 In the event of the death of a Shareholder the legal personal representative of a deceased sole holder of a Share will be the only person recognised by the Company as having any title in the Share. In the case of a Share registered in the names of two or more persons, the survivor or survivors or where all survivors of the first deceased joint holder are later deceased the legal personal representative of the last surviving joint holder on his or her death will be the only person recognised by the Company as having any title to the Share.
- 14.2 Any manager of a mentally disordered person or any person becoming entitled to a Share in consequence of the bankruptcy of a Shareholder (*Affected*

*Shareholder*) will, upon such evidence being produced as may from time to time be properly required by the Board, have the right to transfer the Share as the Affected Shareholder could have, provided that the Board will have the same right to decline or delay registration as it would have had in the case of a transfer of the Share by the Affected Shareholder.

- 14.3 Where the registered holder of any Share dies or becomes bankrupt, his or her personal representative or the assignee of his or her estate, as the case may be, will, upon the production of such evidence as may from time to time be required by the Board, be entitled to the same rights (whether in relation to meetings of the Company, or to voting or otherwise) as the registered holder would have been entitled to if he or she had not died or become bankrupt. Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will for the purposes of this Constitution be deemed to be joint holders of the Share.

## **15. *Lien on Shares***

- 15.1 The Company will have a first and continuing lien for all debts, obligations and liabilities of any Shareholder of the Company, owed to the Company or to any subsidiary of the Company on any account whatsoever, upon all Shares held by the Shareholder, whether alone or jointly with another person or other persons, and upon all dividends, rebates, other distributions, bonuses, allowances and other payments which may be payable to the member by the Company and all proceeds of sale of the Shares. If the Company registers any transfer of any Share upon which it has a lien without giving to the transferee notice of its lien, the Share will be freed and discharged from the lien of the Company.
- 15.2 The Company may sell, in such manner as the Board thinks fit, any Share on which the Company has a lien, but no sale will be made unless:
- 15.2.1 Some sum in respect of which the lien exists is presently payable to the Company or to any subsidiary of the Company; and
- 15.2.2 The Company has demanded the amount, in writing given to the registered holder of the Share (or the person entitled to that Share by reason of the registered holder's death or bankruptcy), and payment has not been made within fourteen (14) days after the demand.
- 15.3 For giving effect to any sale contemplated in clause 15.2, the Board may authorise a person to execute a share transfer to transfer the Shares to the purchaser. The purchaser will be registered as the holder of the Shares comprised in any such transfer, and he or she will not be bound to see to the application of the purchase money, nor will his or her title to the Shares be affected by any irregularity or invalidity in the sale proceedings.
- 15.4 The proceeds of the sale will be received by the Company and applied first, in payment of costs and expenses incurred in enforcing the lien; second in payment of the amount secured by the lien; and the residue will (subject to a like lien for sums not presently payable as existed upon the Shares prior to the sale) be paid to the person entitled to the Shares at the date of the sale.
- 15.5 In the event that any Shareholder will be indebted to the Company or to any

subsidiary of the Company, the Company will have the right to retain any credit or payment due to such Shareholder and to apply the same in full or partial satisfaction of such Shareholder's indebtedness to the Company or to any subsidiary of the Company.

- 15.6 Sections 108, 109, 116, 120(2), 132 and 133 of the PPSA will not apply to the extent they are inconsistent with this clause 15.

## **16. *Terms and Conditions of Trade***

- 16.1 *Trade with Shareholders:* All goods and/or services supplied by the Company or any subsidiary of the Company to a Transacting Shareholder will, except as may otherwise be agreed and communicated to the Shareholder in writing, be deemed to be supplied on the terms and conditions which are fixed by the Board from time to time and notified in writing to all Transacting Shareholders.
- 16.2 *Trade with others:* The Board, whether on its own behalf or on behalf of any subsidiary of the Company, may trade with persons who are not Transacting Shareholders on such terms and conditions as it thinks fit.

