TEMPLATE CONSTITUTION – USER NOTES

This constitution is intended for use by a company with a simple shareholding structure and only one class of shares.

The Companies Act 1993 provides that a company can only take certain actions or avoid certain procedures if its constitution allows it to. For example, a company can only do the following things if expressly permitted by its constitution:

- buy back its own shares
- issue shares to new shareholders without first offering those shares to existing shareholders
- indemnify its directors.

This constitution is intended to be permissive and to allow companies to avoid having to obtain shareholder consent wherever possible.

This constitution is based on the principle that "majority rules" and that directors can take action without shareholder approval wherever possible. This approach will not always be appropriate. If the company would like shareholders to approve certain actions of the company, you will need different provisions in the constitution.

USING THIS TEMPLATE

The ***User Notes*** and the statements in the footer (all marked in red) are included to assist you to prepare this document. They are for reference only. You should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- the requested details need to be inserted
- there are different options for you to consider within a clause
- the whole clause is optional and you need to consider whether to include it, based on the company's circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and deleted the brackets.

If you delete any clause or schedule, remember to cross reference check the document.

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CONSTITUTION OF [*INSERT COMPANY NAME*] LIMITED
COMPANY NUMBER: [*INSERT NUMBER*]

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1 CAPACITY AND EFFECT

1.1 **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 they are negated or modified, in accordance with the Act, by this constitution.

1.2 **Full capacity:** Subject to this constitution, the Act, any other enactment and the general law, the Company has full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter any transaction.

1.3 **Shareholders' agreement:** If there is a shareholders' agreement between all of the Shareholders and the Company, to the extent permitted by law, this constitution is subject to that shareholders' agreement and in the event of a conflict between this constitution and the shareholders' agreement, the shareholders' agreement will prevail.

2 RIGHTS ATTACHING TO SHARES

2.1 **Shares:** Subject to clauses 2.2 and 2.3, a Share is an ordinary share in the Company and confers on the holder:

a the right to one vote on a poll at a meeting of the Company on any resolution, including any resolution:

i to appoint or remove a Director;

ii to alter the constitution;

iii to approve a major transaction;

iv to approve an amalgamation of the Company under section 221 of the Act; and

v to put the Company into liquidation;

b the right to an equal share in dividends authorised by the Board;

c the right to an equal share in the distribution of the surplus assets of the Company on a per Share basis; and

d the right to receive notice of and attend every meeting of Shareholders.

2.2 **Changes via terms of issue:** Subject to section 53 of the Act, the rights specified in clause 2.1 may be negated, altered, or added to by the terms on which the Share is issued.

2.3 **Partly paid Shares:** Each Share which is not fully paid is to carry only a fraction of the Voting Rights set out in clause 2.1 which would be exercisable if the Share were fully paid. The fraction

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is equivalent to the proportion which the amount paid is of the total amounts paid and payable.

3 ISSUE OF SHARES

3.1 **Board may issue Shares:** Subject to the Act and this constitution, 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 the numbers the Board thinks fit.

3.2 **Alteration of Shareholder rights:** The issue of additional Shares ranking equally with, or in priority to, existing Shares, whether as to voting rights or distributions, is deemed not to be an action affecting the rights attached to the existing Shares.

[User note:

- ***If new shares must be offered to existing shareholders before they can be offered to other persons, use option one or option two below. One of these two options should be used if the existing shareholders require the right to participate in any future share issues by the company.***
- ***If new shares do not need to be offered to existing shareholders before they can be issued to other persons, use option three below. Option three gives the company the most flexibility.]***

[OPTION ONE - User note: Section 45 of the Companies Act sets out the statutory pre-emptive rights which automatically apply to every New Zealand company, unless they are expressly dis-applied in the company's constitution. This clause confirms that the statutory pre-emptive rights set out in section 45 of the Companies Act apply to any new shares issued by the company. Section 45 requires the company to offer any new shares to existing shareholders in a manner that would maintain the existing shareholders' rights in relation to voting and distributions (e.g. dividend) at the same level as the existing shareholders enjoyed before any new shares were issued. Section 45 provides little guidance as to process, requiring only that the company's offer of new shares to existing shareholders remain open for acceptance for a "reasonable time".]

3.3 **[*Section 45 of the Act:*** *Section 45 of the Act applies to the Company.*]

OR

[OPTION TWO - User note: This clause dis-applies the statutory pre-emptive rights set out in section 45 but replaces it with the pre-emptive process set out in Schedule 4 of this constitution. The Schedule 4 process differs from the statutory process in that it provides for any shares which are declined by a shareholder to be allocated to any other

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shareholder that has indicated it would like to take more than its pro-rata share of the share issue.]

[***Section 45 of the Act:*** *Section 45 of the Act does not apply to the Company. The Company will issue Securities in accordance with Schedule 4.*]

OR

[OPTION THREE - User note: Use the clause below if shares can be issued without having to offer those shares to existing shareholders first. This option should be used if the company is to have the right to issue shares to third parties without having to first offer the shares to existing shareholders through the pre-emptive process. This option offers the company the most flexibility as it can offer shares (i.e. raise capital) without having to go through the pre-emptive process. The pre-emptive process can add time and uncertainty to a share issue/fund raising process.]

[***Section 45 of the Act****: Section 45 of the Act does not apply to the Company.*]

4 OTHER MATTERS RELATING TO SHARES

4.1 **Consolidation and subdivision of Shares:** The Board may:

a consolidate and divide the Shares in proportion to those Shares; or

b subdivide the Shares in proportion to those Shares.

4.2 **Company may purchase Shares:** The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders in accordance with 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.

4.3 **Call on Shares:** Schedule 1 governs calls on Shares.

4.4 **Forfeiture of Shares where calls or other amounts unpaid:** The Board may commence procedures in accordance with Schedule 1 for forfeiture of any Shares if the holder of those Shares fails to pay:

a a call, or an instalment of a call, on those Shares on the due date; or

b any amount that is payable under this constitution or the terms of issue of those Shares or any contract for the issue of those Shares.

4.5 **Company's lien:** The Company has a lien on Shares that are not fully paid Shares and the proceeds of sale of those Shares as set out in Schedule 1.

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4.6 **No encumbrance:** Except as provided in clause 4.5, a Shareholder must not create or permit to subsist, any mortgage, security interest, charge, lien or other encumbrance or adverse interest in any Share without the prior written consent of the Board.

5 TRANSFER OF SHARES

5.1 **Transfer of Shares:** Subject to any restriction contained in this constitution and to the terms on which the Share is issued, a Shareholder may transfer any Share to another person by an instrument of transfer.

[User note: Delete clauses 5.2 and 5.3 below (Restriction on transfer, No undermining) if there are no pre-emptive rights on share transfers.]

