



Good Health **Healthy Future**

**PharmaZen Limited
Constitution**

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Constitution of PharmaZen Limited

Pursuant to the Companies Act 1993

Part I Interpretation

1 Definitions and Interpretation

1.1 In this constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

"Act" means the Companies Act 1993.

"alternate director" means a director appointed pursuant to clause 1.1(a).

"amalgamation" means the completed act of the company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company.

"annual meeting" means a meeting of shareholders held pursuant to clause 14.1.

"balance date" means the date adopted by the company as the end of its financial year for the purpose of its annual financial statements. [Section 2 of the Act and section 7 Financial Reporting Act]

"Board" means the directors numbering not less than the required quorum acting as the Board of directors of the company, and where one director is a quorum it means that director so acting alone. [Section 127]

"call" means a resolution of the Board under clause 9.1 requiring shareholders to pay all or part of the unpaid amount of the issue price of any Shares and, where the context requires, means the obligation of a shareholder to meet the amount due pursuant to such a resolution.

"chairperson" means the chairperson of the Board, elected under clause 9.2(a) or appointed under clause 1.1(a).

"class" and "class of Shares" means a class of Shares having attached to them identical rights, privileges, limitations, and conditions. [Section 116]

"company" means PharmaZen Limited.

"constitution" means this constitution of the company and all amendments to it from time to time.

"director" means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

"distribution", in relation to Shares held by a shareholder, means:

- (a) the direct or indirect transfer of money or property, other than Shares, by the company to or for the benefit of that shareholder; or
- (b) the incurring of a debt by the company to or for the benefit of a 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. [Section 2(1)]

"dividend" means a distribution by the company other than a distribution to which section 59 or section 76 of the Act applies. [Section 53]

"interest group", in relation to any action or proposal affecting rights attached to Shares, means a group of shareholders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more classes of Shares.

For the purposes of this definition:

- (a) one or more interest groups may exist in relation to any action or proposal; and
- (b) if
 - (i) action is taken in relation to some holders of Shares in a class and not others; or
 - (ii) a proposal expressly distinguishes between some holders of Shares in a class and other holders of Shares of that class;

holders of Shares in the same class may fall into 2 or more interest groups. [Section 116]

"interests register" means a register kept by the company at its registered office as required by section 189(1)(c) of the Act.

"major transaction", in relation to the company, means:

- (a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the company's assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of (whether contingent or not), assets of the company, the value of which is more than half the value of the company's assets before the disposition; or
- (c) a transaction which has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half the value of the company's assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of the company.

Nothing in paragraph (c) of this definition applies by reason only of the company giving, or entering into an agreement to give, a charge secured over assets of the company the value of which is more than half the value of the company's assets for the purpose of securing the repayment of money or the performance of an obligation. [Section 129(2), (2A) and (3)]

"managing director" means a director who is appointed under clause 22 as an employee of the company, with the responsibility for the management of the company (together with any other employee).

"month" means calendar month.

"Notice" means a notice given in accordance with the Act either in writing or electronically;

"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. [Section 105(2)]

"ordinary Share" means a Share which confers on the holder:

- (a) the right to vote at meetings of shareholders and on a poll to cast one vote for each Share held;
- (b) subject to the rights of any other class of Shares, the right to an equal share in dividends and other distributions made by the company; and
- (c) subject to the rights of any other class of shares, the right to an equal share in the distribution of the surplus assets of the company on its liquidation. [Section 36(1)].

"register" means the register of Shares required by clause 6 of this constitution and section 87 of the Act to be kept.

"Registrar" means the Registrar of Companies appointed under section 357(1) of the Act.

"Share" means a share in the company.

"shareholder" means a person:

- (a) registered in the register as the holder of one or more Shares; or
- (b) until the person's name is entered in the register, a person named as a shareholder in the application for registration of the company at the time of registration of the company; or
- (c) until the person's name is entered in the register, a person who is entitled to have that person's name entered in the register under a registered amalgamation proposal as a shareholder in an amalgamated company. [Section 96]

"solvency test" means an examination to be applied to the financial state of the company, which will be satisfied if:

- (a) the company is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the company's assets is greater than the value of its liabilities, including contingent liabilities, and in respect of which regard has been had to the matters referred to in section 4(2) of the Act.

For the purpose of this definition "debts" and "liabilities" have the meaning given to those terms in sections 52(4) or 108(5) of the Act as applicable.

"special meeting" means any meeting (other than an annual meeting) of shareholders entitled to vote on an issue, called at any time by the Board, or by any other person who is authorised by the Board to call meetings of shareholders. [Section 121]

"special resolution" means a resolution of shareholders approved by a majority of 75 per cent of the votes of those shareholders entitled to vote and voting on the question. [Section 2(1)]

"working day" means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) If Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday.
- (c) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (d) if the first day of January in any year falls on a Friday, the following Monday; and
- (e) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday. [Section 2(1)]

1.2 In this constitution unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this constitution;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
- (e) "written" and "in writing" includes any means of reproducing words, figures or symbols in a tangible and visible form; and
- (f) a reference to a clause is to that clause in this constitution unless stated otherwise.

1.3 Subject to this clause 1, expressions contained in this constitution bear the same meaning as specified in the Act as amended from time to time.

1.4 If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the constitution does not contravene or become inconsistent with the Act.

Part II Capacity

2 Capacity and Powers

2.1 Rights, powers and duties

The company, the Board, each director and each shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution. [Section 27]

2.2 Full capacity

Subject to this constitution, the Act, any other enactment and the general law, the company has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction. [Section 16]

Part III Shares

3 Issue of Shares

3.1 A: Classes of Shares

(a) Different classes of shares may be issued including without limitation shares which:

- (i) are redeemable within the meaning of the Act; or
- (ii) confer preferential rights to distributions of capital or income; or
- (iii) confer special, limited, or conditional voting rights; or
- (iv) do not confer voting rights. [Section 37 of the Act]

(b) The company has the power to redeem a redeemable share:

- (i) at the option of the company; or
- (ii) at the option of the holder of the share; or
- (iii) on a date specified in this constitution;

for a consideration that is specified or to be calculated by reference to a formula or required to be fixed by a suitably qualified person who is not associated with or interested in the company. [Section 68 of the Act]

3.2 B: Initial Shares

As at the date of this constitution the number of initial Shares and their class, to be issued pursuant to Section 41(a) of the Act, are those specified in the application for registration of the company.

3.3 Issue of Other Shares

(a) Subject to the Act, this constitution and the terms of issue of any existing Shares the Board may issue additional Shares (and rights or options to acquire Shares) of any class (including redeemable Shares) at any time, to any person and in such numbers as the Board thinks fit.

- (b) Unless the terms of issue of any class of Shares specifically otherwise provide, the Board may issue Shares that rank or would rank (as to voting or distribution rights or both) equally with or prior to existing Shares without any requirement that the Shares be first offered to existing shareholders and for the purposes of clause 12.212.2(a) such an issue is not an action affecting the rights attached to the existing Shares. [Section 45(3) and 117(3) (a)]
- (c) A share is issued when the name of the shareholder is entered as the holder on the register. [Section 51 of the Act]

3.4 Consideration for issue of Shares

- (a) Subject to clause 3.4(b), before the Board issues Shares pursuant to clause 3.3(a), it must:
 - (i) decide the consideration for which the Shares will be issued and the terms on which they will be issued;
 - (ii) if the Shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue;
 - (iii) resolve that, in its opinion, the consideration for the Shares and their terms of issue are fair and reasonable to the company and to all existing shareholders; and
 - (iv) if the Shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of that consideration is not less than the amount by which the Shares would be credited as paid up. [Section 47]
- (b) Clauses 3.2(a) and 3.4 do not apply to:
 - (i) the issue of Shares that are fully paid up from the reserves of the company to all shareholders of the same class in proportion to the number of Shares held by each such shareholder; or
 - (ii) the consolidation or subdivision of Shares. [Section 48]
 - (iii) the issue of shares on the conversion of any convertible securities or the exercise of any option to acquire shares in the company. [Sections 47(8) and 48]

3.5 Directors' certificate on consideration for issue

- (a) The directors who vote in favour of a resolution under clause 3.3(a) must sign a certificate:
 - (i) stating the consideration for, and the terms of, the issue;
 - (ii) describing the consideration in sufficient detail to identify it;
 - (iii) where a present cash value has been determined in accordance with clause 3.43.4(a)(ii), stating that value and the basis for assessing it;
 - (iv) stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the company and to all existing shareholders; and

- (v) if the Shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value is not less than the amount to be credited as paid up for the issue of the Shares. [Section 47(2)]
- (b) A copy of the directors' certificate given under clause 3.5(a) must be filed with the Registrar within 10 working days after it is given.