## **17. *Shareholders***

- 17.1 *Board May Accept Application:* The Board may in its absolute discretion decide whether or not to accept an application to become a Shareholder.
- 17.2 *Board May Allot Shares:* The Board may immediately allot to any applicant such minimum number of Shares it determines from time to time.
- 17.3 *Board Will Not Allot Ordinary Shares:* The Board will not allot Ordinary Shares to any person:
- 17.3.1 Who, in the opinion of Board, is unlikely to become a Transacting Shareholder of the Company; and/or
  - 17.3.2 Of a number less than the minimum shareholding of Ordinary Shares determined by the Board at its discretion from time to time and/or
  - 17.3.3 Who will not be allotted a number of Development Shares equal to or more than the minimum shareholding of Development Shares determined by the Board at its discretion from time to time.
- 17.4 *Board Will Not Allot Development Shares:* The Board will not allot Development Shares to any person:
- 17.4.1 Who does not hold, or who will not be allotted, a number of Ordinary Shares equal to or more than the minimum shareholding of Ordinary Shares determined by the Board at its discretion from time to time; and/or
  - 17.4.2 Of a number less than the minimum shareholding of Development Shares determined by the Board at its discretion from time to time.
- 17.5 *Application of Moneys Payable to Shareholders:* The Board may apply some or all of any amounts payable by the Company to any Shareholder, whether in

respect of a dividend, rebate, or any payment otherwise due to that Shareholder towards the payment in part or in full of any amounts owing by that Shareholder to the Company and/or any subsidiary of the Company whatsoever, including in respect of non fully paid Shares allotted or Shares to be allotted by the Company to that Shareholder.

- 17.6 *Evidence of Legal Title:* The Company will be entitled to treat the person whose name appears on the Share Register as the absolute owner of that Share and will not be under any obligation to recognise any trust or equity, or partial, contingent, equitable, or other claim to or interest in any Share or in any fractional part of a Share whether or not it has notice of such claim or interest.
- 17.7 *Joint Holders:* If several persons are registered as joint holders of any Share, any one of those persons may give receipts for any money payable in respect of that Share.
- 17.8 *Statement of Shareholder Rights:* The Company will as soon as practicable on receipt of request from a Shareholder and in accordance with the Companies Act issue a statement of shareholder rights to that Shareholder which includes the number of Shares held by that Shareholder, the class to which the Shares belong and the total number of Shares of that class issued by the Company.

## **18. *Alteration of Shareholder Rights***

- 18.1 Unless the terms of issue of any class of Shares specifically provide otherwise, the Company may issue Shares which rank equally with or in priority to existing Shares, whether as to voting rights or distributions or both, and any such issue is deemed not to be an action which affects the rights attached to existing Shares.

## **19. *Meetings of Shareholders***

- 19.1 *Annual Meetings:* The annual meeting of the Company will be held once in every calendar year, at such time (not being more than 15 months after the holding of the last preceding meeting) and place as may be determined from time to time by the Board.
- 19.2 *Business of an Annual Meeting:* The business of the annual meeting of the Company will be:
- 19.2.1 To receive and consider the financial statements, the reports of the Directors and of the auditor, and any matters incidental thereto; and
  - 19.2.2 To elect Directors in the place of those retiring subject to any alternative procedures on a postal ballot; and
  - 19.2.3 To appoint auditors and fix or authorise the Directors to fix their remuneration; and
  - 19.2.4 To transact any other business which, by law, may be transacted at an annual meeting.
- 19.3 *Special Meeting:* A special meeting of Shareholders entitled to vote on an issue:
- 19.3.1 May be called at any time by the Board; and