5.2 [***Restriction on transfer:*** *Except as provided in clause 5.10, no Shares may be sold or transferred by any Shareholder, liquidator, official assignee or personal representative of any Shareholder, unless the rights of pre-emption set out in Schedule 3 have been exhausted.*

5.3 ***No undermining:*** *A Shareholder must not do anything that has the purpose or effect of undermining or circumventing the restriction on the transfer of Shares set out in clause 5.2.*]

5.4 **Transferor to remain holder until registration:** The transferor of a Share will remain the holder of the Share until the name of the transferee is entered in the share register of the Company.

5.5 **Form of transfer:** Every instrument of transfer of Shares must comply with the following provisions:

a the form of the instrument of transfer must be any usual or common form or any other form approved by the Board;

b the instrument of transfer must be signed or executed by or on behalf of the transferor; and

c where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed by, or on behalf of, the transferee.

5.6 **Delivery to Company:** An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the share register of the Company, together with the share certificate (if any) relating to the Shares to be transferred. The transferee must provide the evidence the Board or the agent reasonably requires proving the title of the transferor to, or right of the transferor to transfer, the Shares.

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5.7 **Registration of transfer:** On receipt of a form of transfer in accordance with clause 5.6, the Company must as soon as practicable enter the name of the transferee on the share register as holder of the Shares, unless:

a the Board resolves within 10 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so;

b notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the Board; and

c the refusal or delay in the registration is permitted or required by clause 5.8 or 5.9.

5.8 **Power of Board to refuse or delay registration:** The Board may refuse or delay the registration of a transfer of any Share for any of the following reasons:

a the Company has a lien on the Share;

b the Share is not fully paid up;

c the form of transfer is not accompanied by the certificate for the Share to which it relates (if a certificate has been issued) and such other evidence as the Directors may reasonably require of the right of the transferor to make the transfer;

d the holder of the Share has failed to comply with the terms of this constitution or of any contract with the Company relating to the Share; or

e the Board considers that it would not be in the best interests of the Company to do so.

[User note: Delete clause 5.9 below (Requirement to refuse registration) if clause 5.2 (Restriction on transfer) is not included (i.e. if there are no pre-emptive rights on share transfers).]

5.9 [***Requirement to refuse registration:*** *The Board must refuse the registration of a transfer of any Share if clause 5.2 has not been complied with.*]

[User note: Delete clause 5.10 below (Exempt transfers) if clause 5.2 (Restriction on transfer) is not included (i.e. if there are no pre-emptive rights on share transfers).]

5.10 [***Exempt transfers:*** *The restrictions in clause 5.2 do not apply:*

a *to any Shares transferred by a Shareholder to a trustee of any trust of which the relevant Shareholder is a primary beneficiary;*

b *where the Shares are the property of a trust, to any sale, transfer or other disposition that is:*

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i *required by a change in the trustees of that trust; or*

ii *from a trustee to a primary beneficiary of that trust;*

c *to any Shares transferred to the Company in accordance with this constitution and the Act;*

**[*User note: Sub-clause d below provides that if any shares are transferred under the tag or drag provisions set out in Schedule 5, then the pre-emptive rights process need not be followed. This means that:*

- ***a shareholder wishing to sell 75% of the shares could "drag" the other shareholders into that sale without giving those shareholders the opportunity to purchase the 75% shares***
- ***where there is a sale of 50% or more of the shares, any shareholder wishing to "tag" along can do so without having to first offer their shares to the remaining shareholders.***

***Consider whether pre-emptive rights should be waived in either or both of those situations.*]**

d [*to any Shares transferred where:*

i *the Seller has exercised a Drag-Along Option (each as defined in Schedule 5); or*

ii *a Remaining Shareholder has exercised a Tag-Along Option (each as defined in Schedule 5);*]

[*User note: Delete clause 5.10e below if clauses 5.13 to 5.16 (Transfer to Nominee Company) are not included.*]

e [*to any Shares transferred in accordance with clauses 5.13 to 5.16*]; or

[*User note: Clause 5.10f below provides that any shares may be transferred without going through the pre-emptive provisions if the holders of 75% of the shares approve that transfer. This approval requirement could be changed, for example to require approval by the board or approval by all shareholders.*]

f [*to any Shares transferred by a Shareholder to any person if the transfer is approved in writing by Shareholders holding Shares carrying together at least 75% of the Voting Rights.*]

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[User note:

- ***Delete clause 5.11 (Change of control) below if clause 5.2 (Restriction on transfer) is not included (i.e. if there are no pre-emptive rights on share transfers).***
- ***Clause 5.11 (Change of control) provides for shares to be valued at fair market value (as opposed to fair value). A fair market valuation will usually provide for a discount to take into account the illiquid nature of the shares and the fact that the shares being sold constitute a minority stake in the company (if that is the case). An assessment of the "fair value" of the shares may not take account of those factors.]***

5.11 [***Change of control:*** *Where a company is a Shareholder (whether solely or jointly with others) and its Shares in the Company comprise the majority of its assets then, unless clause 5.10 applies or the transfer is approved by the Board, a transfer of a controlling interest in that Shareholder (whether directly or indirectly and whether by one or by a series of transactions) will constitute a deemed transfer of the Shareholder's Shares and the Shareholder must give the Directors a Transfer Notice (as that term is defined in paragraph 1 of Schedule 3) at the effective total consideration paid (or to be paid) for the Shareholder's Shares, or, if that cannot be readily assessed and evidenced to the Board's satisfaction, the Board may substitute "fair market value" for the Shareholder's Shares as assessed by a suitably qualified independent valuer appointed by the Board.*]

[User note: Clause 5.12 (Major Share sale) below deals with tag-along and drag-along rights. Only insert this clause (and Schedule 5) if tag-along and drag-along rights are to apply to the shares.

- ***Tag-along rights entitle minority shareholders to sell their shares if a major shareholding in the company is sold.***
- ***Drag-along rights entitle selling shareholders to force the remaining shareholders to sell their shares if a major shareholding in the company is sold.***
- ***The tag and drag provisions in Schedule 5 are drafted on the basis that tag-along applies on a sale of 50% or more of the shares and drag-along rights apply on the sale of 75% or more of the shares. 75% is the logical starting point for a drag-along right, because 75% is the approval threshold under the Companies Act for major transactions of the company (i.e. 75% of shareholders can approve the sale of the business of the company). These percentages can be varied.***
- ***This provision may not be relevant (for example if a company is held by one shareholder, or two shareholders on a 50/50 basis). If that is the case, the tag and drag rights can either be retained (on the basis that they do no harm) or deleted. In all situations, consider carefully whether shares in the company should be subject to tag and drag rights.]***

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5.12 [***Major Share sale:*** *If one or more Shareholders wish, in one transaction or a series of linked transactions, to transfer Shares in the Company carrying 50% or more of the Voting Rights to any other person then Schedule 5 applies*.]