3.6 **Payment for Shares already issued**

Before Shares that have already been issued are credited as fully or partly paid up other than for cash, the Board must:

- (a) determine the reasonable present cash value of the consideration; and
- (b) resolve that, in its opinion, the present cash value of the consideration is:
 - (i) fair and reasonable to the company and all existing shareholders; and
 - (ii) not less than the amount to be credited in respect of the Shares. [Section 47(3)]

3.7 **Directors' certificate on payment for Shares already issued**

- (a) The directors who vote in favour of a resolution under clause 3.6 must sign a certificate:
 - (i) describing the consideration in sufficient detail to identify it; and
 - (ii) stating:
 - (A) the present cash value of the consideration and the basis for assessing it;
 - (B) that the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders; and
 - (C) that the present cash value of the consideration is not less than the amount to be credited in respect of the Shares. [Section 47(4)]
- (b) A copy of the directors' certificate given under clause 3.7(a) must be filed with the Registrar within 10 working days after it is given.

3.8 **Deemed payment other than for cash**

For the purposes of clauses 3.4 and 3.6, Shares that are (or are to be) credited as paid up (whether wholly or partly) as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments (whether simultaneously or not), must be treated as paid up other than in cash to the value of the property or services. [Section 47(6)]

3.9 **Amount owing on issue of Shares**

Where money or other consideration is due at a fixed time to the company on Shares in accordance with their terms of issue, that amount does not comprise a call and no notice is required to be given to

the shareholder (or other person liable under the terms of issue) before the company may enforce payment of the amount due.

3.10 Bonus Shares

The Board may authorise the allotment of Shares to all shareholders of the same class, issued as fully or partly paid up (from the assets of the company) in proportion to the number of Shares held by each such shareholder. [Section 48]

3.11 Consolidation and subdivision of Shares

The Board may authorise:

- (a) the consolidation and division of Shares or any class of Shares in proportion to those Shares or the Shares in that class; and
- (b) the subdivision of the Shares or any class of Shares in proportion to those Shares or the Shares in the class. [Section 48]

3.12 Company paying up partly paid Shares

Subject to the solvency test being satisfied after the distribution is made, and to clause 3.6, the Board may authorise the payment (from the assets of the company) of any amount unpaid on Shares already issued by the company.

3.13 Issue of Shares by unanimous assent

If all entitled persons have agreed or concurred in writing and have not withdrawn that agreement or concurrence as permitted by section 107(6) of the Act, Shares may be issued otherwise than in accordance with clauses 3.3, 3.4 and 3.5. [Section 107(2)]

4 *Purchase of own Shares*

4.1 Purchase by company of its Shares

The company may purchase or otherwise acquire its Shares in accordance with, and subject to, sections 58 to 65, 107, 108 and 110 to 112 of the Act, and may hold the acquired Shares in accordance with sections 67A to 67C of the Act.

4.2 Non-proportional Share repurchase

The Board may make an offer to purchase or otherwise acquire Shares:

- (a) To any one or more Shareholders as the Board thinks fit; and
- (b) For whatever number of Shares or proportions of Shares as the Board thinks fit.

5 *Transfer of Shares*

5.1 Entry in register

Subject to clause 5.2, Shares may be transferred by entry of the name of the transferee on the register. [Section 84]

5.2 Share transfer and form of transfer

- (a) Any Shareholder may transfer all or any shares held by a form of transfer complying with subclause (b).
- (b) Every form of transfer shall be in any usual or common form or other form which the Board may approve and shall be executed by or on behalf of the transferor to the satisfaction of the Board. If a share is not fully paid up the form of transfer (or a separate transferee's acceptance document in any usual or common form or other form which the Board may approve) shall also be executed by or on behalf of the transferee to the satisfaction of the Board. [Section 84].

5.3 Board's right to refuse or delay registration of transfer

- (a) The Board may, within 30 working days of the receipt of a form of transfer of Shares, refuse or delay the registration of the transfer if:
 - (i) the holder of the Shares has failed to pay an amount due to the company in respect of those Shares;
 - (ii) the Board considers that to effect the transfer would result in a breach of the law;
 - (iii) the Board considers that it is not in the best interests of the company to register the transfer; or
 - (iv) clause 7.3 has not been complied with or the form of transfer has not been properly executed or does not comply with clause 5.2;
 - (v) the registration of the transfer would result in there being a breach of an agreement or undertaking of which the Board has notice
 - (v) the Board has determined a Minimum Shareholding in the Company and the transfer would result in either party to the transfer holding less than a minimum holding.
- (b) A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within 5 working days of the date of the resolution being passed. [Section 84]

5.4 Registration of transfer

Subject to clause 5.2, on receipt of a duly completed form of transfer, the company must enter the name of the transferee on the register as holder of the Shares, unless the Board has resolved in accordance with clause 5.4 to refuse or delay the registration of the transfer of the Shares.

6 Share register

6.1 Maintain register

- (a) The company must maintain a register which records all Shares issued by the company and which states:
 - (i) whether, under this constitution or the terms of issue of any Shares, there are any restrictions or limitations on their transfer; and

(ii) where any document that contains the restrictions or limitations may be inspected.
[Section 87(1)]

(b) The company may appoint an agent to maintain the register.

[Section 87(3)]

6.2 Contents of register

The register must state, with respect to each class of Shares:

(a) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last 10 years, a shareholder;

(b) the number of Shares held by each shareholder within the last 10 years; and

(c) the date of any:

(i) issue of Shares to;

(ii) repurchase or redemption of Shares from; or

(iii) transfer of Shares by or to;

each shareholder within the last 10 years; and in relation to the transfer, the name of the person to or from whom the Shares were transferred. [Section 87(2)]

6.3 Directors' duty to supervise register

It is the duty of each director to take reasonable steps to ensure that the register is properly kept and that the transferees' names are promptly entered on it in accordance with clause 5.4. [Section 90]

6.4 Register prima facie evidence

Subject to section 91 of the Act, the entry of the name of a person in the register as holder of a share is prima facie evidence that the legal title to the share is vested in that person. [Section 89]

6.5 Register evidence of rights

The company may treat the registered holder of a share as the only person entitled to:

(a) exercise the right to vote attaching to the share;

(b) receive notices in respect of the share;

(c) receive a distribution in respect of the share; and

(d) exercise the other rights and powers attaching to the share. [Section 89(2)]

6.6 Trust not to be registered or recognised

(a) No notice of a trust, whether express, implied, or constructive, may be entered on the register.
[Section 92]

- (b) Except as required by law, no person will be recognised by the company as holding any share upon trust or holding any interest in a share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the share vested in the registered holder.
- (c) A personal representative of a deceased holder of Shares is entitled to be entered in the register as the holder of such Shares as a personal representative.
- (d) The registration of a trustee, executor or administrator as a personal representative of a deceased shareholder does not constitute notice of a trust. [Section 93]

6.7 Minimum Shareholdings

- (a) The Directors may determine from time to time the minimum number of shares that must be held by each shareholder; On the presentation of a share transfer if as a result of that transfer being implemented this would result in a shareholder holding less than the minimum number of shares determined by the Directors then the Board may decline to register that transfer.
- (b) The Directors may give notice to any shareholder holding less than a minimum number of shares as determined under (a) above that the Company will repurchase those shares and the Company may then offer to repurchase those shares and on that offer being accepted may cancel those shares so repurchased. This buy back of shares shall not require shareholder approval.

7 Share certificates

7.1 Application for share certificate

A shareholder may apply to the company for a certificate relating to some or all of the shareholder's Shares.

7.2 Issue of share certificate

- (a) The company must, within 20 working days after receiving an application for a share certificate under clause 7.2, send to the shareholder a certificate stating the name of the company, and the class and number of Shares to which the certificate relates.
- (b) If the application relates to some but not all of the applicant's Shares, the company must separate the Shares shown in the register as owned by the applicant into separate parcels; one parcel being the Shares to which the share certificate relates, and the other parcel being any remaining Shares. [Section 95]

7.3 Transfer to be accompanied by share certificate

Notwithstanding clause 5 and section 84 of the Act, 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 by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board). [Section 95(5)]

7.4 Surrendered share certificate

Where Shares to which a share certificate relates are transferred, and the share certificate has been sent to the company to enable registration of the transfer, the share certificate will be cancelled and no further share certificate will be issued except at the request of the transferee.

