

This is the constitution of Bay Energy Limited (*company number 565426*) (the "**Company**").

The constitution is in the name of "Trustpower Limited" as the constitution will take effect, and the Company intends to change its name to Trustpower Limited, immediately prior to the implementation of the proposed demerger of the company currently named Trustpower Limited which is contemporaneously to change its name.

**CONSTITUTION  
OF  
TRUSTPOWER LIMITED**

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**CONSTITUTION  
OF  
TRUSTPOWER LIMITED**

**1. DEFINITIONS AND INTERPRETATION**

1.1 **Definitions:** In this Constitution if not inconsistent with the context:

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

"**Alternate Director**" means any person appointed under Clause 28;

"**Appendix 6**" means appendix 6 to the Rules (as that appendix may be amended from time to time), or any portion or provision of the Rules which may at any time replace appendix 6 as the provision which specifies the provisions of the Rules required to be incorporated by reference in the constitutions of companies listed on the Main Board, as such provisions apply from time to time and as modified by any Ruling relevant to the Company;

"**Auditor**" means the independent person appointed to act as auditor of the Company;

"**Board**" means the Directors who number not less than the required quorum acting together as the board of directors of the Company;

"**Chairperson**" means the chairperson of Directors for the time being of the Company and includes any deputy chairperson or other person who is acting for the time being as chairperson of the Company;

"**Company**" means Trustpower Limited;

"**Constitution**" means this constitution of the Company as amended or substituted from time to time;

"**Director**" means a person appointed as, or holding the office of, a director of the Company in accordance with this Constitution;

"**Distribution**" has the meaning given to that term in section 2(1) of the Act;

"**Dividend**" has the meaning given to that term in section 53 of the Act;

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

"**Group**" means the Company and its Subsidiaries;

"**Issue**" means an issue of Securities of the Company;

"**Managing Director**" means a Director appointed to that office pursuant to Clause 27;

"**NZX Incorporation Rules**" means those provisions of the Rules specified in Appendix 6, as those provisions may be amended from time to time;

"**NZX Main Board**" means the main board equity security market operated by NZX;

"**Office**" means the registered office for the time being of the Company;

**"Ordinary Resolution"** has the meaning given to the term "Ordinary Resolution of the Issuer" in the Rules;

**"Register"** means the share register required to be kept pursuant to section 87 of the Act and Clause 12.4;

**"Registered Address"** in relation to any Shareholder means the address of the Shareholder as entered in the Register or, if the Shareholder has supplied to the Company an address within or beyond New Zealand for the purpose of giving notices to that Shareholder, shall mean the address so supplied and shall include any such address supplied to the Company by:

- (a) any person entitled to a Share following the death or bankruptcy of a Shareholder; or
- (b) the manager or committee of a mentally disordered Shareholder;

**"Representative"** means:

- (a) a person appointed as proxy under Clause 19; or
- (b) a representative appointed by a corporation under Clause 21.6.

**"Rules"** means the listing rules of NZX Main Board in force from time to time;

**"Secretary"** means any person appointed by the Board from time to time in accordance with Clause 32.11;

**"Share"** means a share (as that term is defined or used in the Act) in the Company and includes an Equity Security;

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

**"Shareholder"** means a person whose name is entered in the Register as the holder for the time being of Shares;

**"Solvency Test"** has the meaning given to that term in section 4 of the Act and, where applicable, section 52 of the Act;

**"Special Resolution"** has the meaning given to that term in section 2(1) of the Act;

**"Takeovers Code"** means the takeovers code approved in the Takeovers Code Approval Order 2000 (SR 2000/210), as amended;

**"Tauranga Energy Consumer Trust"** means the trustees from time to time of the Tauranga Energy Consumer Trust established by a trust deed dated 21 December 1993;

**"TECT Charitable Trust"** means the trust of that name established by deed dated 27 March 2004, as amended from time to time;

**"Working Day"** has the meaning given to that term in section 2(1) of the Act.

1.2 **Definitions in the Rules:** Words and expressions in this Constitution which commence with initial capital letters and are not defined in Clause 1.1 but are defined in the Rules have the respective meanings given to them by the Rules.

1.3 **Interpretation:** In this Constitution, if not inconsistent with the context:

- (a) headings and sub-headings do not assist interpretation and appear only for convenience;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms and corporations and "firm" includes "partnership";
- (d) words importing the masculine gender include the feminine or neuter gender and vice versa;
- (e) save as aforesaid, any terms not defined in this Constitution but which are defined in the Act shall bear the same meaning in this Constitution as in the Act;
- (f) where this Constitution adopts any definition in the Rules, references in that definition to "Issuer" shall be construed as references to the Company;
- (g) a reference to a "share" is a reference to that term as used or defined in the Act;
- (h) "in writing" and "written" includes facsimile and electronic communications and any other means of communication in a tangible and visible form resulting in permanent visible reproduction;
- (i) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
  - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
  - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision; and
- (j) where any word or expression is defined in this Constitution, any other grammatical form of that word or expression has a corresponding meaning.

**1.4 Constitution to prevail over Act:** If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

**2. COMPLIANCE WITH THE RULES**

**2.1 Rules:** Notwithstanding any other provisions contained in this Constitution but subject to all applicable law, the Company may do anything permitted by the Rules and at all times shall comply with all applicable Rules provided that:

- (a) any failure to comply with the Rules or with a provision of this Constitution corresponding with a provision of the Rules shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, and voting at, any meeting) done or entered into

by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Rules or those provisions of this Constitution shall not be entitled to enforce that transaction or contract;

- (b) Clause 2.1(a) does not affect the rights of any holder of Securities of the Company against the Company or the Directors arising from failure to comply with the Rules or those provisions of this Constitution; and
- (c) if a provision in this Constitution is inconsistent with the Rules, the Rules shall prevail, and that provision shall be deemed to be amended, or deleted, to the extent necessary to make that provision consistent with the Rules.

2.2 **NZX Incorporation Rules:** The NZX Incorporation Rules are deemed to be incorporated in this Constitution, and shall have effect as if they were set out in full in this Constitution. Without limiting the preceding sentence, if at any time the NZX Incorporation Rules require or permit any act or omission which would otherwise be in contravention of this Constitution, that act or omission is deemed to be allowed by this Constitution.