[*User note: Clauses 5.13 to 5.16 below allow the company to require the holders of small share parcels to transfer those shareholdings to a nominee company (to be held on trust for the benefit of those small shareholders) in order to reduce the number of share parcels on issue and potentially avoid the company becoming a 'code company'. If a company has 50 or more voting share parcels and either total group assets of $30 million or more, or total group revenues of $15 million or more, it is classified as a 'code company' and must comply with the requirements of the Takeovers Code. Those requirements can impose significant administrative and regulatory burdens on 'code companies' in respect of new share issues, sales of existing shares by exiting shareholders and a number of other changes to the capital structure or shareholding of the company. Use clauses 5.13 to 5.16 below if there is a material possibility that the company will have a substantial number of shareholders and share parcels in the foreseeable future (e.g. if the company expects to put in place an employee share ownership plan in respect of a large number of employees) and the company wishes to avoid having a large number of shareholders on its share register, and/or the Company is concerned about becoming a 'code company' in the foreseeable future.*]

5.13 **[*Transfer to Nominee Company:*** *If the Company:*

a *is a code company as defined in the Takeovers Regulations 2000;*

b *is, in the reasonable view of the Board, at risk of becoming a code company in the next 12 months; or*

c *has 30 or more share parcels,*

*the Company may, by written notice (**Nominee Company Transfer Notice**) require any Shareholder that holds less than [5%] of the Shares (calculated on a fully diluted basis) (**Minority Shareholder**) to transfer all of the Shares held by that Minority Shareholder to a company incorporated and maintained for the purpose of holding Shares on trust for the benefit of some or all of the Minority Shareholders (**Nominee Company**).*

5.14 ***Minority Shareholder's obligations:*** *Within 5 working days of receipt of a Nominee Company Transfer Notice, a Minority Shareholder must:*

a *if requested by the Company, execute any reasonable deed of declaration of trust or similar document included with the Nominee Company Transfer Notice that sets out the terms on which the Nominee Company is to hold the Minority Shareholder's Shares on trust for the benefit of the Minority Shareholder; and*

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b *deliver to the Company registrable transfers of all of the Shares held by that Minority Shareholder, executed by the Minority Shareholder in favour of the Nominee Company.*

5.15 ***Company's obligations:*** *The Company must ensure that the Nominee Company holds the Shares on trust for the benefit of the relevant Minority Shareholders on reasonable terms.*

5.16 ***Failure to transfer:*** *If a Minority Shareholder fails to comply with its obligations under clause 5.14, the Company is appointed as the attorney of the Minority Shareholder with the power to complete and execute the documents referred to in clause 5.14 on the Minority Shareholder's behalf, and the Board may register those share transfers immediately.*]

6 TRANSMISSION OF SHARES

6.1 **Title in the Shares:** If a Shareholder dies, the survivor(s) (if the deceased was a joint Shareholder), or the personal representative(s), will be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder, but nothing in this clause releases the estate of a deceased joint Shareholder from any liability for any Share, or constitutes a release of any lien which the Company may have over any Share.

[User note: Clause 6.2 (Transfer Notice to be given) below includes a reference to fair market value. See the user note at clause 5.11 (Change of control).]

6.2 **Transfer Notice to be given:** If:

a a Shareholder (other than a joint shareholder) dies or becomes mentally incapacitated; or

b a liquidator, receiver, manager, statutory manager, official assignee, inspector, trustee or other similar person is appointed in respect of a Shareholder or the whole or any part of its assets,

the personal representative, liquidator, receiver, manager, statutory manager, official assignee, inspector, trustee or other similar person as the case may be must give to the Board a [*Transfer Notice (as that term is defined in paragraph 1 of Schedule 3)*] ***Or – delete as appropriate*** [*written transfer notice*] ***[User note: Select the second option if clause 5.2 (Restriction on transfer) is not included (i.e. if there are no pre-emptive rights on share transfers)]*** in respect of all Shares registered in the name of the Shareholder at "fair market value" for the Shares as assessed by a suitably qualified independent valuer appointed by the Board.

7 DIVIDENDS

7.1 **Unclaimed dividends:** Any dividend or other monetary distribution unclaimed for one year after having been authorised may be used by the Directors for the benefit of the Company

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until claimed. Any dividend or other monetary distribution unclaimed for five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board may, at any time after that forfeiture, annul the forfeiture and pay the relevant dividend or other distribution to any person producing evidence of entitlement to that dividend or distribution.

7.2 **Distributions do not accrue interest:** The Company is not liable to pay any interest on distributions.

8 MEETINGS OF SHAREHOLDERS

8.1 **Annual general meetings:** If required under section 120 of the Act, an annual general meeting of Shareholders must be held not later than:

a 6 months after the balance date of the Company; and

b 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.

8.2 **Resolution in lieu of annual general meeting:** It is not necessary for the Company to hold an annual general meeting of Shareholders required under section 120 of the Act if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with clause 8.4.

8.3 **Special meetings:** A special meeting of Shareholders may be called at any time by the Board and must be called by the Board if requested by Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the resolutions to be considered at the meeting of the Shareholders.

8.4 **Resolution in lieu of meeting:** A resolution in writing signed in accordance with section 122 of the Act is as valid as if it had been passed at a meeting of Shareholders.

8.5 **Procedure at meetings:** The First Schedule to the Act governs proceedings at all meetings of Shareholders.

9 APPOINTMENT AND REMOVAL OF DIRECTORS

9.1 **Maximum number:** Unless otherwise determined by written approval of Shareholders holding Shares carrying together more than 50% of the Voting Rights, the maximum number of Directors is [*insert*].

9.2 **Directors:** On the adoption of this constitution, the Directors are those persons named as Directors on the Company's register of directors.

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9.3 **Shareholders may appoint Directors:** Any person who is not disqualified under the Act may be appointed as a Director by:

a a written notice to the Company signed by Shareholders holding Shares carrying together more than 50% of the voting rights entitled to be exercised on any resolution to appoint a Director;

b an ordinary resolution; or

c any means provided for in any shareholders' agreement between all of the Shareholders and the Company.

9.4 **Shareholders may remove Directors:** Any Director may be removed from office by:

a a written notice to the Company signed by Shareholders holding Shares carrying together more than 50% of the voting rights entitled to be exercised on any resolution to remove a Director;

b an ordinary resolution; or

c any means provided for in any shareholders' agreement between all of the Shareholders and the Company.

9.5 **Notices of appointment or removal of Directors:** A notice of appointment or removal of a Director may be comprised in one or more written notices. The notice takes effect from the time it is served on the Company in accordance with the Act or from such later time as the notice states that it is to take effect.