- 19.3.2 Must be called by the Board at the written request of Shareholders holding Shares carrying together not less than five (5) per cent of the voting rights entitled to be exercised on the issue.
- 19.4 *Shareholder Request for Special Meeting:* Any request by Shareholders to hold a special meeting must specify the issue to be voted on at the meeting, signed by the persons making the request and deposited at the registered office of the Company. The request may consist of several documents in the like form each signed by one or more of the requisitionists.
- 19.5 *Proceedings at Meetings:* The proceedings of meetings of Shareholders will be governed by the First Schedule of the Act except as altered by this clause 19.5:
- 19.5.1 The Chairperson or, if absent, the deputy chairperson (if any) of the Board, or failing him or her one of the Directors appointed for that purpose by the Board, or (failing such appointment) appointed by such Shareholders present, will preside as Chairperson at every meeting, but if no Director will be present within fifteen minutes after the time appointed for holding the same, or if no one of the Directors present is willing to act as chairperson, the Shareholders present will choose some Shareholder present to be chairperson of the meeting.
- 19.5.2 The quorum for a meeting will be ten (10) persons having the right to vote at the meeting present in person or by proxy or (in the case of a corporation being a Shareholder) represented by a representative appointed pursuant to paragraph 10 of the First Schedule to the Act.
- 19.5.3 In the case of an equality of votes at any meeting the Chairperson of the meeting at which the show of hands takes place will be entitled to a second or casting vote.
- 19.5.4 Each Director who is not a Shareholder of the Company will nevertheless be entitled to attend every meeting.
- 19.5.5 Shareholders may only exercise the right to vote at a meeting by casting a postal vote in accordance with paragraph 7 of the First Schedule to the Act where the Board so determines.

## **20. *Votes of Shareholders***

- 20.1 *Transacting Shareholders:* Notwithstanding anything to the contrary in this Constitution, no Shareholder other than a Transacting Shareholder or a Director who holds Ordinary Shares will be entitled to vote either upon a show of hands, in a postal ballot, or in any way whatsoever. If clause 12.11 applies to a Transacting Shareholder, that Transacting Shareholder will not be entitled to vote.
- 20.2 *Votes of Shareholders:* Every Shareholder entitled to vote in person or by proxy will be entitled to one vote only.
- 20.3 *Proxy:* Any person may be appointed as a proxy for a Shareholder entitled to vote other than an employee of the Company or any of its subsidiaries.

## 21. *Directors*

### 21.1 *Number of Directors:*

21.1.1 Unless altered in accordance with clause 21.1.2, the number of Directors for the time to be elected will be not less than five (5) and not more than six (6).

21.1.2 The Company at a meeting may from time to time increase or reduce the number of Directors and may also determine in what rotation the increased or reduced number is to go out of office.

21.2 *Qualifications of Directors:* A Director will not be required to hold any Shares of the Company but will be entitled to receive notice of and to speak at all meetings of the Company.

21.3 *Rotation of Directors:* In each year two (2) Directors (not including Appointed Directors) will retire as determined at the annual meeting of the Company, provided that if this would result in any Director(s) being required to retire by rotation any earlier than three (3) years after their election or last re-election, then the number of Directors to retire at the relevant annual meeting of the Company will be reduced to exclude any such person(s). The order of the Directors to retire will be determined in accordance with each Director's tenure in office in that the two (2) Directors to retire in each year will be those longest in office. As between two (2) or more Directors who have been in office an equal length of time, the Director to retire will, unless the Board resolves otherwise, be determined by lot. The length of time a Director has been in office will be computed from his or her last election or re-election (as applicable) or appointment where he or she has previously vacated office.

### 21.4 *Eligibility for Election as a Director at the Annual Meeting of the Company:*

21.4.1 A retiring Director will be eligible for re-election. Subject to clause 21.6 he or she will retain office until the dissolution or adjournment of the annual meeting of the Company at which his or her successor is elected.

21.4.2 No person (not being a retiring Director) will be eligible for election to the office of Director at the annual meeting of the Company unless he or she has been nominated in writing, provided that such nomination will not be required if that person is recommended by the Directors. Every nomination must be made and signed by two Transacting Shareholders (other than the person nominated) as nominator and seconder. Every nomination paper must be left at the registered office of the Company, not later than 30 Working Days before the annual meeting of the Company.

21.4.3 No person may take office as a Director unless he or she has consented in writing to be a Director and certified that he or she is not disqualified from being appointed or holding office as a Director of the Company.