2.3 **Ruling:** If NZX has granted a Ruling in relation to the Company authorising any act or omission which in the absence of that Ruling would be in contravention of the Rules or this Constitution, that act or omission shall be deemed to be authorised by the Rules and by this Constitution.

2.4 **References to Listing Rules:** A reference in this Constitution to a specific Rule includes that Rule as it may be amended from time to time and any Rule which may be substituted for that Rule.

2.5 **Cessation:** Clauses 2.1, 2.2, 2.3 and 3.11 apply only for so long as the Company is party to a listing agreement with NZX. If the Company ceases to be party to a listing agreement with NZX those clauses shall cease to have effect.

2.6 **Companies Act 1993:** 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 by this Constitution.

### 3. ISSUE OF SHARES, CONVERTIBLE SECURITIES, OPTIONS; MINIMUM HOLDINGS

3.1 **Power to Issue:** The Board may, subject always to the provisions of the Rules and the Act, issue, allot or otherwise dispose of any Share or other Equity Securities to such persons, on such terms and conditions, and at such times and in such manner as the Board thinks fit.

3.2 **Rights attaching to Shares:** Subject to relevant provisions of this Constitution, the Act and the Rules and without prejudice to any special rights previously conferred on the holders of any existing Share or Class of Shares, any Share in the Company may be issued with such preferred, deferred or other special rights or such restrictions whether in regard to voting, Distributions or otherwise as the Board may from time to time determine.

3.3 **Rights and powers attaching to Shares:** Subject to any special rights or restrictions for the time being attached to any Share, and to the rights and restrictions set out elsewhere in this Constitution, each Share confers on the holder:

- (a) the right on a poll at a meeting of Shareholders to one vote on each resolution (subject to Clause 21.4 in the case of Shares which are not fully paid);

- (b) the right to an equal share in Dividends authorised by the Board; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company.

3.4 **Consolidation and subdivision:** The Board may:

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

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

3.5 **Redeemable Shares:** Subject to relevant provisions of this Constitution, the Act and the Rules, the Board may issue Shares that are redeemable on a specified date or at the option of the Company or at the option of the holder of the Shares.

3.6 **Pre-emptive rights:** Except as provided in this Constitution, any pre-emptive rights specified in section 45 of the Act are hereby negated.

3.7 **Issue of Convertible Securities:** Subject to the Act and the Rules, the Board may from time to time at its discretion issue Convertible Securities upon such terms and conditions as the Board may think fit.

3.8 **Grant of Options:** Subject to the Act and the Rules, the Board may from time to time at its discretion grant Options to subscribe for Securities in the Company on such terms and conditions as to payment or exercise or otherwise as shall be determined by the Board at the time such Options are granted.

3.9 **Transfer of Rights:** Every person to whom unissued Equity Securities are offered pursuant to an offer complying with Listing Rule 7.3.4(a) may decline or accept the offer, or transfer their Rights thereunder to any person or persons to whom the Equity Securities, when issued, could be transferred but the Directors have the same right to decline to accept any such transfer as they would have if the transfer were a transfer of Shares, and the provisions of this Constitution as to the transfer of Shares, with all necessary modifications, apply to transfers of Rights to unissued Equity Securities.

3.10 **Bonus issues:** Subject to the Rules, the Board may resolve to apply any amount which is available for Distribution either:

- (a) in paying up in full Shares or other Securities of the Company to be issued credited as fully paid to:
  - (i) the Shareholders who would be entitled to that amount if it were distributed by way of Dividend, and in the same proportions; and
  - (ii) if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of such Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in Clause 3.10(a)(i),

or partly in one way and partly in the other.



3.11 **Minimum Holdings:** The Company at any time may give notice in writing ("**Company Notice**") to a holder of Securities whose holding of Securities is less than a Minimum Holding ("**Small Holder**") of its intention to exercise its powers under this Clause 3.11. Any Director may act on the Company's behalf in exercising the powers of the Company under this Clause 3.11.

(a) Unless during the period specified in the Company Notice, being not less than three months after despatch of the Company Notice, the Small Holder concerned lodges for registration a transfer of Securities which, together with Securities already registered in the Small Holder's name, will result in the holding of Securities equal to or more than a Minimum Holding, the Company may arrange for the sale of the Small Holder's Securities through the NZX Main Board or in some other manner approved by NZX.

(b) For the purposes of this Clause 3.11, the Small Holder concerned is deemed to have appointed any Director as the Small Holder's attorney to execute all documents relating to the sale and transfer of such Securities.

(c) The Company shall account to the Small Holder for the proceeds of sale (less all reasonable costs incurred by the Company in respect thereof) which may be held by the Company in trust for the Small Holder concerned and paid to the Small Holder on surrender of the certificate (if any) for the Securities so sold or on an indemnity being given to the Company in the case of a certificate which has been lost or destroyed.

(d) The title of the purchaser of any Securities sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this Clause 3.11 and the receipt of the Company shall be a good discharge to the purchaser for the purchase price.

#### 4. ALTERATION OF SHAREHOLDERS' RIGHTS

4.1 **Procedure:** The Company shall comply with the provisions of sections 116 and 117 of the Act.

4.2 **Issue of equal or prior ranking Shares:** For the purposes of Clause 4.1, the issue of further Shares which rank equally with, or in priority to, any existing Shares, whether as to voting rights, Distributions or otherwise, is deemed not to be action affecting the rights attaching to those existing Shares.

#### 5. CALLS ON SHARES

5.1 **Calls:** The Board may from time to time make calls as it thinks fit upon the Shareholders in respect of all or any of the moneys unpaid on their Shares and not by the terms of issue of those Shares made payable at fixed times. At least 10 Business Days' notice specifying the time and place for payment and to whom such call shall be paid shall be given of each call and each Shareholder shall pay the amount of every call so made on such Shareholder to the persons and at the times and places appointed by the Board. A call is deemed to be made at the time when the resolution of the Board making the call is passed. A call may be made payable by instalments.

5.2 **Liability of joint holders:** The joint holders of a Share shall be jointly and severally liable for the payment of all calls and instalments due in respect of that Share.

5.3 **Power to differentiate:** The Board may, on any Issue of Shares, differentiate between the holders of those Shares in respect of the amount of calls to be paid and in the time of payment of such calls.