9.6 **Vacation of office:** A Director vacates office if any of the following occurs:

a the Director resigns by notice in writing to the Company. The notice is effective when it is received by the Company or at a later time specified in the notice;

b the Director is removed from office in accordance with clause 9.4;

c the Director becomes disqualified from being a Director under section 151 of the Act;

d the Director becomes of unsound mind, or becomes subject to an order under the Protection of Personal and Property Rights Act 1988;

e the Director dies;

f the Director has for more than three months been absent without permission of the other Directors from meetings of the Directors held during that period and the other Directors resolve that his or her office be vacated by reason of that absence; or

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g the term (if any) for which the Director is appointed expires and, before its expiry, the Director is not re-appointed in accordance with clauses 9.3 and 9.5 for a further term.

9.7 **Alternate Directors:** Any Director may, at any time by written notice to the Company, appoint any person who is not already a Director and who is approved by a majority of the Directors (such approval not to be unreasonably withheld) to act as an alternate for the Director, either for a specified period, or generally during the absence or inability to act from time to time of the Director. The following provisions will apply to an Alternate Director:

a the appointment may at any time be revoked by written notice of the Director in whose place the Alternate Director acts, and is automatically revoked when the Director in whose place the Alternate Director acts vacates office;

b unless otherwise provided by the terms of the appointment, the Alternate Director:

i has the same rights, powers and privileges (including the power to sign resolutions of Directors, and the power to execute documents on behalf of the Company); and

ii must discharge all the duties and obligations,

of the Director in whose place he or she acts; and

c every person acting as an Alternate Director is alone responsible to the Company for the Alternate Director's own acts and defaults and the Alternate Director is not deemed to be the agent of the Director in whose place the Alternate Director acts.

9.8 **Remuneration for Alternate Directors:** Each Alternate Director:

a will not, except by virtue of an agreement with the Director whom he or she represents, be entitled to receive any remuneration from the Company; and

b will be entitled to have expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties reimbursed by the Company.

9.9 **Remuneration for professional services:** A Director or a firm of which that Director is a member may act in a professional capacity for the Company. That Director or firm is entitled to remuneration for professional services as if the Director were not a Director. A Director or firm of which that Director is a member may not act as an auditor of the Company.

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10 DIRECTORS' MEETINGS

The Third Schedule to the Act relating to the proceedings of a Board does not apply to the Company. Schedule 2 of this constitution, and the relevant provisions of any shareholders' agreement between all of the Shareholders and the Company, govern those proceedings.

11 POWERS AND DUTIES OF DIRECTORS

11.1 **Management of Company:** The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.

11.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company that are not required, either by the Act or this constitution, to be exercised by the Shareholders or any other person.

11.3 **Compliance with constitution:** Despite clauses 11.1 and 11.2, the business and affairs of the Company must be managed in accordance with the applicable provisions of this constitution.

11.4 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act. In exercising the Board's delegated powers, a delegate must comply with any requirement imposed on the delegate by the Board.

11.5 **Appointment of attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. A power of attorney may contain any provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise an attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

11.6 **Ratification by Shareholder:** Subject to section 177 of the Act, the Shareholders, or any other person in whom a power is vested by this constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

11.7 **Wholly owned subsidiaries:** 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.

[User note: Clauses 11.8 (Subsidiaries not wholly owned) and 11.9 (Joint venture companies) below provide for a director to act in the best interests of the company that appointed that director, rather than the best interests of the company of which he or she is a director. The position under the Companies Act is that directors must act in the

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best interests of the company unless its constitution specifically provides otherwise in the limited situations set out at clauses 11.7 (above), 11.8 and 11.9. Be cautious about including clauses 11.8 and 11.9. Generally, any company (unless it is a wholly owned subsidiary of another company) will want its directors to act in the best interest of that company, rather than the company that appointed him/her.]

11.8 [***Subsidiaries not wholly owned:*** *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*.]

[*User note: See the user note at clause 11.8 (Subsidiaries not wholly owned)*]

11.9 [***Joint venture companies:*** *If the Company is carrying out a joint venture between its Shareholders, a Director may, when exercising powers or performing duties as a Director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a Shareholder or Shareholders, even though it may not be in the best interests of the Company*.]

12 INTERESTED DIRECTORS

12.1 **Disclosure of interests:** A Director must comply with the disclosure of interest requirements of section 140 of the Act but failure to comply with that section does not affect the validity of any contract or arrangement entered into by the Company.

12.2 **Interested Directors:** A Director who is interested in a transaction entered into, or to be entered into, by the Company may do any of the following:

a vote on any matter relating to the transaction;

b attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;

c sign a document relating to the transaction on behalf of the Company; or

d do any other thing in his or her capacity as a Director in relation to the transaction.

13 DIRECTORS' REMUNERATION AND OTHER BENEFITS

**[*User note: Clause 13.1 below allows the board to approve the remuneration of directors without shareholder approval (whether that remuneration is in the form of regular board fees, fees for consulting services or otherwise). However, shareholders must approve compensation paid to directors for loss of office, any loans to directors or any*

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guarantees by the company for debts of a director. If the company would prefer that shareholders also approve the remuneration of directors, replace the reference to "161(1)(b) to (d)" below with "161(1)(a) to (d)".]

13.1 **Authorisation of payment or other benefit:** The Board may only exercise the power conferred by sections 161(1)(b) to (d) of the Act to authorise any payment or other benefit of the kind referred to in those sections with the approval of Shareholders.

13.2 **Expenses:** Each Director will be entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business and the Board may authorise those payments without Shareholder approval.

14 INDEMNITY AND INSURANCE

14.1 **Indemnity for Directors:** A Director, or a director of a related company, may be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

14.2 **Indemnities and insurance:** In addition to the indemnities set out in clause 14.1, the Company may, with the prior approval of the Board, do any of the following:

a indemnify an employee of the Company or a related company for any costs referred to in section 162(3) of the Act;

b indemnify an employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; or

c effect insurance for a Director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.

14.3 **Duty to certify:** The Directors who vote in favour of authorising insurance under clause 14.2c must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

14.4 **Interests register:** The Directors must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or a related company, are promptly entered in the interests register.

14.5 **Definitions:** Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 14.

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15 METHOD OF CONTRACTING

A deed to be entered into by the Company may be signed on behalf of the Company by any of the following:

a two or more Directors of the Company;

b a Director, or other person or persons authorised to do so by the Board, whose signature or signatures must be witnessed; or

c one or more attorneys appointed by the Company in accordance with section 181 of the Act.

16 LIQUIDATION

16.1 **Distribution of surplus:** Subject to the rights of any Shareholders and to the terms on which their Shares are issued, and to clauses 16.3 to 16.5, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Shareholders entitled to those assets in proportion to their shareholding.

16.2 **Requiring payment on Shares:** If any Shareholder's Shares are not fully paid up, the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.