8 *Transmission of Shares*

- (a) In the case of the death of a shareholder, the survivor (where the deceased was a joint holder) or the legal personal representative of the deceased (where the deceased was a sole holder) will be the only person recognised by the company as having any title to the deceased's interest in the Shares. Nothing contained in this clause 8(a) will release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.
- (b) Notwithstanding clause 6.6, the assignee of the property of a bankrupt shareholder is entitled to be registered as the holder of the Shares held by the bankrupt.

9 *Call on Shares*

9.1 Board may make calls

- (a) Subject to the terms of issue of any Shares, the Board may resolve to require the holders of unpaid or partly paid Shares to pay all or part of the amount unpaid on the Shares. The terms of the resolution will constitute the terms of the obligation to pay the call (including payment by instalments). The call may be revoked or postponed at any time by the Board.
- (b) Subject to the terms of issue of any class of Shares and to clause 9.4, unless all the holders of a class of Shares subject to a call unanimously agree, a call (or the postponement or revocation of a call) will apply to all the holders of Shares of the class equally.

9.2 Notice of calls

- (a) Notice of the call must be given to the shareholder at the time of the call or to a subsequent holder of the Shares. Failure to give notice to a shareholder will not invalidate a call but it will not be payable by that shareholder until the notice has been served on the shareholder. The notice must specify the day by which and the place at which the call must be paid.
- (b) Notice of a call sent by post to a shareholder to the address recorded in the register as the address of the shareholder will be deemed to have been received by the shareholder the day after it was posted.

9.3 Liability for calls

- (a) The joint holders of Shares are jointly and severally liable to pay all calls in respect of the Shares.
- (b) If a call is not paid before or on the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment until the time of actual payment) at such rate as the Board determines either at the time of the call or subsequently together with all expenses incurred by the company by reason of the shareholder's default.
- (c) The liability for a call which has become due and payable attaches to the current shareholder and not a prior shareholder, notwithstanding that at the date of the call (or the date the call fell due for payment) another person was the holder of the Shares or that the notice of the call was served on the then shareholder and not the current shareholder.
- (d) Following the registration in the register of a change of ownership of Shares in respect of which a call has been made, a notice of the call is not required to be served on the new shareholder.

9.4 **Agreement to differentiate between calls**

The Board may, on the issue of Shares, by agreement with the shareholders concerned, differentiate between the holders of the same class as to the amount to be paid on the Shares and the times for payment.

10 *Suspension of right to dividends, forfeiture and lien*

10.1 **Suspension of right to dividends**

- (a) If a shareholder fails to pay any call (or instalment of a call) on the day appointed for payment, the Board may at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, suspend payment of any dividends or other distributions payable to the shareholder.
- (b) The amount owing under the call for the purposes of clauses 10.1 and 10.3 may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder of the amount owing under the call.

10.2 **Application of suspended dividends**

All dividends and other distributions suspended pursuant to clause 10.1 may be applied by the company to reduce the amount owing under the call. Dividends so applied will be deemed to have been paid in full.

10.3 **Lifting suspension of right to dividends**

When the total dividends and distributions withheld and applied under clause 10.2 equal the total amount owing under the call, including amounts owing under clause 10.1(b), the suspension of the right to dividends and distributions will be lifted, and all rights to be paid dividends and distributions on the Shares will resume.

10.4 **Forfeiture**

- (a) If a shareholder fails to pay any call or instalment of a call on the day appointed for payment of it the Board may, while any part of the call or instalment remains unpaid, serve a notice on him or her requiring payment of so much of the call or instalment as is unpaid together with any interest, which may have accrued and all expenses that may have been incurred by the company by reason of such non-payment.
- (b) The notice shall name a further day (not earlier than the expiration of 10 working days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.
- (c) If the requirements of the notice are not complied with, any Share in respect of which the notice has been given may, at any time after the notice is given and before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all dividends and any other distribution in respect of the forfeited Shares and not actually paid before the forfeiture.
- (d) When any Share has been forfeited:

- (i) notice of the resolution shall be given to the shareholder in whose name the Share was registered immediately before the forfeiture;
 - (ii) an entry of the forfeiture, with the date of the forfeiture, shall be made in the register; and
 - (iii) the Share certificate of any Shares forfeited shall be immediately cancelled by the company and the shareholder shall return the Share certificate for the forfeited Share to the company within 10 working days of receiving notice of the resolution.
- (e) A person whose Shares have been forfeited shall cease to be a shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the company all money which at the date of the forfeiture was payable by him or her to the company in respect of the Shares but his or her liability shall cease if and when the company receives payment in full of all such money in respect of the Shares.
- (f) The provisions of this constitution as to forfeiture shall 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.
- (g) Any failure to give the notice, or to make the entry, required under clause 10.4(d) does not invalidate the forfeiture.

10.5 **Lien**

- (a) The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those Shares. This lien is for:
- (i) all money payable (whether presently or not) in respect of Shares held by the shareholder;
 - (ii) all other money presently payable by the shareholder to the company on any account whatever; and
 - (iii) any amount the company may be called upon to pay under any statute or regulation in respect of Shares of a deceased shareholder or other shareholder (whether or not the period for the payment, fulfilment or discharge has actually arrived).
- (b) The lien extends to all dividends from time to time declared in respect of the Shares.

10.6 **Sale on exercise of forfeiture or lien**

- (a) Subject to this clause 10.6 a forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board thinks fit.
- (b) Subject to this clause 10.6, the company may sell in such a manner as the Board thinks fit any Shares on which the company has a lien. No sale may be made until:
- (i) a sum in respect of which the lien exists is due and payable;

- (ii) a notice in writing stating, and demanding payment of, the amount due and payable (in respect of which the lien exists) has been given to the current registered holder of the share (or the person entitled to that share by reason of the registered holder's death or bankruptcy); and
 - (iii) 10 working days have expired since the giving of that notice.
- (c) The net proceeds of the sale of any forfeited Share or any Shares sold for the purpose of enforcing a lien are to be applied in or towards satisfaction of any unpaid calls, instalments, in the case of a lien, or any other money in respect of which the lien existed. The residue, if any, shall be paid to the former holder of the Shares.
- (d) A certificate signed by a director stating that the power of sale provided in this clause 10.6 has arisen, and is exercisable by the company under this constitution, or that a Share in the company has been duly forfeited on the date stated, will be conclusive evidence of the facts stated in the certificate.
- (e) For giving effect to any sale after forfeiture or for enforcing a lien in purported exercise of the powers given in this constitution, the Board may authorise some person to transfer the Shares sold to the purchaser. The purchaser will be registered as the holder of the Shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the Shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the company exclusively. If the Share certificate for the forfeited Shares is not delivered up to the company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the Share certificate not delivered up.

11 Distributions

11.1 Solvency test

- (a) Subject to clause 11.2, the Board may, if it is satisfied on reasonable grounds that the company will satisfy the solvency test immediately after the distribution, authorise a distribution by the company to shareholders of any amount and to any shareholders as it thinks fit.
- (b) The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the company will satisfy the solvency test immediately after the distribution. The grounds for that opinion must also be stated in that certificate. [Sections 4 and 52]

11.2 Dividends payable pari passu

- (a) Subject to clause 11.2(b), the Board may not authorise a dividend:
 - (i) in respect of some but not all the Shares in a class; or
 - (ii) that is of a greater value per share in respect of some Shares of a class than 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 shareholder's liability under this constitution or under the terms of issue of the share. [Section 53]

- (b) A shareholder may waive his or her entitlement to receive a dividend by giving a notice in writing, signed by or on behalf of the shareholder, to the company. [Section 53(3)]
- (c) If all the shareholders of the same class concur in writing in respect of each proposed dividend, the company may pay a dividend which is distributed other than in accordance with clause 11.2(a).

[Section 107(1)]

11.3 Unclaimed distributions

- (a) Any distribution that has not been claimed after one year from the date of the distribution may be invested or otherwise made use of by the Board for the benefit of the company until it is claimed. The company shall not be regarded as holding any such amount used on trust for the claimant.
- (b) Any distribution remaining unclaimed for a period of five years from the date of the distribution may be forfeited by the Board for the benefit of the company, provided that the Board may in its discretion cancel the forfeiture and pay the distribution to any person producing evidence satisfactory to the Board that he or she is entitled to the amount claimed.