- 5.4 **Liability for interest on unpaid calls:** If the sum payable in respect of any call or instalment is not paid on or before the due date for payment thereof, the holder for the time being of the Share in respect of which the call has been made shall be liable to pay interest at such rate or rates as the Board may determine from the due date to the date of actual payment, unless the Board waives payment of interest wholly or in part.
- 5.5 **Sums payable in terms of Issue deemed calls:**
- (a) If by the terms of Issue of any Shares or otherwise any amount is made payable at any fixed time or by instalments at fixed times, every such amount or instalment shall be payable as if it were a call duly made by the Board and of which due notice has been given and all the provisions contained in this Clause 5 shall apply to such amount or instalment accordingly and to the Shares in respect of which they are payable.
- (b) Every such amount or instalment shall, when due, be payable to the Company by the person who for the time being is registered as the holder of the Shares.
- 5.6 **Calls may be paid in advance:** The Board may, if it thinks fit, receive from any Shareholder willing to advance the same all or any part of the money uncalled and unpaid on any Shares held by that Shareholder and may (until the same would, but for the advance, become payable) pay interest on all or any part of the money so advanced, at such rate as may be agreed upon between the Board and the Shareholder paying the sum in advance, but no Shareholder shall be entitled as of right to any interest on any money so paid in advance except by agreement with the Board. The Company may at any time repay the amount so advanced.
- 5.7 **Proof that call is owing:** In any proceedings for the recovery of any money due in respect of any call, it shall be sufficient to prove that the name of the relevant Shareholder is entered in the Register as the holder or one of the holders of the Shares in respect of which such debt arose, that the resolution making the call is duly recorded in the minute book of meetings of the Board and that notice of such call was duly given to the Shareholder. It shall not be necessary to prove the appointment or qualifications of the Directors comprising the Board which made such call nor any other matter whatsoever and proof of the matters aforesaid shall be conclusive evidence of debt.
- 5.8 **Cancellation of unpaid amounts:** No obligation to pay any amount which is unpaid on any Share shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

## 6. FORFEITURE OF SHARES

- 6.1 **Board may require payment of call with interest and expenses:** If any Shareholder fails to pay any call or instalment of a call on the due date for payment thereof, the Board may, at any time thereafter during such time as the call remains unpaid, serve a further notice on such Shareholder requiring that Shareholder to pay such call together with any interest that may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.
- 6.2 **Notice requiring payments to contain certain particulars:** The notice referred to in Clause 6.1 shall name a further day (not being less than 10 Business Days after the date on which such notice is deemed to have been served) on or before which such call and all interest and expenses that have accrued or have been incurred by the Company by reason of such non-payment are to be paid. It shall also name the place where payment is to be made (the place so named being either the Office or some other place at which calls of the Company are made payable). The notice shall also state that in the

event of non-payment at or before the time and at the place appointed, the Shares in respect of which such call was made or is payable will be liable to be forfeited.

- 6.3 **Forfeiture for non-payment:** If the requirements of any notice given pursuant to Clause 6.2 are not complied with, any Share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all Dividends and other Distributions declared in respect of the forfeited Share and not actually paid before the forfeiture.
- 6.4 **Evidence:** An entry in the minute book of meetings of the Board that a Share in the Company has been duly forfeited on a date stated in the minute shall be conclusive evidence of the facts stated in that minute as against all persons claiming to be entitled to the Share.
- 6.5 **Shares forfeited deemed cancelled:** Any Share forfeited in accordance with this Clause 6 shall be deemed to be cancelled immediately on forfeiture.
- 6.6 **Holders of forfeited Shares cease to be Shareholders but remain liable for calls made before forfeiture:** A person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall continue to be liable to pay and shall forthwith pay to the Company all calls, instalments, interest and expenses owing upon or in respect of such Shares at the time of forfeiture (together with interest thereon from the date of the forfeiture at such rate or rates as the Board determines, until the actual date of payment) and the Board may enforce the payment of such monies or any part thereof if it thinks fit, but shall not be under any obligation to do so.
- 6.7 **Notice of forfeiture to be given and entered in Register:** On the forfeiture of any Share, the Board shall cause a note of such forfeiture and the date thereof to be entered in the Register and shall cause notice of such forfeiture and the date thereof to be given to the relevant Shareholder.
- 6.8 **Restriction on forfeiture:** Notwithstanding anything in this Clause 6, Shares shall not be liable to forfeiture for failure of the persons entitled to them (by transmission or otherwise) to submit evidence of title within a specified time.
- 6.9 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.

## 7. SURRENDERS OF SHARES

- 7.1 **Directors may accept surrenders of Shares:** The Board may accept from any Shareholder a surrender of such Shareholder's Shares which are liable to forfeiture or any part thereof upon such terms as may be agreed upon between such Shareholder and the Board subject always to compliance with the Rules.

## 8. LIEN

- 8.1 **Company to have lien on Shares:** The Company shall have a first and paramount lien upon each Share registered in the name of each Shareholder (whether solely or jointly with others) for all unpaid calls and instalments payable in respect of that Share and any interest payable on such amounts, and for all sums of money which the Company may be called upon to pay under any statute or legislative enactment in respect of that Share, whether payable presently or in the future, and such lien shall extend to all Dividends or other Distributions from time to time declared in respect of such Share and to the proceeds of sale of such Share. The registration of a transfer of Shares on which

the Company has any lien shall, unless notice to the contrary is first given to the transferee by the Company, operate as a waiver of such lien.