16.3 **Distribution in kind:** With the approval of the Shareholders, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether or not they are of the same kind).

16.4 **Process for distribution in kind:** For that purpose, the liquidator may:

a attribute values to assets as the liquidator considers appropriate; and

b determine how the division will be carried out as between Shareholders.

16.5 **Trusts:** With the approval of Shareholders, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of Shareholders. The liquidator may determine the terms of the trust.

17 NOTICES

17.1 **Manner of sending:** Any notices, reports, accounts or documents required to be sent to a Shareholder must be sent in the manner set out in section 391 of the Act.

17.2 **Notices to joint holders:** A notice may be given by the Company to the joint holders of a Share in the Company by giving the notice to the joint holder named first in the share register in respect of the Share.

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18 INTERPRETATION

18.1 **Definitions:** In this constitution the following words have the following meanings:

TERM	MEANING
Act	the Companies Act 1993.
Alternate Director	a person appointed in accordance with this constitution to act in place of a Director.
Board	the Directors who number not less than the required quorum, acting together as a board of Directors.
Company	[*Company Name*] Limited.
Director	a person appointed as a director of the Company.
Security	any Share and any security that may be converted into Shares or that gives the holder of the security the right to have Shares issued to it (including options and warrants).
Share	a share issued, or to be issued, by the Company.
Shareholders	those persons whose names are entered in the share register of the Company as the holders of Shares.
Voting Right	a right to vote at a meeting of Shareholders (other than rights to vote only on the appointment of an administrator, on a resolution for the winding up of the Company, or on similar financial distress events).

18.2 **Terms defined in Act:** Terms defined in the Act have the same meaning when used in this constitution, provided that a reference to a **company** refers to any body corporate, regardless of its jurisdiction of incorporation.

18.3 **Interpretation:** In this constitution, unless the context otherwise requires:

a an expression referring to **writing** includes e-mail communications;

b a reference to a **person** includes any company, trust, partnership, joint venture, association, body corporate or public authority;

c a reference to any **legislation** includes:

i that legislation as from time to time amended, re-enacted or substituted; and

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ii any statutory instruments, regulations, rules and orders issued under that legislation or provision from time to time;

d a reference to a **clause**, **part**, **schedule** or **attachment** is a reference to a clause, part, schedule or attachment of or to this constitution;

e a reference to a **paragraph** is a reference to a paragraph of a schedule to this constitution;

f **including** and similar words do not imply any limitation;

g the **singular** includes the plural and vice versa; and

h the expression **with the approval of the Shareholders** means with the approval of the Shareholders by ordinary resolution.

18.4 **Conflicts between the Act and this constitution:** If there is any conflict between a provision in this constitution and a mandatory provision in the Act, the provision in the Act prevails.

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SCHEDULE 1

CALLS, FORFEITURE AND LIENS

1 CALLS ON SHARES

1.1 **Shareholders must pay calls:** Subject to this constitution, the terms of issue of any Shares or the terms of the contract for the issue of any Shares, every Shareholder on receiving at least 48 hours' written notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any Shares that are not fully paid Shares and that he or she holds. The Board may revoke or postpone a call, or require a call to be paid by instalments.

1.2 **Calls to apply equally:** Subject to the terms of issue of any Shares and to paragraph 1.7, 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.

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

1.4 **Joint holders are jointly and severally liable:** The joint holders of a Share that is not a fully paid Share are jointly and severally liable to pay all calls for that Share.

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

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

1.7 **Board may differentiate between holders as to calls:** On the issue of Shares, the Board may differentiate between the holders of Shares as to the amount of calls to be paid and the times of payments.

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1.8 **Board may accept payment in advance for calls:** Where a Shareholder is willing to advance some or all of the money unpaid and uncalled on any Share or Shares of that Shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and the Shareholder for the period between the date that the amount is accepted and the date that the amount becomes payable under a call or the date specified for its payment.

2 FORFEITURE OF SHARES

2.1 **Directors may by notice require forfeiture of Shares if calls unpaid:** The Directors may during the time that a call, instalment, or other amount remains unpaid on a Share, serve a notice on the Shareholder requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest.

2.2 **Notice of forfeiture must satisfy certain requirements:** The notice served on a Shareholder under paragraph 2.1 must specify a date not earlier than 10 working days after the date the notice is served by which payment is to be made. The notice must also state that, in the event of non-payment by the appointed time, the Shares to which the call, instalment, or other amount relates, will be liable to be forfeited by the Shareholder.

2.3 **Failure to comply with notice may lead to forfeiture:** Where a valid notice under paragraph 2.1 is served on a Shareholder and the Shareholder fails to comply with the notice, then the Board:

a may resolve that any Share for which that notice was given be forfeited; and

b may cancel any share certificate relating to any Share which has been forfeited under that resolution.

2.4 **Board may deal with forfeited Share:** Before any proposed sale or transfer of forfeited Shares, the Board must first offer those Shares to existing Shareholders, other than the Shareholder holding the forfeited Shares at the time of forfeiture, as if they were new Shares about to be issued by the Company. Subject to this requirement, a forfeited Share may be sold or otherwise disposed of on the terms and in the manner the Board thinks fit. However, the Board may cancel the forfeiture at any time before the sale or other disposition on the terms the Board thinks fit.

2.5 **Shareholder whose Shares are forfeited loses rights:** A person whose Shares have been forfeited immediately ceases to be a Shareholder in respect of those Shares despite any other provision of this constitution. The forfeiture includes all dividends and any other distribution in respect of the forfeited Shares announced but not actually paid before the forfeiture. A person whose Shares have been forfeited remains liable to pay the unpaid amount he or she

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owes the Company, but that liability ceases if the Company receives payment in full of all money owing for those Shares.

2.6 **Surrender of Shares:** The Directors may, at their discretion, accept from any Shareholder a surrender of his or her Shares which are liable to forfeiture upon terms that may be agreed between the Shareholder and the Company.

2.7 **Director's statutory declaration is conclusive:** A statutory declaration given by a Director that a Share has been duly forfeited on a stated date is conclusive evidence of the facts stated in that declaration against any person claiming an entitlement to that Share.

2.8 **Company may sell forfeited Share:** The Company may receive consideration, if any, given for a forfeited Share following a sale or disposition, and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of, and register that person as the holder of the Share. That person is not bound to see to the application of the purchase money, if any, nor is the title to the Share affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or disposal of that Share.

2.9 **Sale proceeds:** If any forfeited Share is sold within 12 months of the date of forfeiture, the Company must apply the net proceeds of the sale (after deducting expenses of sale) in payment of the sum presently payable on the lien, and the balance, if any, must be paid to the former holder of the Share.