11.4 Bonus Shares in lieu of dividend

The Board may issue Shares to any shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if:

- (a) the right to receive Shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends, has been offered to all shareholders of the same class on the same terms; and
- (b) relative voting or distribution rights, or both, would be maintained if all shareholders elected to receive the Shares in lieu of the proposed dividend; and
- (c) the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
- (d) the Shares issued to each shareholder are issued on the same terms and subject to the same rights as the Shares issued to all shareholders in that class who agree to receive the Shares; and
- (e) the provisions of section 47 of the Act are complied with by the Board. [Section 54]

11.5 Discounts to shareholders

- (a) The Board may, pursuant to a discount scheme, resolve that the company offer shareholders discounts in respect of some or all of the goods sold or services provided by the company.
- (b) Subject to clause 11.5(d), the discount scheme must be one where the Board has previously resolved that the proposed discounts:
 - (i) are fair and reasonable to the company and all shareholders; and
 - (ii) will be available to all shareholders or to all shareholders of the same class on the same terms.

- (c) The discount scheme may not be approved or continued by the Board unless the Board is satisfied on reasonable grounds that the company will satisfy, or is satisfying, the solvency test.
- (d) If all shareholders of the class of Shares to which a proposed discount scheme would apply, agree in writing, the scheme may be put into effect notwithstanding that it does not comply with clause 11.5(b). [Sections 55 and 107(1)]

11.6 Financial assistance on acquisition of Shares

The company may, subject to and in accordance with sections 76 to 80, 107 and 108 of the Act, give financial assistance (whether directly or indirectly) to a person for the purpose of, or in connection with, the purchase of Shares issued (or to be issued) by the company, or by its holding company. [Section 76]

Part IV Shareholders Rights and Obligations

12 Shareholder's rights

12.1 Issue of statement of rights to shareholder

- (a) The company must issue to any shareholder, on request, a statement that sets out:
 - (i) the class of Shares held by the shareholder, the total number of Shares of that class issued by the company, and the number of Shares of that class held by the shareholder;
 - (ii) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the Shares held by the shareholder; and
 - (iii) the relationship of the Shares held by the shareholder to other classes of Shares.
- (b) The company is not obliged to provide a shareholder with a statement under clause 12.1(a), if:
 - (i) a statement that complies with clause 12.1(a)(i) to 12.1(a)(iii) has been provided within the previous 6 months;
 - (ii) the shareholder has not acquired or disposed of Shares since the previous statement was provided;
 - (iii) the rights attached to the Shares have not been altered since the previous statement was provided; and
 - (iv) there are special circumstances that make it reasonable for the company to refuse the request.
- (c) A statement issued pursuant to clause 12.1(a) must state in a prominent place that it is not evidence of title to the Shares or of the matters set out in it. [Section 83]

12.2 Alteration of Shareholder's rights

- (a) The Company must not take action that affects the rights attached to Shares unless that action has been approved by a special resolution of each interest group.
- (b) For the purposes of clause 12.2(a) the rights attached to a Share include:

- (i) the rights, privileges, limitations, and conditions attached to the Share by the Act or this constitution, including voting rights and rights to distributions;
- (ii) the right to have the procedure set out in this clause, and any further procedure required by this constitution for the amendment or alteration of rights, observed by the company; and
- (iii) the right that a procedure required by this constitution for the amendment or alteration of rights not be amended or altered.

but do not include:

- (iv) the issue of further shares ranking equally or in priority to existing shares pursuant to Clause 3.2 (b) [Section 117 (3)(a)]

12.3 Shareholders entitled to exercise certain rights.

- (a) The Shareholders who are:
 - (i) entitled to receive distributions; or
 - (ii) entitled to exercise any other right or receive any other benefit under the Act, this constitution or pursuant to the terms of issue of Shares,are those shareholders of the relevant class:
 - (iii) if the Board has fixed a date for the purpose, whose names are registered in the register on that date; or
 - (iv) if the Board does not fix a date for the purpose, whose names are registered in the register on the day on which the Board or the Shareholders, as the case may be, pass the resolution concerned.
- (b) A date must not be fixed under clause 12.3(a) that precedes by more than 20 Working Days the date on which the proposed action will be taken. [Section 125]

13 Exercise of powers reserved to shareholders

13.1 Powers reserved to shareholders

- (a) Powers reserved to shareholders by the Act or by this constitution may be exercised:
 - (i) at an annual meeting or a special meeting; or
 - (ii) by a resolution in lieu of a meeting pursuant to clause 14.3.
- (b) Unless otherwise specified in the Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution. [Section 104]

13.2 **Special resolutions**

When shareholders exercise a power to approve any of the following, that power may only be exercised by a special resolution:

- (a) an alteration to or revocation of this constitution or the adoption of a new constitution;
- (b) a major transaction;
- (c) an amalgamation;
- (d) the liquidation of the company.

Any decision made by special resolution pursuant to this clause may be rescinded only by a special resolution, provided that a resolution to put the company into liquidation cannot be rescinded. [Section 106]

13.3 **Unanimous assent to certain types of action**

- (a) Notwithstanding clause 11.1, if all entitled persons have agreed or concurred in writing and have not withdrawn that agreement or concurrence as permitted by section 107(6) of the Act:
 - (i) a dividend may be authorised otherwise than in accordance with clause 11.2;
 - (ii) a discount scheme may be approved otherwise than in accordance with clause 11.5;
 - (iii) Shares that have been issued as redeemable at the option of the company may be redeemed otherwise than in accordance with sections 69 to 72 of the Act; and
 - (iv) any of the matters referred to in clause 21.1(a) may be authorised otherwise than in accordance with that clause.
- (b) A power referred to in clause 13.3(a) must not be exercised unless the Board is satisfied on reasonable grounds that the company will, immediately after the exercise of the power, satisfy the solvency test.
- (c) The directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, the company will, after the exercise of the power, satisfy the solvency test. [Section 107(1)]

13.4 **Management review by shareholders**

- (a) A shareholder may question, discuss, and comment on the management of the company at a meeting of shareholders.
- (b) A meeting of shareholders may pass a resolution relating to the management of the company.
- (c) Notwithstanding section 128 of the Act or any other clause of this constitution, a resolution relating to the management of the company passed at a meeting of shareholders (in accordance with clause 13.4(b)) is not binding on the Board. [Section 109]

13.5 Dissenting shareholder may require company to purchase Shares

Where:

- (a) a shareholder is entitled to vote on the exercise of one or more of the powers set out in:
 - (i) clause 13.2(a) and the proposed alteration imposes or removes a restriction on the activities of the company; or
 - (ii) clause 13.2(b) or 13.2(c); and
- (b) the shareholders resolved, pursuant to clause 13.2 to exercise the power; and
- (c) the shareholder casts all the votes attached to Shares registered in the shareholder's name and having the same beneficial owner against the exercise of the power; or
- (d) where the resolution to exercise the power was passed under clause 14.3, the shareholder did not sign the resolution,

that shareholder is entitled to require the company to purchase those Shares in accordance with section 111 of the Act. [Section 110]

13.6 Shareholder proposals

- (a) A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of the shareholders at which the shareholder is entitled to vote.
- (b) If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must (at the expense of the company) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (c) If the notice is received by the Board not less than five working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must (at the expense of the shareholder) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (d) If the notice is received by the Board less than five working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, if practicable and (at the expense of the shareholder) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (e) If the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

- (f) The Board is not required to include in or with the notice given by the Board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous, or vexatious.
- (g) Where the costs of giving notice of the shareholder's proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must (on giving notice to the Board) deposit with the company or tender to the company a sum sufficient to meet those costs. [Clause 9 of First Schedule]

14 Meetings of shareholders

14.1 Annual meeting

- (a) The Board must, in accordance with section 120 of the Act, call an annual meeting of shareholders to be held:
 - (i) not later than 6 months after the balance date of the company; and
 - (ii) not later than 15 months after the previous annual meeting, or in respect of the first annual meeting not later than 18 months after the date of the company's incorporation.
- (b) The company must hold the annual meeting on the date on which it is called to be held. [Section 120]
- (c) It shall not be necessary for the company to hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with sections 122(2) and 122(3) of the Act.

14.2 Special meetings.

A special meeting:

- (a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting; and
- (b) must be called by the Board on the written request of shareholders holding not less than 5 per cent of the votes entitled to be cast on the issue. [Section 121]

14.3 Resolution in lieu of meeting

- (a) Subject to clause 14.3(c), a resolution in writing signed by not less than 75 per cent (or where it is greater, the percentage required for the passing of a special resolution) of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, who together hold not less than 75 per cent (or where it is greater, the percentage required for the passing of a special resolution) of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.
- (b) For the purposes of clause 14.3(a), any such resolution may consist of one or more documents in similar form (including letter, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the shareholders entitled to vote on the resolution.