- 8.2 **Lien may be enforced by sale of Shares:** The Company may sell, in such manner as the Board thinks fit, any Shares on which the Company has a lien, but no sale shall be made unless a sum in respect of which a lien exists is presently payable, nor until the expiration of 10 Business Days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the persons entitled thereto by reason of the death or bankruptcy of the holder.
- 8.3 **Application of proceeds of sale:** The proceeds of any sale of Shares in satisfaction of a lien, shall be applied first in payment of all expenses, next in satisfaction of the debts or obligations of the Shareholder to the Company in respect of which the lien exists, and the residue (if any) shall be paid to such Shareholder or his or her executors, administrators or assigns or as that Shareholder may direct.
- 8.4 **Title to Shares sold subject to a lien:** Upon any sale of Shares after enforcing a lien, the Board may authorise any person to execute an instrument of transfer of the Shares sold and cause the purchaser's name to be entered in the Register in respect of those Shares. The purchaser shall not be bound to see to the regularity of the proceedings, or to the application of the purchase money, and after the purchaser's name has been entered in the Register in respect of such Shares, the validity of the sale shall not be impeached by any person and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

## 9. ACQUISITION AND REDEMPTION OF SHARES

- 9.1 **Company may acquire and hold its own Shares and redeem redeemable Shares:**  
The Company may:
- (a) purchase or otherwise acquire Shares or other Equity Securities (including without limitation purchases or offers made pursuant to sections 59(1) and 60(1)(b)(ii) of the Act) from one or more holders, and is permitted to hold Shares or other Equity Securities so purchased or acquired;
  - (b) redeem any Share or other Equity Security held by one or more holders which is issued as redeemable in accordance with the terms of Issue,

in accordance with the provisions, and subject to the restrictions, of the Act, the Rules and this Constitution (including the NZX Incorporation Rules).

## 10. FINANCIAL ASSISTANCE

- 10.1 Subject to the provisions of the Rules and the Act, the Company may give financial assistance to a person for the purpose of, or in connection with, the purchase of issued Shares or Shares to be issued, or "shares" issued or to be issued by the Company's holding company.

## 11. TRANSFER OF SHARES; SHARE REGISTER

- 11.1 **Transferor is deemed to remain holder until registration of transfer:** Subject to any restrictions contained in this Constitution, the transferor of a Share shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Register in respect of the Share.

- 11.2 **Execution of transfers of Shares:** Any Share may be transferred:
- (a) in any manner authorised by or pursuant to the Financial Markets Conduct Act 2013 provided that if registration as a holder imposes a liability on the transferee, the transfer shall be signed by the transferee; or
  - (b) by an instrument in common form or in any other form approved by the Board which has been signed by or on behalf of the transferor and, if registration as a holder imposes a liability on the transferee, also signed by the transferee.
- 11.3 **Overseas execution:** Where an instrument of transfer would have complied with the provisions of the Financial Markets Conduct Act 2013 had it been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or its Share Registrar.
- 11.4 **Delivery to Company:** An instrument transferring Shares must be delivered to the Company or to the Share Registrar, together with such evidence (if any) as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.
- 11.5 **Verification:** The Board may, before approving any instrument of transfer for registration under Clause 11.2(b), require that the validity of the signatures of the parties to the transfer be verified and may require that either or both of these signatures be witnessed.

## 12. RESTRICTIONS ON TRANSFERS OF SHARES:

- 12.1 **Board's refusal to register:** Subject to the Act (which imposes certain procedural requirements on a board), the Board may decline to accept or register, or delay the registration of, any transfer of Shares where:
- (a) the Company has a lien on the Shares; or
  - (b) there is insufficient evidence of entitlement to transfer; or
  - (c) registration of such transfer, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than a Minimum Holding.
- 12.2 **Return of unregistered transfers:** A transfer of any Shares the registration of which has been declined shall be promptly returned to the person submitting it, for completion, and (subject to Clause 12.1) shall be registered when any errors or omissions have been rectified.
- 12.3 **Company to retain transfer:** If the Company registers an instrument of transfer it shall retain the instrument.
- 12.4 **Register and share registrars:** The Company shall maintain a share register in accordance with the Act and the reference in section 87 of the Act to "shares" shall be deemed to include a reference to Equity Securities of the Company. The Company shall be entitled to divide and keep two or more Registers in different places, which may be maintained by agents. The Company may also appoint more than one person to act as a Share Registrar at any given time. During such time as the Company only has one Register, every instrument of transfer shall be left for registration, together with the certificate of title to the Shares to be transferred, at the Office or with any agent of the Company appointed to act as a Share Registrar.

- 12.5 **Suspension of registration:** Subject to the Act and the Rules, the registration of transfers may be suspended by the Board for such periods of time as the Board may determine, provided that registration shall not be suspended for more than 30 days or such other length of time in any year as may be specified from time to time by the Act.
- 12.6 **No trusts recognised:** Except as required by law or as expressly authorised by this Constitution, the Company shall be entitled to treat the registered holder of any Share as the absolute owner thereof and shall not, unless ordered by a court of competent jurisdiction, be liable or under any obligation to recognise any trust or equity or equitable or other claim to or interest in such Share on the part of any other person whether or not it shall have actual or other notice thereof and any such notice, if given, shall be absolutely inoperative as against the Company for any purpose.
- 12.7 **Transfer of Securities other than Shares:** The provisions of this Clause 12 shall also apply to the transfer of Securities other than Shares, with any necessary modifications.

### 13. TRANSMISSION OF SHARES

- 13.1 **On death of Shareholder, survivor or executor only recognised:** In the case of the death of a Shareholder, the survivors or survivor, where the deceased was a joint holder, or the legal personal representatives of the deceased, where the deceased was the sole holder, shall be the only persons recognised by the Company as having any title to or interest in Shares of the deceased; but nothing in this Clause 13 shall release the estate of a deceased joint holder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.
- 13.2 **Person becoming entitled on death or bankruptcy of Shareholder may be registered:** Any person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall, upon such evidence being produced as may from time to time be properly required by the Board, have the right either to be registered as a Shareholder in respect of the Share or, instead of being so registered, to make such transfer of the Share as the deceased or bankrupt Shareholder could have made.
- 13.3 **Rights to Distributions of personal representative or assignee of bankrupt Shareholder:** Where a Shareholder dies or becomes bankrupt, the personal representatives or the assignee of such Shareholder's estate, as the case may be, shall, upon the production of such evidence as may from time to time be required by the Board be entitled to the same Distributions and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise) and is subject to all limitations as the Shareholder would have been entitled to if the Shareholder had not died or become bankrupt. Where two or more persons are jointly entitled to any Share in consequence of the death of the Shareholder they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.
- 13.4 **Transfer on behalf of mentally disordered Shareholder:** Where any Shareholder becomes mentally disordered or subject to a protection of property order, that Shareholder's manager will be entitled, upon the production of any evidence that may from time to time be required by the Board, to transfer the Shares or to be registered as a Shareholder in respect of the Shares and to receive the same Distributions and other advantages and to have the same rights (whether in relation to meetings of the Company, or to voting, or otherwise) and is subject to all limitations as the Shareholder would have been entitled to if that Shareholder had not become mentally disordered or subject to a protection of property order.
- 13.5 **Refusal of Transfer:** Notwithstanding the provisions of this Clause 13, the Board has the same right to refuse or suspend registration of a transfer of Shares as it would have had in the case of a transfer of the Shares by that Shareholder before becoming a

mentally disordered or protected person, or before that Shareholder's death or bankruptcy, as the case may be.