3 LIENS

3.1 **Company's lien:** The Company has a lien, ranking in priority over all other equities, on:

a all Shares that are not fully paid Shares (and any dividends or other distributions in respect of those Shares) registered in the name of a Shareholder (whether solely or jointly with others); and

b the proceeds of sale of those Shares,

for:

c unpaid calls and instalments payable in respect of any of the Shares;

d interest on any unpaid calls or instalments;

e sale expenses owing to the Company in respect of any of the Shares; and

f any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other law in respect of the Shares of a Shareholder, whether the period for payment has arrived or not.

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3.2 **Waiver of lien:** Registration of a transfer of Shares on which the Company has any lien will operate as a waiver of the lien, unless the Company first gives notice to the contrary to the transferee.

3.3 **Company may sell Share on which it has a lien:** The Company may sell a Share on which it has a lien as the Board thinks fit, where:

a the lien on the Share is for a sum which is presently payable; and

b the registered holder of the Share has failed to pay that sum within 10 working days after the Company has served him or her with written notice demanding payment of that sum.

3.4 **The Company may transfer Share and apply proceeds:** The Company may receive consideration given for a Share sold under paragraph 3.3, and may execute a transfer of the Share in favour of the person to whom the Share is sold, and register that person as the holder of the Share discharged from all calls due prior to the purchase. The purchaser is not bound to see to the application of the purchase money, and its title to the Share is not affected by any irregularity or invalidity in the proceedings relating to the sale.

3.5 **Proceeds application:** The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, must be paid to the former holder of the Shares.

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SCHEDULE 2

PROCEEDINGS OF BOARD MEETINGS

1 NOTICES

1.1 **Power to convene meeting:** 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 paragraph 1.2.

1.2 **Notice of meetings:** The following provisions apply in relation to meetings of the Board:

a The notice of meeting must be a written notice delivered by hand to the Director, or sent to the address, or email address which the Director provides to the Company for that purpose, or if an address or email address is not provided, then a written notice to his or her last place of employment or residence known to the Company.

b At least two days' notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two business hours' notice is given.

c It is not necessary to give notice of a meeting to an Alternate Director, unless the Director for whom the Alternate Director is alternate is known to be either outside of New Zealand or otherwise unavailable to attend meetings.

d A notice of meeting must specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual communication, the manner in which each Director may participate in the proceedings of the meeting.

1.3 **Irregularity in notice:** An irregularity in the notice of a meeting or a failure to give 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 agree to the waiver.

2 MEETING PROCEDURE

2.1 **Methods of holding meetings:** A meeting of the Board may be held by any of the following means:

a by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

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b by means of audio, or audio and visual, communications by which all Directors participating and constituting a quorum can simultaneously hear each other during the meeting.

2.2 **Quorum:** A quorum for a meeting of the Board, other than an adjourned meeting, is a majority of the Directors that are entitled to vote at that meeting.

2.3 **No business if no quorum:** No business may be transacted at a meeting of the Board if a quorum is not present.

2.4 **Adjournment:** If a quorum is not present within 20 minutes after the time appointed for a meeting of the Board, the meeting is adjourned automatically by two working days at the same time of day and place (or a later time as the Directors present at the meeting may determine) and notice of the time and place of the adjourned meeting must be given to all Directors. If at the adjourned meeting a quorum is not present within 20 minutes after the time appointed for the meeting, the Directors present will constitute a quorum.

2.5 **Chairperson:** The Directors may elect one of their number as chairperson of the Board for a term (if applicable, not exceeding the term for which he or she is appointed as a Director) or until he or she dies or resigns as chairperson or until another chairperson is appointed in his or her place by a majority vote of the Directors.

2.6 **Chairperson not present:** If, at a meeting of the Board, the Chairperson is not present within 10 minutes after the time appointed for the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

2.7 **Voting:** Every Director has one vote. An Alternate Director may not vote at a meeting if the person for whom he or she is an Alternate Director also attends.

[User note: Paragraph 2.8 ([No] casting vote) below deals with the chairperson's casting vote. Consider whether you would like your chairperson to have a casting vote i.e. an extra vote which can be exercised by the chairperson if the directors' votes for and against a matter are equal. This can be useful if there is an even number of directors but does give the chairperson significant power. Generally, we do not recommend giving the chairperson a right to have a casting vote.]

2.8 **[*No*] casting vote:** The chairperson [*has*][*does not have*] a casting vote.

2.9 **Resolutions:** A resolution of the Board is passed if a majority of the votes cast on it is in favour of it.

2.10 **Voting presumption:** A Director present at a meeting of the Board will be presumed to have voted in favour of a resolution of the Board unless he or she:

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a expressly abstains from voting; or

b dissents from or votes against the resolution.

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

3 RESOLUTIONS

3.1 **Written resolution:** A resolution in writing, signed or assented to in written form by all the Directors entitled to vote on the resolution (including Alternate Directors when the Director for whom he or she is appointed is unable to act), is as valid as if it had been passed at a meeting of the Board duly convened and held.

3.2 **Counterparts:** A resolution under paragraph 3.1 may consist of several documents (including a copy sent by email) in like form each signed or assented to by one or more Directors.

3.3 **Administration:** A copy of any written resolution must be entered in the minute book of Board proceedings.

4 COMMITTEES

A committee of Directors must, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this constitution relating to proceedings of Directors apply to meetings of a committee of Directors.

5 VALIDITY OF ACTIONS

The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.

6 OTHER PROCEEDINGS

Except as provided in this constitution, the Board may regulate its own procedure.

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[SCHEDULE 3

PRE-EMPTIVE RIGHTS ON TRANSFER

[*User note: Include this Schedule only if clause 5.2 (Restriction on transfer) has been included, i.e. if there are pre-emptive rights on share transfers.*]

1 TRANSFER NOTICE

*A Shareholder proposing to sell or otherwise transfer any Shares (**Proposing Transferor**) must give written notice to the Board specifying the details set out in paragraph 3 below (**Transfer Notice**). Subject to paragraph 2, the Transfer Notice constitutes an offer to sell the Proposing Transferor's Shares to the other Shareholders in accordance with this Schedule. It also constitutes an appointment of the Company as the Proposing Transferor's agent for the transfer of the Shares under this Schedule. If a Transfer Notice includes several Shares it is not to operate as if it were a separate notice in respect of each Share and the Proposing Transferor is under no obligation to sell or transfer part only of the Shares specified in the Transfer Notice. No Transfer Notice may be revoked by a Proposing Transferor except with the consent of the Board.*

2 COMPLIANCE WITH SECURITIES LEGISLATION

Despite any other provision of this Schedule, no Shareholder has the right to be offered any Shares proposed to be sold or otherwise transferred by the Proposing Transferor under paragraph 1 unless the Company is satisfied that any offer of Shares to that Shareholder will be exempt from the formal information disclosure and registration requirements under relevant securities legislation.