- (c) A resolution pursuant to section 196(2) of the Act to not appoint an auditor may be passed as provided in clause 14.3(a), provided that the resolution must be signed by all the shareholders entitled to vote on the resolution.
- (d) Within five working days of a resolution being passed under this clause, the company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed. [Section 122]

14.4 Chairperson of meetings of shareholders

- (a) If the directors have elected a chairperson, and that chairperson is present at a meeting of shareholders, he or she must chair the meeting.
- (b) If no chairperson has been elected or if, at any meeting of shareholders, the chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to chair the meeting. [Clause 1 of the First Schedule]

14.5 Shareholders entitled to notice of meeting

- (a) The shareholders entitled to receive notice of a meeting of shareholders are those shareholders of the relevant class:
 - (i) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of meeting, whose names are registered in the register on that date; or
 - (ii) if the Board does not fix a date for purpose of establishing an entitlement to receive the notice of meeting, whose names are registered in the register at the close of business on the day immediately preceding the day on which the notice is given.

(b) A date fixed by the Board under clause 14.5(a)(i) must not precede by more than 30 working days nor less than 10 working days the date on which the meeting is to be held. [Section 125(3) and (4)].

(c) A shareholder may notify the Company that the shareholder wishes to receive documents electronically in accordance with section 391(3A) of the Companies Act 1993.

~~(b)~~(d) If a shareholder elects to receive electronic notices then the Company, in accordance with sections 391(3B) and (3C) may send notice to shareholders as provided by those subsections.

14.6 Notice of meeting

~~Written notice~~ Notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting, and to every director and the auditor of the company, not less than 10 working days before the meeting. [Clause 2 of First Schedule]

14.7 Contents of notice

The notice referred to in clause 14.6 shall address the relevant matters set out below: The notice referred to in clause 14.6 must 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; [Clause 2 of First Schedule]
- (b) the text of any special resolution to be submitted to the meeting; [Clause 2 of First Schedule]
- (c) the text of any resolution for the purposes of section 207I or 207J of the Act to be submitted to the meeting; [Clause 2 of First Schedule]
- (d) in the case of special resolutions required by section 106(1)(a) or (b) of the Act, the right of a shareholder under section 110 of the Act; [Clause 2 of First Schedule]
- (e) the method of voting and if it is postal voting, electronic voting or any other method of voting;
- (f) the way in which votes are to be cast, the address or electronic system to which votes are to be sent or posted including, if required, the name to which they are to be sent;
- ~~(d)~~(g) the time period within which voting rights must be exercised.
- ~~(c) the postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and [Clause 7(2) of First Schedule]~~
- ~~(d) that the postal vote must be received by the person referred to in paragraph (c) at least 48 hours prior to the start of the meeting.~~

14.8 Irregularities in notice

- (a) 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. [Clause 2(3) of First Schedule]
- (b) The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting. [Clause 2(3A) of First Schedule]

14.9 Method of holding 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) 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. [Clause 3 of First Schedule]

14.10 Adjournments

- (a) The chairperson of a meeting of shareholders may, at the request of those shareholders present in person or by proxy who are between them able to exercise a majority of the votes able to be cast at the meeting, adjourn the meeting.

- (b) No business shall be transacted of any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) 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 clauses 14.6 and 14.7 [Clause 2 of First Schedule]

14.11 Minutes

- (a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of shareholders.
- (b) Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings. [Clause 8 of First Schedule]

15 Voting at meetings

15.1 Quorum

- (a) A quorum for a meeting of shareholders is present if those shareholders who have cast votes in person, by post or electronically or who are present in person or by proxy ~~are postal votes or who are present, or their proxies who are present, are~~ between them able to exercise 5% of the votes to be cast on the business to be transacted by the meeting. [Clause 4(2) of First Schedule]
- (b) Subject to clause 15.1(c), no business may be transacted at a meeting of shareholders if a quorum is not present.
- (c) If a quorum is not present within 30 minutes after the time appointed for the meeting:
 - (i) in the case of a meeting called pursuant to a requisition of shareholders under clause 14.2(b), the meeting is dissolved:
 - (ii) 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 directors 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 present or their proxies are a quorum. [Clause 4 of First Schedule].

15.2 Voting

- (a) In the case of a meeting of shareholders held under clause 14.9(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
 - (i) voting by voice; or
 - (ii) voting by show of hands.
- (b) In the case of a meeting of shareholders held under clause 14.9(b), unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson of the meeting.

- (c) A declaration by the chairperson of the 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 15.2(d).
- (d) At a meeting of shareholders, a poll may be demanded by:
 - (i) not less than five shareholders having the right to vote at the meeting; or
 - (ii) a shareholder or shareholders representing not less than 10 per cent of the total voting rights of all shareholders having the right to vote at the meeting; or
 - (iii) 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 per cent of the total amount paid up on all Shares that confer that right; or
 - (iv) the chairperson of the meeting.
- (e) A poll may be demanded either before or after the vote is taken on a resolution.
- (f) If a poll is taken, votes must be counted according to the votes attached to the Shares of each shareholder present (in person or by proxy) and voting.
- (g) The chairperson of a shareholders' meeting is not entitled to a casting vote [Clause 5(7) of First Schedule]
- (h) For the purposes of this clause, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder. [Clause 5 of First Schedule]

15.3 Proxies and representatives

- (a) A shareholder may exercise the right to vote ~~either~~ by being present, by electronic voting, or by proxy.
- (b) A proxy for a shareholder is entitled to attend, be heard, and vote at a meeting of shareholders as if the proxy were the shareholder.
- (c) A proxy must be appointed by notice in writing signed by or, in the case of an electronic notice, sent by, the shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- (d) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced 48 hours before the start of the meeting. The Chairperson may generally or in respect of any particular shareholder waive the time requirements of this Clause 15.3 (d). [Clause 6 of First Schedule].
- (e) A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. [Clause 10 of First Schedule]

15.4 Postal votes

- (a) A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause 15.4. [Clause 7(1) of First Schedule]
- (b) To avoid doubt, a postal vote may be cast using electronic means permitted by the Board in accordance with the Act.
- (c) The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting.
- (d) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- (e) A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting, by sending a notice of the manner in which his or her Shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- (f) It is the duty of the person authorised to receive and count postal votes at a meeting:
 - (i) to collect together all postal votes received by him or her, or by any other authorised person, or by the company;
 - (ii) in relation to each resolution to be voted on at the meeting, to count:
 - (A) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
 - (B) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution;
 - (iii) to sign a certificate stating that he or she has carried out the duties set out in paragraphs (e)(ii)(A) and (B) of this clause and which sets out the results of the counts required by paragraphs (e)(ii) of this clause; and
 - (iv) to ensure that the certificate required by paragraph (e)(iii) of this clause is presented to the chairperson of the meeting.
- (g) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
 - (i) on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;
 - (ii) on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

- (h) The chairperson of a meeting must call for a poll on a resolution on which the chairperson holds sufficient postal votes that if a poll were taken the result could differ from that obtained on a show of hands.
- (i) The chairperson of a meeting must ensure that a certificate of postal votes held by the chairperson is annexed to the minutes of the meeting. [Clause 7 of First Schedule]

15.5 **Votes of joint holders**

Where 2 or more persons are recorded in the register as the holder of a share, the vote of the person named first in the register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders. [Clause 11 of First Schedule]

15.6 **Unpaid sums**

If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than at a meeting of an interest group. [Clause 12 of First Schedule]

15.7 **Meetings of interest groups**

The provisions of clauses 14 and 15 shall, with such consequential amendments as may be necessary, govern the proceedings of any meeting of an interest group.

15.8 **Other proceedings**

Except as provided in this constitution the shareholders may regulate their own procedure.

Part V Directors and their Powers and Duties

16 *Appointment and removal of Directors*

16.1 *Board Composition*

The composition of the Board must include the following:

- (a) the minimum number of Directors (other than alternate directors) shall be three and the maximum number of Directors (other than alternate directors) is seven;
- (b) at least two Directors must be ordinarily resident in New Zealand; and
- (c) of the number of Directors at least five shall be elected and the Board may appoint up to two independent directors.

16.2 *Independent Directors*

The Board may appoint up to two (2) independent Directors provided the persons so appointed have the experience and qualifications to be of special value to the Company to act as a director of the Company. The Board shall have the following powers in respect of those appointments:

- (a) to determine the period for which they hold office, which period shall be reviewed at least every three years;
- (b) the right to remove, by a majority vote of the Board, any person so appointed;
- (c) any other terms and conditions of holding office.