- 13.6 **Transfer of Securities other than Shares:** The provisions of this Clause 13 shall also apply to the transfer of Securities other than Shares, with any necessary modifications.

#### 14. DISTRIBUTIONS TO SHAREHOLDERS

- 14.1 **Power to authorise:** The Board, if it is satisfied on reasonable grounds that the Company will immediately after a Distribution satisfy the Solvency Test, may (subject to the Act and to this Constitution) authorise a Distribution at a time, and of an amount, and in such form and to any Shareholders as it determines.

- 14.2 **Restriction on certain Dividends:** The Board must not authorise a Dividend:

- (a) in respect of some but not all the Shares in a Class; or
- (b) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class,

provided that Dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid, other than in advance of calls, on the relevant Shares during any portion or portions of the period in respect of which the Dividend is paid but a Shareholder may waive that Shareholder's entitlement to receive a Dividend or any part thereof by written notice to the Company signed by or on behalf of the Shareholder. If any Share is issued on terms providing that it shall rank for Dividend as from a particular date, that Share shall rank for Dividend accordingly.

- 14.3 **Persons to whom Distribution payable:** A Distribution shall be payable to the person who is, on the Record Date, the registered holder of the Securities in respect of which the Distribution is made.

- 14.4 **Dividends may be paid by automatic payment or by cheque:** Unless otherwise directed by the Shareholder, any Dividend may be paid by automatic payment to any bank nominated in writing by the Shareholder or person entitled, or by cheque sent through the post to the Registered Address of the Shareholder or person entitled, or in the case of joint holders, to the bank nominated by or the Registered Address of that one whose name stands first on the Register in respect of the joint holding or to the person nominated in writing by all the joint holders. Every cheque so sent shall be made payable to the order of the person to whom it is sent. The Company shall not be liable for any loss arising from any mode of transmission referred to in this Clause 14.4.

- 14.5 **No interest on Distribution:** No Distribution shall bear interest against the Company.

- 14.6 **Deductions from Distribution:** The Board may deduct from any Distribution payable to a Shareholder all such money as may be due from that Shareholder to the Company on account of:

- (a) unpaid calls and instalments and any interest payable on such amounts, in respect of the Shares for which the Distribution is being paid; and
- (b) such amounts as the Company may be called upon by legislation to pay in respect of those Shares, including withholding and other taxes.

- 14.7 **Payment of small Distribution amounts:** Where the net amount of a Distribution payable to a Shareholder is less than such minimum amount as may be determined from time to time by the Board for the purposes of this clause, the Company may, with the prior

approval of that Shareholder, defer payment of the Distribution to that Shareholder until the earlier of:

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

**14.8 Unclaimed Distribution:**

- (a) A Distribution unclaimed for one year after having become payable may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the Distribution with other money of the Company and shall not be required to hold it or regard it as being impressed with any trust.
- (b) A Dividend unclaimed for five years after having become payable shall at the expiry of such period be forfeited by the Board for the benefit of the Company, provided always that the Board shall at any time after such forfeiture annul the same and pay such Dividend to the person producing evidence of entitlement.

**14.9 Shares in lieu of Dividends:** The Board may establish, operate, vary, suspend and terminate a plan whereby Shareholders may elect to receive Shares in lieu of Dividends on such terms and conditions as the Board determines.

**14.10 Calls in advance do not carry right to participate:** Where any Security is fully or partly paid up in advance of calls, such payment, whether or not carrying interest, shall not confer a right to participate in Distributions to Shareholders.

**14.11 Transfer does not pass right to any Distribution declared after such transfer:** A transfer of Securities shall not pass the right to any Distribution declared on such Securities after such transfer and before the registration of the transfer.

**15. MANAGEMENT OF COMPANY**

**15.1** In accordance with the provisions of section 128(3) of the Act, the Company shall maintain the Company's head office and a significant permanent operational and senior management presence in the Tauranga region.

**16. RESTRICTIONS ON CAPITAL REPAYMENTS/BUYBACKS/DIVIDENDS IN CERTAIN CIRCUMSTANCES**

**16.1** The Board must not, subject to any Special Resolution authorising otherwise, authorise a Distribution (by whatever means including a Dividend, acquisition of its own shares, redemption of shares, arrangement or otherwise) where, immediately after the Distribution, the net debt of the Group divided by the total tangible assets of the Group would exceed the figure of 50 percent provided that:

- (a) nothing in the above restriction shall restrict a Distribution of the Company's annual net profit after tax being paid out as a Distribution;
- (b) in the circumstances that any party (excluding Infratil Limited or an Associated Person of Infratil Limited) makes a full offer in accordance with and as defined in the Takeovers Code and that full offer is declared unconditional in all respects then at that time this Clause 16 shall be deemed to have been revoked and to be inapplicable from the time the full offer is declared unconditional; and



- (c) in the circumstance that the Tauranga Energy Consumer Trust and/or the TECT Charitable Trust (or nominee(s) of either of the foregoing wholly owned by either of the foregoing) in aggregate ceases to beneficially own at least 25 percent of the Shares then at that time this Clause 16 shall be deemed to have been revoked and to be inapplicable.

## 17. MEETINGS OF SHAREHOLDERS

17.1 **Annual meeting:** The Company shall hold annual meetings of Shareholders in accordance with section 120 of the Act.

17.2 **Special meetings:** A special meeting of Shareholders entitled to vote on an issue:

- (a) may be called at any time by the Board; or
- (b) must be called by the Board on the written request of Shareholders holding Shares carrying together not less than five percent of the votes entitled to be cast on the issue.