21.5 *Election of Directors:* Subject to clause 21.1, the Company at any annual meeting of the Company at which any Directors retire by rotation will fill up the vacated offices by electing a like number of Directors and, without notice may fill up any other vacancies.

21.6 *Election of Directors by Postal Ballot:*

21.6.1 The Board may resolve to hold a postal ballot for the election of Directors in accordance with clause 21.6.3 (or by such electronic means as permitted by the board in its sole discretion).

21.6.2 Shareholders entitled to vote will be entitled on a postal ballot (or a ballot conducted by electronic means) to one vote only.

21.6.3 A postal ballot will be conducted as follows:

(a) Not less than fourteen (14) days before the date fixed for the annual meeting the person appointed by the Board for that purpose will send to every Transacting Shareholder a voting paper upon which will be printed the names of the candidates for election as Directors and which will indicate the day and hour at which the ballot will close.

(b) Every Transacting Shareholder who votes will strike out the name of any candidate for whom he or she does not wish to vote and will leave uncanceled the name of the candidate or candidates for whom he or she desires to vote. Every Transacting Shareholder will sign his or her name within the envelope provided by the Company for the purpose, but not upon the voting paper. In the case of a Body Corporate, the signing will be on behalf of the Body Corporate by a Director or person authorised by the Body Corporate for the purpose. The envelope containing the voting paper will be sealed and posted to the scrutineers so as to reach the office of the scrutineers not later than the time fixed for the closing of the ballot.

(c) Should any Transacting Shareholder leave uncanceled upon his or her voting paper the names of more or less candidates than there are vacancies to be filled the vote will be invalid. Should the scrutineer not receive any voting papers before the time fixed for the closing of the ballot, the ballot will be declared null and void and the Directors will fill the vacancies by appointing the necessary number of persons as Directors from those nominated for election. Should the result of any ballot be inconclusive because of the candidates receiving an equal number of votes, the result between those candidates concerned will be determined by lot conducted by the scrutineers in such manner as they see fit.

(d) Upon the closing of the ballot the scrutineers will open the envelopes and will cause a list of names of the voting Transacting Shareholders to be made up from the envelopes and

then cause the envelopes to be destroyed. The scrutineers will then open the voting papers and report the result of the election to the Chairperson.

The scrutineers will be the auditors of the Company or such other person or persons (not being office bearers or candidates for office) as they may appoint.

#### 21.7 *Casual Vacancies:*

- 21.7.1 Subject to clause 21.8.7 any casual vacancy occurring among the Directors may be filled by the Directors, or in the Board's discretion the Board may call a special meeting for the purpose of filling any casual vacancy. Any person so chosen will hold office only until the conclusion of the next succeeding annual meeting of the Company.
- 21.7.2 The remaining Directors may continue to act notwithstanding any vacancy in their number. If the number of Directors falls below the minimum fixed by this Constitution the Directors will not, except for the purpose of filling vacancies or of summoning a special meeting of the Company, act for so long as the number is below the said minimum.

#### 21.8 *Appointed Directors:*

- 21.8.1 The Directors will have the power at any time and from time to time to appoint up to two (2) persons to be additional Directors to those who are elected pursuant to clause 21.5, and the provisions of this clause 21.8 will apply to such appointed Directors.
- 21.8.2 Any Director so appointed will be a person with skills, experience or knowledge in the commercial, legal or financial sectors of the business community or have such other expertise or attributes as the Board may from time to time determine as appropriate.
- 21.8.3 Any person so appointed will be appointed for a period not exceeding three (3) years and upon such terms as the Directors from time to time will determine and may have such appointment terminated at such time and upon such terms as the Directors may determine. The Directors may reappoint any Appointed Director whose term of office has expired.
- 21.8.4 A Director appointed under this clause 21.8 will commence to hold office immediately from the date of appointment ~~and will cease to hold office immediately at the expiration of~~ for a period not exceeding three (3) years from the date of such appointment or upon receipt of an earlier notice of termination of appointment in writing. The appointment of a Director under this clause 21.8 will be notified in writing to the Shareholders.
- 21.8.5 Subject to the provisions of this clause 21.8, the process for the appointment or reappointment of an Appointed Director will be as the Directors in their discretion deem fit.