16.3 Appointment of Directors

- (a) The provisions in this clause apply to all directors to be appointed by the shareholders. The provisions do not apply to independent directors appointed under clause 16.2.
- (b) Any natural person who is not disqualified under the Act and who has been nominated at least 20 working days prior to the Annual Meeting of the Company may be appointed as a Director by an ordinary resolution of shareholders. This provision does not apply to an existing director seeking re-election.
- (c) In addition to the provisions under clause 16.3(b) the Board may appoint any person who is not disqualified under the Act to be a Director to fill a casual vacancy or as an addition to the existing directors, subject to the maximum number of directors. Any Director appointed under this clause may hold office only until the next annual meeting, and is then eligible for election, but must not be taken into account in determining the Directors who are to retire by rotation at that meeting.
- (d) The persons holding office as directors of the Company on adoption of any changes to this constitution continue in office and are deemed to have been appointed as Directors pursuant to this constitution. Similarly, the chairperson of the Board continues in office and is deemed to have been appointed as chairperson pursuant to this constitution.

16.4 Rotation of Directors

- (a) At the annual meeting in each year at least one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office, but shall be eligible for re-election at that meeting.
- (b) The Directors who have been longest in office shall retire first provided that if those Directors comprise more than one third of the Directors those Directors shall decide by agreement or failing agreement by lot which of them is to retire first and be subject to re-election. Any of those Directors not offering himself or herself for re-election shall not be counted in that number.
- (c) Other than as set out in (b) above, where directors have been appointed on the same day, or a director has not been re-elected in the previous two years, those directors shall determine by agreement, or failing agreement by lot, who shall stand for re-election in each year.
- (d) Any Director appointed by the Board pursuant to clause 16.3(c) shall not be counted in determining the number of directors to retire from office in the relevant year. In addition, any director appointed under clause 16.3(c) shall stand for re-election as required by that clause.
- (e) A retiring Director continues to hold office:
 - (i) until he or she is re-elected; or
 - (ii) if he or she is not re-elected, until the meeting of security holders at which he or she retires (or any adjournment of that meeting) elects someone in his or her place; or
 - (iii) if the meeting of shareholders does not elect someone in his or her place, until the end of the meeting or any adjournment of the meeting.

(f) The shareholders may by ordinary resolution fill the office vacated by a Director who is retiring by rotation in accordance with this clause by electing a person who is not disqualified under the Act to that office at the annual meeting at which the outgoing Director retires. If no new Director is elected and if the retiring Director (not being disqualified under the Act) is offering himself or herself for re-election, the retiring Director shall be deemed to be re-elected unless it is expressly resolved by ordinary resolution not to fill the vacated office or a resolution for the re-election of that Director is put to the meeting and lost.

16.5 No shareholding qualification for Directors

There is no shareholding qualification for Directors.

16.6 Election of chairperson of the Board and term of office

(a) The Directors may elect one of their number as chairperson and, if they so determine a deputy chairperson, of the Board.

(b) The chairperson of the Board and, if one has been elected, the deputy chairperson of the Board holds that office until he or she vacates that office, or the Directors elect a chairperson or deputy chairperson (as the case may be) in his or her place.

16.7 Office of Director vacated in certain cases

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

(a) dies;

(b) is removed from office pursuant to the Act;

(c) is an executive Director and ceases to be an employee of the Company or of a related body corporate of the Company;

(d) becomes an insolvent under administration;

(e) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health; or

(f) is absent from 3 consecutive meetings of the Board without leave being granted by a resolution of the Board and the Board resolves that the Director has vacated office;

(g) becomes disqualified from being a director pursuant to the Act; or

(h) retires from office and is not re-elected or deemed to have been re-elected under this constitution.

16.8 Resignation

A director may resign office by signing a written notice of resignation and delivering it to the company. The notice takes effect upon the later of the receipt of it at the registered office of the company (including receipt of a facsimile or email copy) and any later time specified in the notice. [Section 157(2)]

16.9 Shareholding qualification

A director is not required to hold Shares.

16.10 Directors may appoint and remove alternate Directors:

Every Director may:

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

(b) remove his or her alternate Director from that office,

by giving written notice to that effect to the Company. A majority of the other Directors may similarly remove an alternate of a Director from that office.

16.11 Alternate Director has powers of appointer

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

(a) has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, and participate in a meeting, of the Board, and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director); and

(b) is also subject to the same terms and conditions of appointment as that Director, except that he or she is not entitled to receive remuneration.

16.12 Remuneration of alternate Director

Each alternate director's remuneration (if any) must be paid by the Director who appointed the alternate Director.

16.13 Termination of appointment of alternate Director

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

16.14 Rights to Indemnify / insure alternate director

An alternate director shall not be the agent of his or her appointor, and shall exercise his or her duties as a director independently of his or her appointor.

(a) For the avoidance of doubt, and without prejudice to an alternate director's other rights and powers, the Company may:

(b) Indemnify an alternate director for any costs referred to in section 162(3) of the Act; and

(c) Indemnify an alternate director in respect of any liability or costs referred to in section 162(4) of the Act; and

(d) Effect insurance for an alternate director in respect of any liability or costs referred to in section 162(5) of the Act.

17 DIRECTORS' REMUNERATION

17.1 Board's power to authorise remuneration and other benefits is limited

The Board may authorise:

(a) the payment of remuneration or the provision of other benefits by the Company to a Director for services as a Director;

(b) the entering into of a contract to carry out consultancy services or any other services requested by the Board;

only if the relevant action has been approved by an ordinary resolution. Each resolution must express Directors' remuneration as either:

(i) an annual monetary sum payable among all Directors (other than an executive Director); or

(ii) an annual monetary sum payable to any person holding office as a Director.

17.2 Increase of Total Remuneration

(a) If remuneration is expressed in accordance with clause 17.1(b)(ii) and if there is an increase in the number of Directors holding office, the Board may, without the authorisation of an ordinary resolution, increase the total remuneration by the amount required to enable the Company to pay the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).

(b) No resolution which increases the amount fixed under a previous resolution is to be passed at a meeting of shareholders of the Company unless notice of the amount of the proposed increase has been given in the notice of meeting.

17.3 Matters the Board may authorize

The Board may authorise:

(a) the making of loans by the Company to a Director;

(b) the giving of guarantees by the Company for debts incurred by a Director; and

(c) the entering into of a contract to do any of the things set out in this clause;

(d) the engaging of a Director as a consultant and paying consultancy fees to that Director.

17.4 Expenses

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

17.5 Payments upon cessation of office

The Company may make a payment to a Director or former Director, or his or her dependants, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if:

- (a) the total amount of the payment (or the base for the pension) does not exceed the total remuneration of the Director in his or her capacity as a Director in any three years chosen by the Company; or
- (b) the payment is authorised by an ordinary resolution.

Nothing in this clause affects any amount paid to an executive Director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any related normal subsidy) made by a Director to a superannuation scheme.

17.6 Special remuneration

The Board may authorise special remuneration to any Director who is or has been engaged by the Company or a subsidiary to carry out any work or perform any services which is not in the capacity of a director of the Company or a subsidiary.

~~16~~

~~16.1 Number of directors~~

~~The Company must have at least 2 Directors.~~

~~16.2 Initial Directors~~

~~Upon registration of the company under the Act the directors are the persons named as the directors in the application for registration of the company. [Section 153]~~

~~16.3 Appointment and removal by notice~~

- ~~(a) Subject to clauses 16.2 and 16.4, the directors are the persons appointed from time to time as directors by a notice in writing signed by the holders of the majority of the ordinary Shares and who have not resigned or been removed or disqualified from office under this constitution.~~
- ~~(b) A director may be removed from office at any time by a notice in writing signed by the holders of the majority of the ordinary Shares.~~
- ~~(c) A notice given under clauses 16.3(a) or 16.3(b) takes effect upon receipt of it at the registered office of the company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by the shareholders giving the notice.~~
- ~~(d) A director holds office until his or her resignation, disqualification or removal in accordance with this constitution. [Section 157].~~

~~16.4 Appointment and removal of directors by resolution~~

- ~~(a) In addition to the appointment or removal of directors under clause 16.3, a director may be appointed or removed from office by an ordinary resolution. [Sections 153(2) and 156]~~

~~(b) — A resolution to appoint 2 or more directors may be voted on as one resolution without each appointment being voted individually. [Section 155]~~

~~(c) — A notice of meeting at which the removal of a director will be considered must state that a purpose of the meeting is the removal of the director. [Section 156]~~

~~16.5 — Disqualification and removal~~

~~A person will be disqualified from holding the office of director if he or she:~~