17.3 **Method of holding meeting:** A meeting of Shareholders may be held either by a number of Shareholders, who constitute a quorum:

- (a) being assembled together at the place, date and time appointed for the meeting;
- (b) participating in the meeting by means of audio, audio and visual, or electronic communication; or
- (c) by a combination of both of the methods described in Clauses 17.3(a) and 17.3(b).

For the avoidance of doubt, a Shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

17.4 **Quorum:** A quorum for a meeting of Shareholders is present if five Shareholders are present in person or by Representative. Subject as hereinafter provided no business shall be transacted at any meeting of Shareholders unless the requisite quorum is present when the meeting proceeds to business.

17.5 **Participation by electronic means:** A Shareholder, or the Shareholder's Representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if:

- (a) the Board approves those means; and
- (b) the Shareholder or Representative complies with any conditions imposed by the Board in relation to the use of those means (including, for example, conditions relating to the identity of the Shareholder or Representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).

17.6 **Chairperson of meetings of Shareholders:**

- (a) If the Board has elected a Chairperson and that Chairperson is present at a meeting of Shareholders, he or she must chair the meeting. If the Chairperson

is not present, the deputy Chairperson (if any) shall be entitled to take the chair.

- (b) If there is no Chairperson or deputy Chairperson (if any) present or if at any meeting such person is not present within 15 minutes after the appointed time for holding such meeting or is unwilling to act, and no Director is present and willing to take the chair, the Shareholders present may choose a chairperson from one of their number.
- (c) Subject to the Act and this Constitution, the Chairperson of the meeting in his or her sole discretion shall have the right to determine and regulate the proceedings of any meeting of Shareholders.

17.7 **Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

17.8 **Evidence:** Minutes which have been signed as correct by the Chairperson of the meeting are prima facie evidence of the proceedings.

## 18. NOTICE PROVISIONS

18.1 **Notice of meeting:** Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting, and to every Director and the Auditor, not less than 10 Working Days before the meeting.

18.2 **Right to attend meetings of Shareholders and receive notices:** Equity Security holders of all Classes whether entitled to a vote or not shall be entitled to attend meetings of Shareholders, and to receive copies of all notices, reports and financial statements issued generally by the Company to holders of Securities carrying votes.

18.3 **Contents:** The notice referred to in Clause 18.1 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;
- (b) the text of any Special Resolution to be submitted to the meeting;
- (c) in the case of Special Resolutions required by sections 106(1)(a) or 106(1)(b) of the Act, the right of a Shareholder under section 110 of the Act; and
- (d) that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder.

18.4 **Form of resolutions:** So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.

18.5 **Shareholders not entitled to notices unless address given:** If a Shareholder has not supplied to the Company an address within or outside New Zealand for the giving of notices to such Shareholder, such Shareholder shall not be entitled to receive any notices from the Company and all proceedings taken without notice to any such Shareholder shall be as valid as if such Shareholder had due notice thereof.

18.6 **Service of notices outside New Zealand:** If a holder of Quoted Securities has no Registered Address within New Zealand and has not supplied the Company an address within New Zealand for the giving of notices, but has supplied an address outside New

Zealand, then notices for that Quoted Security holder shall be posted to that Quoted Security holder at such international address and shall be deemed to have been received by that Quoted Security holder 24 hours after the time of the posting.

- 18.7 **Service of notice on joint holders of Shares:** All notices shall, with respect to any Shares to which persons are jointly entitled, be given to whichever of such persons is named first in the Register, or that person who is nominated in writing by all joint holders, and notice so given shall be sufficient notice to all the holders of such Shares.
- 18.8 **Service of notice on deceased or bankrupt Shareholders:** A notice may be given by the Company to the persons entitled to a Share as a consequence of the death or bankruptcy of a Shareholder by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the bankrupt or by any like description, at the address, if any, supplied for that purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.
- 18.9 **Irregularities in notice:**
- (a) The accidental omission to give notice of a meeting to, or the failure to receive, or late receipt of, notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.
  - (b) 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.

## 19. PROXIES

- 19.1 **Right to appoint:** A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders.
- 19.2 **Form of proxy:** A proxy form shall be sent with each notice of meeting of Quoted Security holders. A proxy shall be appointed by written notice signed by or, in the case of an electronic notice, sent by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant meeting reasonably permit), as a minimum, provide for two-way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the vote.
- 19.3 **Proxy may vote:** A proxy is entitled to attend and be heard at a meeting of Shareholders for which he or she is appointed as if the proxy were the Shareholder and may vote on all procedural matters including any resolution to amend any of the resolutions and to adjourn the meeting and vote on any resolution as amended.
- 19.4 **Proxy may demand a poll:** The instrument appointing a proxy shall be deemed to confer authority on that proxy to demand or join in demanding a poll.
- 19.5 **Instrument appointing proxy to be in writing:** The instrument appointing a proxy shall be in writing, signed by the Shareholder or by the Shareholder's attorney duly authorised in writing, or, if such Shareholder is a corporation, signed by its attorney or other person lawfully entitled to bind such corporation. The instrument shall state whether the proxy is appointed for a particular meeting or for a period of time.
- 19.6 **Time of deposit:** The instrument appointing a proxy and the power of attorney (if any) under which it is signed, or any office copy or notarially certified copy thereof, shall be

deposited at the Office, or such other place within New Zealand as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the start of the meeting.

19.7 **When vote by proxy valid though authority revoked:** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the Shareholder, or revocation of the proxy, or transfer of the Share in respect of which the vote is given provided no intimation in writing of the death, insanity, revocation or transfer shall have been received at the Office or by the Chairperson of the meeting before the vote is given.

19.8 **Holders of other Securities:** The provisions of this Clause 19 shall also apply to meetings of holders of Securities other than Shares, with any necessary modifications.

## 20. ADJOURNMENTS

20.1 **Meeting adjourned or dissolved if quorum not present:** If within 30 minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders, shall be dissolved; but in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day time and place as the Board may appoint. If at such adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Shareholders who are present in person or by Representative shall be a quorum and may transact the business for which the meeting was called. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting other than by announcement at the adjourned meeting.

20.2 **Chairperson has power to adjourn meeting:** The Chairperson of a meeting of Shareholders may, in his or her sole discretion, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

20.3 **Adjournment or dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the Chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the Chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the meeting.