- 21.8.6 An Appointed Director will be entitled to appointment as a Chairperson or deputy chairperson in accordance with clause 21.16 and will be counted in the quorum of Directors.
- 21.8.7 In the event that any casual vacancy occurs in the position of an Appointed Director the position will be filled in conformity with this clause 21.8.
- 21.9 *Status of Appointed Director:* All the provisions of this Constitution will apply to Appointed Directors except:
- 21.9.1 Clause 21.3 relating to rotation of Directors;
- 21.9.2 Clauses 21.4.1 and 21.4.2 relating to eligibility for election as Directors;
- 21.9.3 Clause 21.5 relating to election of Directors; and
- 21.9.4 Clause 21.6 relating to election of Directors by postal ballot.
- 21.10 *Managing Director:*
- 21.10.1 The Board may from time to time appoint a suitable person to be the Managing Director of the Company for such term and at such remuneration, and generally on such terms and conditions as it thinks fit. The Board may, subject to any contract between the Managing Director and the Company, from time to time remove or dismiss the Managing Director from office and appoint another Managing Director in his or her place. Subject to the terms and conditions of any agreement between the Company and its Managing Director and the terms of the delegation of authority from the Board to the Managing Director, the general and routine business of the Company will be managed by the Managing Director, who will at all times faithfully observe and obey all resolutions of the Board, but, subject thereto, he or she will have full power and authority to engage, suspend, or discharge all or any of the employees and servants of the Company and to fix their respective salaries, wages, or remuneration, to buy and sell, and to enter into all contracts, and generally to do such acts and things that he or she may deem expedient in carrying on the ordinary business of the Company.
- 21.10.2 A Managing Director will not while he or she holds office as such be subject to retirement by rotation, and will not be taken into account in determining the rotation or retirement of Directors, but (subject to the provisions of any contract between him or her and the Company) he or she will be subject to the same provisions as to resignation and removal as the other Directors of the Company.
- 21.10.3 Every Managing Director will be liable to be dismissed or removed from the position of Managing Director by a resolution in writing signed by a majority of all the other Directors for the time being entitled to receive notice of a meeting of the Directors (including any Alternate Director appointed in accordance with clause 21.12). The

Directors may enter into any agreement on behalf the Company with any person who is or is about to become a Managing Director with regard to the length and terms of his or her employment. The remedy of any such person for any breach of the agreement will be in damages only and the Managing Director will have no right or claim to continue in office as Managing Director contrary to the will of the Board.

#### *21.11 Remuneration of Directors:*

- 21.11.1 The Directors will be paid out of the funds of the Company such sum or sums, or at such rate per annum, by way of remuneration for their services as Directors, as the Company may at any general meeting from time to time by resolution determine. Any such determination will apply to the year for which the same is passed and to all subsequent years until the Company in a general meeting by resolution alters the same, provided that the remuneration will not be increased nor any greater sum voted than in the previous year unless the notice of intention to move accordingly, specifying the amount of the proposed increase, has been given to Shareholders in the notice convening the meeting. Such remuneration may be fixed for all or any of the Directors individually or collectively, or partly by the one and partly by the other of such means. Any remuneration payable to any Directors collectively will be divided amongst them in such proportions and in such manner as they may determine, and in default of such determination will be divided amongst them in equal proportions.
- 21.11.2 The Directors will be entitled to be paid their reasonable travelling, hotel, entertaining and other expenses incurred in consequence of their attendance at Board meetings or otherwise in the execution of their duties as Directors.
- 21.11.3 The Directors may award special remuneration out of the funds of the Company by a fixed sum or at a fixed rate to any Director or committee of Directors rendering any special services in going abroad or otherwise for any of the purposes of or in the interests of the Company or for undertaking any work additional to that required of the Directors of a Company similar to this. The Directors may further set aside out of the funds of the Company a fund for payment to Directors of a retirement allowance, provided that such allowance will not exceed the total remuneration paid by the Company to such Director as a Director in respect of any three financial years during which he or she was a Director.