~~(a) — is removed under clauses 16.3 or 16.4; or~~

~~(b) — resigns in writing under clause 16.6 and is not reappointed in accordance with this constitution,
or~~

~~(c) — becomes disqualified from being a director pursuant to section 151 of the Act; or~~

~~(d) — is prohibited from being a director or promoter or being concerned with or taking part in the management of a company under section 382, 383, 385 or section 385AA of the Act; or~~

~~(e) — dies; or~~

~~(f) — becomes a protected person under the Protection of Personal and Property Rights Act 1988; or~~

~~(g) — is under 18 years of age; or~~

~~(h) — is an undischarged bankrupt; or~~

~~(i) — is prohibited by the Companies Act 1955 from being a director or would be so prohibited but for the repeal of that statute.~~

~~16.6 — Resignation~~

~~A director may resign office by signing a written notice of resignation and delivering it to the company. The notice takes effect upon the later of the receipt of it at the registered office of the company (including receipt of a facsimile copy) and any later time specified in the notice. [Section 157(2)]~~

~~16.7 — Shareholding qualification~~

~~A director is not required to hold Shares.~~

~~16.8 — Alternate directors~~

~~(a) — Every director may, by notice given in writing to the company, appoint any person (including any other director) to act as an alternate director in the director's place, either generally, or in respect of a specified meeting or meetings during the director's absence from a meeting.~~

~~(b) — At the director's discretion, by notice in writing to the company, the appointing director may remove the director's alternate director.~~

~~(c) — An alternate director may, while acting in the place of the appointing director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of~~

acting as chairperson and signing Board resolutions) of the appointing director. The alternate director is subject in all respects to the same terms and provisions as the appointing director, except as regards remuneration and except as regards the power to appoint an alternate director under this constitution.

- (d) — For the purpose of establishing a quorum of the Board, an alternate director is deemed to be the director appointing him or her, and if the alternate director is a director he or she can count separately in both capacities.
- (e) — An alternate director does not have a right to attend, speak or vote at a meeting of the Board while his or her appointing director is present.
- (f) — An alternate director's appointment lapses upon his or her appointing director ceasing to be a director or on their removal or on the occurrence of any event relating to the alternate director which, if the alternate director were a director, would disqualify the alternate director from being a director.
- (g) — The notice of appointment of an alternate director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the alternate director until an address is provided to the company.
- (h) — An alternate director shall not be the agent of his or her appointor, and shall exercise his or her duties as a director independently of his or her appointor.
 - (i) — For the avoidance of doubt, and without prejudice to an alternate director's other rights and powers, the company may:
 - (ii) — Indemnify an alternate director for any costs referred to in section 162(3) of the Act; and
 - (iii) — Indemnify an alternate director in respect of any liability or costs referred to in section 162(4) of the Act; and
 - (iv) — Effect insurance for an alternate director in respect of any liability or costs referred to in section 162(5) of the Act.

1718 Indemnity and insurance

18.1 Company may indemnify directors and employees for certain liabilities

The Company shall indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of such an indemnity.

18.2 Company may effect insurance for directors and employees

The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

17-118.3 Indemnity of directors and employees

- (a) The Board shall cause the company to indemnify a director or employee of the company or a related company for costs incurred by him or her in any proceeding:
 - (i) that relates to liability for any act or omission in his or her capacity as a director or employee; and
 - (ii) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- (b) The Board shall cause the company to indemnify a director or an employee of the company or a related company in respect of:
 - (i) liability to any person other than the company or a related company for any act or omission in his or her capacity as a director or employee; or
 - (ii) costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;not being:
 - (iii) criminal liability; or
 - (iv) liability for the breach of section 131 of the Act; or
 - (v) liability for breach of any fiduciary duty owed to the company or related company. [Section 162(3) and (4)]

17-218.4 Insurance of directors and employees

- (a) The Board may, subject to section 162 of the Act, cause the company to effect insurance for directors and employees of the company or a related company in respect of:
 - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
 - (ii) costs incurred by such directors or employees in defending or settling any claim or proceeding relating to any such liability; or
 - (iii) costs incurred by a director or employee 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. [Section 162(5)]
- (b) The directors who vote in favour of authorising the effecting of insurance under clause 18.4(a) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.

- (c) The Board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or related company are forthwith entered in the interests register. [Section 162(6) and (7)]

17.318.5 Definitions

For the purpose of this clause 18, "director" includes a former director and "employee" includes a former employee. [Section 162(9)]

1819 Powers and duties of the Board

18.119.1 Powers of the Board

- (a) Subject to clause 19.1(b) and any restrictions in the Act or this constitution, the business and affairs of the company must be managed by or under the direction or supervision of the Board.
- (b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the company except to the extent that this constitution or the Act expressly requires those powers to be exercised by the shareholders or any other person. [Section 128]

18.219.2 Delegation by Board

- (a) The Board may delegate to a committee of directors, a director, an employee of the company, or any other person any one or more of its powers, other than the powers referred to in the following sections of the Act:
 - (i) section 23(1)(c) (change of company name);
 - (ii) section 42 (issue of other Shares);
 - (iii) section 44 (shareholder approval for the issue of Shares);
 - (iv) section 47 (consideration for the issue of Shares);
 - (v) section 49 (consideration for the issue of options and convertible financial products);
 - (vi) section 52 (distributions);
 - (vii) section 54 (Shares in lieu of dividends);
 - (viii) section 55 (shareholder discounts);
 - (ix) section 60 (offers to acquire Shares);
 - (x) section 61 (special offers to acquire Shares);
 - (xi) section 63 (stock exchange acquisitions subject to prior notice to shareholders);
 - (xii) section 65 (stock exchange acquisitions not subject to prior notice to shareholders);
 - (xiii) section 69 (redemption of Shares at the option of the company);

- (xiv) section 71 (special redemptions of Shares);
 - (xv) section 76 (provision of financial assistance);
 - (xvi) section 78 (special financial assistance);
 - (xvii) section 80 (financial assistance not exceeding 5 per cent of shareholders' funds);
 - (xviii) section 84(4) (transfer of Shares);
 - (xix) section 187 (change of registered office);
 - (xx) section 193 (change of address for service);
 - (xxi) section 221 (manner of approving an amalgamation proposal); and
 - (xxii) section 222 (short form amalgamations). [Section 130(1)]
- (b) The Board is responsible for the exercise of a power by any delegate (where that power is delegated under this clause 19.2) as if the power had been exercised by the Board, unless the Board:
- (i) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this constitution; and
 - (ii) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate. [Section 130(2)]
- (c) The proceedings of meetings of any committee formed pursuant to clause 19.2(a) shall be in accordance with the provisions of clause 20, with such consequential amendments as may be necessary, and any other rules that may be imposed on it by the Board.

18.319.3 Directors to act in good faith

- (a) Subject to this clause 19.3, a director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.
- (b) If the company is a wholly-owned subsidiary, a director may (when exercising powers or performing duties as a director), act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.
- (c) If the company is a subsidiary (but not a wholly-owned subsidiary), a director may, when exercising powers or performing duties as a director, with the prior agreement of the shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.

- (d) Nothing in this clause 19.3 limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business. [Section 132]

18.419.4 Major transactions

The Board may not procure or permit the company to enter into a major transaction unless the transaction is:

- (a) approved by a special resolution; or
- (b) made contingent on approval by a special resolution. [Section 129]

19.20 Proceedings of the Board

19.120.1 Third Schedule

The provisions of the third schedule to the Act are deleted and replaced by this clause 20.

~~19.2 Chairperson~~

- ~~(a) The directors may elect one of their number as chairperson of the Board.~~
- ~~(b) The director elected as chairperson holds that office until he or she ceases to be a director or the directors elect a chairperson in his or her place.~~
- ~~(c) If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within five 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.~~

19.320.2 Notice of meeting

- (a) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the Board by giving notice in accordance with this clause 20.2.
- (b) Not less than two working days notice of a meeting of the Board must be given to every director who is in New Zealand. The notice must include the date, time and place of the meeting and the matters to be discussed.
- (c) The giving of a notice of a meeting or an irregularity in the notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.
- (d) Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.
- (e) It is not necessary to give notice of a meeting of the Board to any director for the time being absent from New Zealand but if a director is resident outside New Zealand, or to the knowledge of the company is temporarily absent from New Zealand, and the director has appointed an alternate director under the provisions of this constitution, notice must (subject to clause 1.1(a)) be given to the alternate director.