3 CONTENTS OF TRANSFER NOTICE

A Transfer Notice must specify:

a *the number of Shares the Proposing Transferor intends to sell or transfer (**Sale Shares**); and*

b *the proposed sale price and terms of sale including payment terms (**Proposed Sale Terms**).*

4 NOTICE

*Within 5 working days of receipt of a Transfer Notice the Board must send to each other Shareholder (**Offeree**) a notice stating:*

a *the number of Sale Shares which the Offeree is entitled to purchase, which will be in proportion to that Shareholder's existing shareholding;*

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b *the Proposed Sale Terms; and*

c *the date (being not less than 20 working days and not more than 30 working days after the date of receipt by the Company of the Transfer Notice) by which the Offeree must give an acceptance notice in writing containing the details set out in paragraph 5 below.*

5 ACCEPTANCE NOTICES

Each acceptance notice must state whether or not the Offeree wishes to purchase:

a *the Offeree's entitlement on the terms specified in the Transfer Notice; and*

b *any additional Sale Shares on the terms specified in the Transfer Notice which have been offered to, but declined by, other Offerees (**Declined Shares**) and if so, what number.*

If the Offeree fails to give an acceptance notice by the required date, the Offeree will be deemed to have rejected the offer.

6 NOTICE TO PROPOSING TRANSFEROR

After receipt of acceptance notices from all Offerees or after the expiry of the date specified in the Board's notice given under paragraph 4c (whichever is the earlier), the Board must within 5 working days send to the Proposing Transferor copies of all acceptance notices received or notify the Proposing Transferor that no acceptance notices have been received.

7 SALE AND PURCHASE

If the acceptance notices received contain sufficient acceptances to enable the purchase of all of the Sale Shares, upon receipt of notice under paragraph 6 the Proposing Transferor must sell the Sale Shares to the accepting Offerees, and the accepting Offerees must buy the Sale Shares, in accordance with paragraphs 8, 9 and 10. If the acceptance notices received do not contain sufficient acceptances to enable the purchase of all of the Sale Shares (or if no acceptance notices are received), the Proposing Transferor is not bound to sell any of the Sale Shares to the Offerees, and paragraph 12 will apply.

8 PURCHASERS

The purchasers of the Sale Shares will be determined as follows:

a *if all Offerees have accepted their entitlements then each Offeree must purchase the number of Sale Shares equivalent to that Offeree's entitlement; or*

b *if not all Offerees accept their entitlement, but there are still sufficient acceptances to purchase all of the Sale Shares, each accepting Offeree will become bound to purchase*

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that number of Shares equal to the Offeree's entitlement plus the number of any Declined Shares that the Offeree agreed to accept in the Offeree's acceptance notice. If there are insufficient Declined Shares to satisfy those requests, the Declined Shares must be divided among those Offerees who requested Declined Shares in proportion to their existing shareholdings in the Company as among each other (except no Offeree will be allocated more Declined Shares than the number which that Offeree has requested) and any Declined Shares remaining unallocated after that proportional division (or any subsequent division) must be used to satisfy the requests for Declined Shares which remain unsatisfied, in proportion to the existing shareholdings in the Company of the relevant Offerees as among each other, or on any other basis the Board considers is fair and reasonable.

9 *SETTLEMENT*

Settlement of the sale and purchase of the Sale Shares must take place within 20 working days after the Proposing Transferor becomes bound to sell the Sale Shares under paragraph 7 (or on any other date agreed by the parties).

10 *PAYMENT*

On settlement:

a *each accepting Offeree must pay the price for the Sale Shares purchased by them to the Proposing Transferor in immediately available, same day cleared funds without set-off or deduction; and*

b *the Proposing Transferor must deliver to each accepting Offeree a signed share transfer form and relevant share certificate (if any) for those Sale Shares.*

11 BOARD MAY EFFECT TRANSFER

If a Proposing Transferor defaults in transferring any Sale Shares in accordance with this Schedule, the Company may execute a transfer of the relevant Sale Shares on behalf of the Proposing Transferor. Subject to deduction of any amount in respect of which the Company has a lien over the Sale Shares, the Company must hold the purchase price on trust for the Proposing Transferor. The receipt by the Company of the purchase price for any Sale Shares will constitute a valid discharge of that purchase price and no question will be raised as to the title of any Offeree after entry of the name of the Offeree in the share register as the holder of the relevant Shares.

12 PROPOSING TRANSFEROR'S RIGHT TO SELL

12.1 *If no acceptance notices are received, or if acceptance notices are received which do not contain acceptances for all of the Sale Shares, then subject to clauses 5.8, 5.9 [and 5.12] of*

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this constitution the Proposing Transferor may, within 60 working days of the date specified by the Board in its notice under paragraph 4c, sell or transfer all of the Sale Shares (but not part only) to a third party at a price which is not less than the price set out in the Proposed Sale Terms and otherwise on terms no more favourable to that third party than the Proposed Sale Terms. **[*User note: Delete the reference to clause 5.12 (Major Share sale) if clause 5.12 has been deleted (i.e. tag-along and drag-along rights are not to apply).*]]**

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[*SCHEDULE 4*

PRE-EMPTIVE RIGHTS ON ISSUES OF SECURITIES

[User note:

- ***Include this Schedule only if option two of clause 3.3 is used i.e. the company has decided that shares must be offered to existing shareholders before they can be issued to other persons and that the company will set out its own process for offering those shares to existing shareholders, rather than following the statutory process set out in section 45 of the Companies Act.***
- ***Delete this Schedule if option one or option three of clause 3.3 is used i.e. the company has decided that it will either not be required to offer shares to existing shareholders before issuing those shares to third parties or that it will offer shares to existing shareholders under section 45.***
- ***This Schedule 4 process differs from the statutory process in that it provides for any shares which are declined by a shareholder to be allocated to any other shareholder that has indicated it would like to take more than its pro-rata share of the share issue. Consider whether that is appropriate for the Company's circumstances, and whether shareholders' rights under this Schedule should be limited to their pro rata share only.]***

1 PRE-EMPTIVE RIGHTS

Subject to paragraphs 2 and 8, all Securities proposed to be issued by the Company must be offered for acquisition in the manner set out in this Schedule 4 to the existing Shareholders, except to the extent that the terms of any Shares already issued do not entitle the holders of those Shares to receive an offer.

2 COMPLIANCE WITH SECURITIES LEGISLATION

No Shareholder has the right to be offered or issued any Securities proposed to be issued by the Company under paragraph 1 unless the Company is satisfied that any offer or issue of

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Securities to that Shareholder will be exempt from the formal information disclosure and registration requirements under relevant securities legislation.