#### *21.12 Alternate Directors:*

- 21.12.1 With the exception of a Director appointed pursuant to clause 21.8 any Director may appoint any person, not being a Director, who is approved by a majority of the Directors to be alternate or substitute Director during his or her absence or inability to act as Director. The appointee, while he or she holds office as an alternate Director, will be entitled to notice of meetings of the Directors and to attend and

vote at meetings of the Directors as a Director, will not require any qualification and will not be entitled to be remunerated otherwise than out of the remuneration of the Director appointing him or her. Any appointment so made may be revoked at any time by the appointor or by a majority of the other Directors. Any appointment or revocation under this clause will be effected by notice in writing to be delivered to the person appointed by the Board for that purpose, provided that a person may only be appointed alternate for one Director at any time.

21.12.2 The appointment of an alternate Director will be cancelled and the alternate Director will cease to hold office whenever the Director who appointed him or her will cease to be a Director. A Director retiring at any ordinary meeting and being re-elected at that meeting will not for the purpose of this clause be deemed to have ceased to be a Director.

21.13 *Retirement of Directors:* A Director may retire from his or her office at any time on giving notice in writing to the Company or by announcing the same at a meeting of the Board. His or her retirement will take effect upon receipt by the Company of the notice or at a later time specified in the notice or upon receipt by the Board of the announcement or at a later time specified in the announcement.

21.14 *Disqualification of Directors:* The office of Director will be vacated if the Director:

21.14.1 Becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or

21.14.2 Becomes a mentally disordered person, or a personal order relating to his or her property is made under the Protection of Personal and Property Rights Act 1988; or

21.14.3 Resigns his or her office in accordance with the provisions of section 157(2) of the Act; or

21.14.4 Becomes a person to whom section 151 of the Act applies; or

21.14.5 Absents himself or herself from attendance at meetings of the Directors continuously for the space of three months without special leave of absence from the Directors and his or her alternate (if any) did not attend any such meetings in his or her stead, and the other Directors resolve that the Director's office be vacated by reason of his or her absence and the absence of his or her alternate; or

~~Attains the age of 70 years provided however that for the purposes of this clause 21.14.6 the Director will be deemed to vacate his or her office immediately upon the dissolution or adjournment of the first annual meeting of the Company following the date that the Director attains the age of 70 years. Any such Director so vacating his or her office will be deemed to be the first, or if more than one respectively in order, of the Directors retiring in accordance with the provisions of clause 21.3.~~

21.15 *Removal of Director:* The Company may by ordinary resolution, and the Board may by unanimous resolution of the remaining Directors, remove any Director before the expiration of that Director's period of office and appoint another person in that Director's place. The notice of meeting for any such meeting must specify that one of the purposes for the meeting is to vote on such a resolution. A person so appointed will hold office only for the remainder of the term for which the Director in whose place he or she is appointed had been appointed or elected.

21.16 *Proceedings at Meetings:* The proceedings at meetings of Directors will except as otherwise set out in this clause be governed by the Third Schedule to the Act:

21.16.1 The Board may from time to time appoint a Chairperson and (if it thinks fit) a deputy chairperson and determine the period for which they respectively are to hold office. The Board may from time to time re-appoint such Chairperson or deputy chairperson for further periods. The Chairperson, or failing him or her the deputy chairperson (if any), will preside at all meetings of the Board, but if no such Chairperson or deputy chairperson is present within ten minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be Chairperson of such meeting. The Director so chosen will preside at such meeting accordingly.

21.16.2 The Chairperson of the Board will, in the case of an equality of votes, have a second or casting vote provided that if the quorum of Directors is less than three (3) the Chairperson will not have a second or casting vote unless three (3) or more Directors are present at the meeting.