19.420.3 Method of holding meetings

- (a) A meeting of the Board may be held either:
 - (i) by a number of directors sufficient to form a quorum, being assembled together at the place, date, and time appointed for the meeting; or
 - (ii) by means of audio, or audio and visual communication, by which all the directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.
- (b) Where a meeting of the Board is held pursuant to clause 20.3(a)(ii), at the commencement of the meeting each director participating must acknowledge his or her presence to all the other directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the chairperson.

19.520.4 Quorum

- (a) A quorum for a meeting of the Board is a majority of the directors appointed by the shareholders (excluding the independent directors).
- (b) No business may be transacted at a meeting of directors if a quorum is not present.
- (c) ~~In accordance with clause 16.8, a~~ An alternate director present at a meeting may be included for the purpose of establishing a quorum.

19.620.5 Voting

- (a) Every director has one vote.
- (b) The chairperson does not have a casting vote.
- (c) 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 are in favour of it.
- (d) 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) the resolution at the meeting. [Third Schedule]
- (e) A director may vote in respect of any transaction in which the director is interested and if the director does so the director's vote will be counted and the director will be counted in the quorum present at the meeting. [Section 144]
- (f) An alternate director may attend and vote at meetings of the Board in accordance with and subject to clause 1.1 if the director that has appointed the alternate director is absent from the meeting.

19.720.6 Minutes

- (a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.

- (b) Minutes of proceedings of the Board which have been signed correct by the chairperson are prima facie evidence of the proceedings.

20.7 Written resolutions of Board permitted

The Board may introduce and implement an electronic system for the signing of documents and sign all resolutions and documents in accordance with that approved system. A written resolution signed or assented to by a majority of the Directors then entitled to receive notice of a meeting of the Board and who together would constitute a quorum at a meeting is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

20.8 Written resolutions may be in counterparts

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

20.9 Committee proceedings

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

~~19.8 Unanimous resolution~~

~~(a) A resolution in writing, signed or assented to by all directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.~~

~~(b) Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.~~

~~(c) A copy of any such resolution must be entered in the minute book of Board proceedings.~~

19.920.10 Other proceedings

Except as provided in this clause 20 the Board may regulate its own procedure.

19.1020.11 Continuing directors

The continuing directors will continue to comprise the Board notwithstanding any vacancy in the number of directors. If their number is reduced below the number fixed by or pursuant to this constitution as the minimum number of directors, the continuing directors will comprise the Board only for the purpose of increasing the number of directors to the minimum number or for summoning a general meeting.

2021 Interested directors

20.121.1 Authority to remunerate directors

- (a) The Board may authorise:
- (i) the payment of remuneration (or the provision of other benefits) by the company to a director for his or her services as a director (or in any other capacity), or by way of compensation for loss of office;

- (ii) the making of loans by the company to a director;
- (iii) the giving of guarantees by the company for debts incurred by a director; and
- (iv) the entering into of a contract to do any of the things set out in subclauses (i) to (iii) (inclusive) of this clause 21.1(a):

if the Board is satisfied that to do so is fair to the company.

- (b) The payment of remuneration (or the giving of any other benefit) to a director in accordance with a contract authorised pursuant to clause 21.1(a) need not be separately authorised by the Board.
- (c) The Board must ensure that forthwith after authorising any payment, loan, guarantee, or contract under clause 21.1(a), particulars are entered in the interests register.
- (d) The directors who vote in favour of authorising a payment, loan, guarantee or contract under clause 21.1(a) must sign a certificate stating that, in their opinion, the making of the payment or loan or the giving of the guarantee, or the entering into of the contract is fair to the company. Grounds for that opinion must also be stated in the certificate. [Section 161]

20.221.2 Other offices with company held by director

- (a) Any director may act by himself or herself, or by the director's firm in a professional capacity for the company; and the director or the director's firm will be entitled to remuneration for professional services as if the director were not a director. Nothing in this clause authorises a director or the director's firm to act as auditor for the company.
- (b) A director may hold any other office or place of profit under the company (other than the office of auditor) in conjunction with the director's office of director, for such period and on such terms (as to remuneration and otherwise) as the Board may determine.
- (c) Other than as provided in clause 21.3, a director is not disqualified by virtue of his or her office from entering into any transaction with the company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a director and not in a fiduciary relationship with the company. No such director shall be liable to account to the company for any profit realised by the transaction by reason of the director holding that office or of the fiduciary relationship thereby established.

20.321.3 Notice of interest to be given

- (a) A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than one director, disclose to the Board of the company:
 - (i) if the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
 - (ii) if the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

- (b) A director is not required to comply with clause 21.3(a) if:
 - (i) the transaction or proposed transaction is between the director and the company; and
 - (ii) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.
- (c) For the purposes of clause 21.3(a), a general notice entered in the interests register or disclosed to the Board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction. [Section 140]

21.22 Managing directors

21.122.1 Appointment and dismissal

- (a) The Board may from time to time appoint one or more of their body to the office of managing director or managing directors of the company, either for a fixed term or an indefinite term.
- (b) Every managing director is liable to be dismissed or removed by a resolution of the Board. The Board may enter into any agreement on behalf of the company with any person who is or is about to become a managing director with regard to the length and conditions of the managing director's employment. The remedy of any such person for any breach of the agreement will be in damages only and the managing director will not have a right or claim to continue in office as managing director contrary to the will of the Board.

21.222.2 Termination of employment

A managing director is, subject to the terms of any contract, subject to the same provisions as regards resignation, removal and disqualification as the other directors. If the managing director ceases to hold the office of director for any reason, the managing director will immediately cease to be a managing director.

22.23 Authority to bind

22.123.1 Method of Contracting

- (a) A contract or other enforceable obligation may be entered into by the company as follows:
 - (i) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by:
 - (A) two or more directors of the company
 - (B) a Director or any other person or class of persons authorised by the Board for that purpose whose signature or signatures must be witnessed; or
 - (C) one or more attorneys appointed by the company in accordance with clause 23.2;

- (ii) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority; and
 - (iii) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.
- (b) A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the company shall be proof of such authority notwithstanding that the authority may have been subsequently revoked. [Section 180]

22.223.2 Attorneys

- (a) The company may, by an instrument in writing executed in accordance with clause 23.1(a)(i), appoint a person as its attorney either generally or in relation to a specified matter or matters.
- (b) An act of the attorney in accordance with the instrument binds the company. [Section 181]

Part VI Liquidation

23.24 Liquidation

23.124.1 Appointment of Liquidator

A liquidator of the company may be appointed by a special resolution of those shareholders entitled to vote and voting on the question.

23.224.2 Distribution of surplus assets

- (a) Subject to the terms of issue of any Shares, upon the liquidation of the company, any assets of the company remaining after payment of the debts and liabilities of the company and the costs of liquidation shall be distributed among the holders of the ordinary Shares in proportion to their shareholding, provided however that a holder of Shares not fully paid up shall receive only a proportionate share of his or her entitlement being an amount which is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder to the company in respect of the Shares.
- (b) Upon the liquidation of the company the liquidator may, with the sanction of an ordinary resolution and any other sanction required by law, 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 the liquidator deems fair upon any assets to be divided as aforesaid and may determine how the division shall be carried out as between the shareholders holding 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 shall be compelled to accept any Shares or other securities whereon there is any liability).

23.324.3 Removal from New Zealand register

- (a) Subject to sections 318 and 320 of the Act, a director, who has been authorised by the Board to do so, may request the Registrar to remove the company from the New Zealand register on the grounds that:

- (i) the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this constitution and the Act; or
 - (ii) the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court under section 241 of the Act for an order putting the company into liquidation.
- (b) For the purposes of clause 24.3(a) the company shall have distributed its surplus assets in accordance with this constitution if the company does so in accordance with clause 24.2(b) except that no liquidator needs to be appointed and references to the liquidator in that clause shall be construed as references to the shareholders acting by an ordinary resolution.

Part VII General

24 — Subvention payments

~~24.1 24.1 — Despite anything contained in this constitution, any shareholder being a company and holding not less than two thirds of the total issued Shares of the company will be entitled to require the company to pay to it (or to any other corporation included within the same tax group (as referred to in subpart IC of the Income Tax Act 2007) as the shareholder specifies) a sum by way of a subvention payment. However, the company will be required to make a subvention payment pursuant to this clause only to the extent that the company and any other shareholder will not be adversely affected by that payment (of which fact a unanimous resolution of the directors will be deemed to be conclusive evidence).~~

25 Notices

Any Notices given to shareholders may be given or delivered in accordance with the provisions of the Act.

This document comprising pages numbered from 1 to 44 is certified as the constitution of **PharmaZen Limited**.

Dated this day of 2021