20.4 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the Chairperson pursuant to Clause 20.3, the unfinished business of the meeting shall be dealt with as follows:

- (a) in respect of a resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution; and
- (b) the Chairperson may direct that any other item of uncompleted business, which in his or her opinion is required to be voted upon, be put to the vote by a poll without further discussion, in accordance with Clause 17.6(c).

## 21. VOTING

21.1 **How Votes may be given:** Votes may be given either personally or by Representative.

**21.2 Method of voting:**

- (a) At a meeting of Shareholders held under Clause 17.3(a), unless a poll is demanded, voting at the meeting shall be by either of the following methods, as determined by the Chairperson of the meeting:
  - (i) Shareholders signifying individually their assent or dissent by voice; or
  - (ii) Shareholders voting by a show of hands.
- (b) In the case of a meeting of Shareholders held under Clause 17.3(b) or Clause 17.3(c), unless a poll is demanded, voting at the meeting shall be by any method permitted by the Chairperson of the meeting.

**21.3 Declaration by Chairperson of result:** Unless a poll is so demanded, a declaration by the Chairperson that a resolution has been carried by the requisite majority, or lost, and an entry to that effect made in the minutes, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**21.4 Votes of Shareholders:** Subject to the Rules and to any rights or restrictions for the time being attached to any Class or Classes of Share, every Shareholder shall be entitled, in respect of each of those Shares on which no call is in arrears or on which no lien or right of forfeiture has been exercised:

- (a) on a vote by voices or on a show of hands, to one vote; and
- (b) on a poll, in respect of each Share which is:
  - (i) fully paid, to one vote; or
  - (ii) not fully paid, to a proportion of the vote which would be exercisable if such Share were fully paid, equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

**21.5 No voting in respect of Shares on which calls are unpaid:** No Shareholder shall be entitled to vote at any meeting of Shareholders (other than a meeting of an interest group) in respect of Shares in the Company on which any calls or other sums are due and unpaid.

**21.6 Corporations acting by representatives at meetings:** Any corporation which is a Shareholder of the Company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Shareholders of the Company or at all such meetings and shall give notice, not less than 48 hours before the start of the relevant meeting of such appointment to the Company. Until notice of revocation of such authority shall have been given to the Company any person so authorised shall be entitled to exercise the same powers on behalf of the corporation as that corporation could exercise if it were an individual Shareholder of the Company.

**21.7 Votes of Shareholders of unsound mind:** A Shareholder who is subject to the Mental Health (Compulsory Assessment and Treatment) Act 1992 and is a mentally disordered person within the meaning of that Act may vote by such Shareholder's committee or other person having authority to administer such Shareholder's estate. Subject to any provisions of a protection order made under the Protection of Personal and Property Rights Act 1988, a Shareholder may vote in respect of any Shares that are subject to such protection order by the manager appointed in that protection order. Any such

committee, manager or other person as aforesaid may vote either on a vote by voices or on a show of hands or on a poll, and, on a poll, may vote by proxy.

- 21.8 **Votes of Shareholders of unsound mind not subject to New Zealand jurisdiction:** A Shareholder not being subject to the statutes referred to in Clause 21.7 but in respect of whom an order has been made by any court having jurisdiction in relation to persons of unsound mind, may vote whether on a vote by voices or on a show of hands or on a poll by such Shareholder's committee, curator bonis or other person in the nature of a committee or curator bonis appointed by that court.
- 21.9 **Votes of representatives of deceased or bankrupt Shareholders:** Any person entitled under Clause 13.2 to a transfer of any Shares may vote at any meeting of Shareholders in the same manner as if such person were the registered Shareholder provided that at least 48 hours before the time of holding the meeting or adjourned meeting, as the case may be, at which such person proposes to vote such person shall satisfy the Board of such person's right to vote, unless the Board shall have previously admitted such person's right to vote at such meeting.
- 21.10 **Votes of joint holders:** Where there are joint registered holders of any Share, any one of such persons may vote at any meeting, either personally or by Representative, in respect of such Share as if such person were solely entitled thereto. If more than one of such joint holders is present at any meeting, personally or by Representative, that one of the said persons so present whose name stands first on the Register in respect of such Share shall alone be entitled to vote in respect thereof. Several executors or administrators of a deceased Shareholder in whose sole name any Shares stand shall for the purposes of this Clause be deemed joint holders thereof.

## 22. POLLS

- 22.1 **Poll may be demanded:** At a meeting of Shareholders, a poll may be demanded (before or on the declaration of the result of the vote):
- (a) by at least five Shareholders present in person or by Representative having the right to vote at the meeting; or
  - (b) by a Shareholder or Shareholders present in person or by Representative and representing not less than 10 percent of the total voting rights of all the Shareholders having the right to vote at the meeting; or
  - (c) by a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which an aggregate amount paid up is not less than 10 percent of the total amount paid up on all Shares that confer that right; or
  - (d) by the Chairperson of the meeting; or
  - (e) as otherwise permitted by the Act.
- 22.2 **When poll to be taken:** If a poll is demanded pursuant to Clause 22.1, it shall be taken in such manner and at such time and place as the Chairperson of the meeting directs and either at once or after an interval or adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In case of any dispute as to admission or rejection of a vote, the Chairperson shall determine the same, and such determination made in good faith shall be final and conclusive.

- 22.3 **Effect of poll on other business:** The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. No poll shall be demanded on the election of a Chairperson of a meeting, and a poll demanded on a question of adjournment shall be taken forthwith unless in the opinion of the Chairperson the taking of a poll is impracticable in which case the meeting shall proceed or be adjourned as directed by the Chairperson.
- 22.4 **Poll procedure:** A poll shall be taken in such manner as the Chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.
- 22.5 **Votes:** On a poll:
- (a) votes may be given either personally or by Representative;
  - (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares; and
  - (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.
- 22.6 **Scrutineers of poll:** If a poll is taken the scrutineers shall be the Auditor for the time being, unless they are unable or unwilling to so act or unless the Chairperson directs to the contrary, in which case the scrutineers shall be appointed by the Chairperson.
- 22.7 **Result of poll:** The Chairperson shall be entitled to declare the result of a poll either at or after the meeting upon receipt of a certificate from the scrutineers stating that sufficient votes to determine the result of the resolution have been counted and setting out the basis of that determination.
- 22.8 **No postal voting:** No postal voting in respect of any meeting of Shareholders is permitted, whether by Shareholders or their proxies unless the Board resolves otherwise whether generally or for any particular meeting or matter.