21.16.3 A meeting of the board may be held:

(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; or

(c) by a combination of both of the methods described in paragraphs (a) and (b).

## **22. *Indemnity and Insurance***

22.1 The Company may give such indemnities and effect such insurances as are referred to in section 162 of the Act to the fullest extent permitted by that section.

## **23. *Notices***

23.1 *Notice to Joint Holders:* A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder named first in the

Share Register in respect of the Share.

- 23.2 *Notice to Personal Representative or Assignee of Shareholder:* A notice may be given by the Company to any person entitled to a Share in consequence of the death or bankruptcy or other incapacity of a member by any method specified in section 391 of the Act addressed to him or her by name or by the title of representative of the deceased or assignee of the bankrupt or otherwise, as the case may require, at the address (if any) or the telephone number (if any) within New Zealand supplied for the purpose by the person claiming to be so entitled, or (until such an address or telephone number has been so supplied) by giving notice in any manner in which the same might have been given if the death or bankruptcy or incapacity had not occurred.
- 23.3 *Effect of Notice Where Shares are Transferred:* Every person who by operation of law, by transfer, or by other means whatsoever will become entitled to any Share will be bound by every notice in respect of that Share which after becoming so entitled and prior to his or her name and address being entered on the Share Register has been duly given to the person from whom he or she derived his or her title to that Share.
- 23.4 *Period of Notice:* Where a given number of days' notice extending over any period is required to be given, the day of service will not be, but the day upon which the notice will expire will be, included in the number of days or other period.
- 23.5 *Notice to Overseas Shareholders:* Each Shareholder whose place of address is not in New Zealand will notify in writing to the Company a place in New Zealand which will be deemed his or her registered place of address. In the absence of any such notification the registered office of the Company will be deemed the registered address of the Shareholder for all purposes whatsoever, and all proceedings taken without other notice to any such Shareholder will be as valid as if he or she had due notice thereof.

## **24. Liquidation**

- 24.1 Subject to this Constitution and the terms of issue of any Shares, if the Company is wound up the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Act, divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not). The liquidator may for that purpose set such value as he or she deems fair upon any property to be divided as aforesaid and may determine how the division will be carried out as between the Shareholders of different classes of Shares. The liquidator may with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit but so that no Shareholders will be compelled to accept any Shares or other securities whereon there is any liability.
- 24.2 Subject to this Constitution and the terms of issue of any Shares if, upon the winding up of the Company:
- 24.2.1 The Surplus Assets will be more than sufficient to repay the whole of the paid up capital of the Company:

- (a) The Surplus Assets will be distributed amongst the Shareholders in proportion to the capital paid at the commencement of the winding up on the Shares held by them respectively, but only to the extent of the paid capital; and
- (b) The Excess Assets will be distributed amongst the holders of Ordinary Shares and the holders of Development Shares in proportion to the capital paid or which ought to have been paid, at the commencement of the winding up, on the Shares held by them respectively other than amounts paid in advance of calls; and

24.2.2 The Surplus Assets will be insufficient to repay the whole of the paid up capital, such Surplus Assets will be distributed so that as nearly as may be the losses will be borne by the Shareholders in proportion to the capital paid or which ought to have been paid, at the commencement of the winding up, on the Shares held by them respectively other than amounts paid in advance of calls, but this clause 24.2.2 is without prejudice to the rights of the holders of Shares issued upon special conditions.

24.3 Any commission or remuneration proposed to be paid on the sale or solvent liquidation of the Company to a Director or the Directors or liquidator will be subject to ratification by the Shareholders at a meeting called for that purpose. Prior notification of the amount of such proposed payments will be given to Shareholders at least fourteen (14) days before such meeting. If no quorum is present at such meeting the proposed payment will be deemed to have been ratified.

## **25. *Method of Contracting***

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

25.1.1 As specified in the Act; or

25.1.2 By a Director and by another person authorised by the Company for the time being for that purpose, both of whose signatures must be witnessed.