3 PRO RATA ENTITLEMENTS

*All new Securities offered for acquisition (**New Securities**) must be offered to the existing Shareholders in proportion to the number of Shares held. Any fractional entitlements to New Securities must be disregarded.*

4 OFFER NOTICE

The offer must be made by written notice, specifying:

a *the number, class and terms of the New Securities offered, including the number of New Securities to which the offeree is entitled;*

b *the issue price and payment conditions; and*

c *the date (being not less than 7 days nor more than 28 days after the date of the written notice) by which the offeree must give an acceptance notice in writing to the Company containing the details set out in paragraph 5.*

5 ACCEPTANCE NOTICES

Each acceptance notice must state whether or not the offeree wishes to purchase:

a *the offeree's entitlement or some lesser number of New Securities; and*

b *any New Securities offered to, but declined by, other offerees (**Declined New Securities**) and if so what number.*

6 SECURITIES NOT ACCEPTED

New Securities offered to Shareholders under paragraph 4 and not accepted will be used to satisfy requests for allocations under paragraph 5b. If there are insufficient Declined New Securities to satisfy those requests, the Declined New Securities must be divided among those Shareholders who request Declined New Securities, in proportion to their existing shareholdings in the Company as among each other (except no Shareholder will be allocated more Declined New Securities than the number which that Shareholder has requested) and any New Securities remaining unallocated after that proportional division (or any subsequent division) will be used to satisfy the requests for Declined New Securities which remain

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unsatisfied, in proportion to the existing shareholdings of the relevant Shareholders as among each other.

7 RESIDUAL SHARES

New Securities remaining unallocated after compliance with paragraphs 1-6 may, at any time within 4 months of the date the New Securities are offered to Shareholders under paragraph 4, be disposed of by the Board in the manner it thinks most beneficial to the Company and may be offered to any person or persons the Board is prepared to register as a Shareholder provided that the consideration for and terms of the issue must not be more favourable than those offered to the Shareholders under paragraph 4.

8 EXCLUDED ISSUES

Nothing in paragraphs 1 to 7 applies to any issue of Securities made:

a *with the written approval of existing Shareholders holding Shares carrying together at least 75% of the Voting Rights; or*

b *with the agreement or concurrence of all entitled persons as provided in section 107(2) of the Act[.][; or*

c *under or in connection with an employee share option plan or similar arrangement established by the Board in accordance with this constitution or any shareholders' agreement between all of the Shareholders and the Company.*]

9 TREASURY STOCK

This Schedule also applies to the transfer of Securities held by the Company in itself as if the transfer was an issue of New Securities by the Company.]

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[SCHEDULE 5

TAG-ALONG AND DRAG-ALONG RIGHTS

[User note: Delete this Schedule if clause 5.12 (Major Share sale) has been deleted (i.e. tag-along and drag-along rights are not to apply).]

1 50% SALE

*If one or more Shareholders (**Seller**) wish, in one transaction or a series of linked transactions, to transfer Shares in the Company carrying 50% or more of the Voting Rights (**Sale Shares**) to any other person on arms' length terms (**Third Party**) then:*

a *the Seller must give a notice to the Company and the other Shareholders of their intention, which must specify the terms of the proposed transfer including the consideration to be provided for the Sale Shares (**Substantial Sale Notice**); and*

b *if the Sale Shares constitute Shares in the Company carrying 75% or more of the Voting Rights, the Seller has the option to require in the Substantial Sale Notice all of the other Shareholders (**Remaining Shareholders**) to transfer to the Third Party all of the Shares held by the Remaining Shareholders (**Drag-Along Shares**) in accordance with paragraph 2 (**Drag-Along Option**).*

2 DRAG-ALONG (75% SALE)

If the Seller exercises the Drag-Along Option in a Substantial Sale Notice:

a *the Seller will be bound to cause the Drag-Along Shares to be purchased by the Third Party upon the sale of the Sale Shares at the consideration per Share to be provided by the Third Party to the Seller in respect of the Sale Shares and otherwise on the same terms applicable to that sale (**Drag-Along Price**);*

b *each of the Remaining Shareholders will be bound to sell their Drag-Along Shares free from all encumbrances to the Third Party at the Drag-Along Price;*

c *the Substantial Sale Notice constitutes the Seller as agent of each Remaining Shareholder with full power and authority to do all things necessary to transfer all of the Drag-Along Shares in accordance with this paragraph, including signing all documents on each Remaining Shareholder's behalf and receiving the consideration for the Drag-Along Shares on each Remaining Shareholder's behalf, to be held on trust for that Remaining Shareholder;*

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d *the Substantial Sale Notice, once given, is irrevocable but both the notice and all obligations arising from it will lapse if for any reason the Seller does not, prior to or simultaneously with the transfer of the Drag-Along Shares, transfer all of the Sale Shares to the Third Party; and*

e *completion of the sale of the Drag-Along Shares will take place on the date of completion of the sale of the Sale Shares, unless in the case of the sale by any particular Remaining Shareholder, that Remaining Shareholder and the Seller agree otherwise.*

3 TAG-ALONG (50% SALE)

*If the Seller does not or (because the number of Shares being sold carry less than 75% of the Voting Rights) cannot exercise its Drag-Along Option in a Substantial Sale Notice, each of the Remaining Shareholders will have the option (**Tag-Along Option**) to require the Seller to cause the Third Party or its nominee to purchase all of the Shares held by the Remaining Shareholders (**Tag-Along Shares**) as follows:*

a *a Remaining Shareholder may only exercise the Tag-Along Option by giving written notice (**Tag-Along Notice**) to the Seller within 10 working days after the date on which the Substantial Sale Notice is given;*

b *a Tag-Along Notice must be for all of a Remaining Shareholder's Tag-Along Shares and, once given, is irrevocable but both the notice and all obligations arising from it will lapse if for any reason the sale of the Sale Shares to the Third Party does not proceed; and*

c *upon the exercise of the Tag-Along Option in accordance with this paragraph:*

i *the Seller will be bound to take all reasonable steps to cause the Tag-Along Shares to be purchased by the Third Party for the consideration per Share to be provided by the Third Party for its Sale Shares and otherwise on terms no less favourable to those applicable to that sale (**Tag-Along Price**);*

ii *the Remaining Shareholders will be bound to sell their Tag-Along Shares to the Third Party at the Tag-Along Price;*

iii *completion of the purchase by the Third Party of all of the Tag-Along Shares must take place on the date of completion of the sale of the Sale Shares, which must be no later than 60 working days after the date of the Substantial Sale Notice (unless in the case of the sale by any particular Remaining Shareholder, that Remaining Shareholder and the Seller agree otherwise); and*

iv *if the Seller is unable to cause the Third Party to complete the purchase of all of the Tag-Along Shares in accordance with this paragraph by the date specified in*

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paragraph 3ciii, then the Seller will not be entitled to sell, transfer or otherwise dispose of any of its Shares to the Third Party.]

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