## 23. SHAREHOLDER PROPOSALS

- 23.1 **Notice to Board:** A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this Clause 23.1.
- 23.2 **Management review by Shareholders:** The Chairperson shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but no such resolution is binding on the Board.
- 23.3 **Meetings of interest groups:** A meeting of the Shareholders constituting an interest group may be called by the Board at any time. All the provisions of this Constitution relating to meetings of Shareholders shall apply, with all necessary modifications, to meetings of interest groups, except that:
- (a) the necessary quorum for a meeting is one Shareholder having the right to vote at the meeting present in person or by Representative;

- (b) any Shareholder in the relevant interest group, present in person or by Representative may demand a poll; and
- (c) if the Board so elects, one meeting may be held of Shareholders constituting more than one interest group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of the Shareholders in each interest group.

## 24. ELECTRONIC COMMUNICATIONS

24.1 Notwithstanding any other provision of this Constitution, to the extent permitted by the Act and the Rules:

- (a) if a Shareholder has provided to the Company an address for the receipt of communications electronically, and if the Shareholder has not requested the Share Registrar in writing otherwise, all communications from the Company to the Shareholder (including notices of meeting, notices of dividends, voting forms, proxy forms, annual reports or notices in lieu thereof and including the service of notices outside New Zealand and the service of notices on deceased or bankrupt Shareholders) may be sent by electronic means;
- (b) the Company may allow Shareholders to use electronic means to appoint Representatives, cast postal votes and cast votes on resolutions at meetings of Shareholders (or of other groups). The procedures in relation to such electronic appointment or electronic voting shall be those required by law (if any) in conjunction with any other procedures determined by the Board.

## 25. DIRECTORS

25.1 **Directors' shareholding qualifications:** There shall be no shareholding qualification for a Director.

25.2 **Maximum number:** The maximum number of Directors (other than Alternate Directors) is seven. Subject to that maximum and the Rules, the number of Directors to hold office shall be fixed from time to time by the Board.

25.3 **Appointment by Shareholders:** Subject to Clause 25.2 and the Rules:

- (a) a person may be appointed as a Director at any time by an Ordinary Resolution; and
- (b) a Shareholder who beneficially owns not less than 25 percent of the Shares may appoint one Director and subsequently remove that Director at any time by notice in writing to the Company (and if the Shareholder exercises this right then the Shareholder has no right to vote upon the election of other Directors).

25.4 **Continue in office:** The Directors in office on the date this Constitution comes into force shall continue to hold office under the provisions contained in this Constitution.

25.5 **Power of Directors to fill casual vacancy or appoint additional Directors:** The Directors shall have power at any time to appoint any other qualified person as a Director, either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum number fixed pursuant to Clause 25.2. Any Director so appointed shall retire at the next annual meeting of the Company, but shall be eligible for re-election at that meeting.



- 25.6 **Exceptions to rotation:** For the purposes of the Rules relating to rotation of directors, one Director who is also an employee of the Company (whether or not a Managing Director) is not required to retire by rotation. If there is more than one such Director, the one not required to retire by rotation shall be selected by the Board.
- 25.7 **Re-election of retiring Director:** A Director retiring by rotation at a meeting in accordance with the Rules shall, if standing for re-election, be deemed to have been re-elected unless:
- (a) some other person is elected to fill the vacated office;
  - (b) it is resolved not to fill the vacated office; or
  - (c) a resolution for the re-election of that Director is put to the meeting and lost.
- 25.8 **Vacation of office:** The office of a Director shall be vacated, if the Director:
- (a) becomes disqualified from being a Director pursuant to the Act; or
  - (b) dies or becomes mentally disordered, or of unsound mind, or becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
  - (c) resigns that person's office by notice in writing to the Company (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
  - (d) is removed from office by an Ordinary Resolution;
  - (e) is removed from office pursuant to Clause 25.3(b); or
  - (f) has for more than six months been absent without approval of the Board from meetings of the Board held during that period.
- 25.9 **Timing of retirement and appointment:** If:
- (a) a Director retires at a meeting of Shareholders and is not re-elected or deemed to be re-elected at that meeting, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting;
  - (b) a Director is removed from office at a meeting of Shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting; or
  - (c) a person who is not already a Director is appointed or elected as a Director at a meeting of Shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

## 26. NOMINATIONS AND VOTING

- 26.1 **Appointment voted on individually:** No resolution to appoint or elect a Director (including a resolution to re-elect any Director) shall be put to holders of Securities unless:
- (a) the resolution is for the appointment of one Director; or

- (b) the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been approved without a vote being cast against it.

Nothing in this Clause 26.1 shall prevent the election of two or more Directors by ballot or poll including where the number of candidates for the office of Director exceeds the vacancies available and the ballot or poll will result in the election of those candidates, equal to the number of vacancies to be filled, who receive the highest number of votes.

## 27. MANAGING DIRECTOR

- 27.1 **Directors may appoint Managing Director:** The Board may from time to time appoint one or more of their body to the office of Managing Director (by whatever name called) for a period not exceeding five years, as the Board may determine. The resolution to appoint a Managing Director and the terms and conditions of that appointment shall require the assent of a simple majority 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 terms and conditions of such person's employment, but so that the remedy of any such person for any breach of the agreement shall be in damages only, and such person shall have no right to claim to continue in such office contrary to the will of the Board. A Managing Director who is qualified to remain a Director under the provisions of this Constitution shall be eligible for reappointment as Managing Director at the expiry of his or her term as Managing Director.
- 27.2 **Termination of Managing Director's term:** Any Managing Director shall be liable to be dismissed or removed by a resolution passed by a simple majority of the Board. Any Managing Director shall immediately cease to be a Managing Director if he or she ceases to hold office as a Director for any reason.
- 27.3 **Remuneration of Managing Director(s):** The remuneration of a Managing Director for his or her services as an employee shall from time to time be fixed by the Board and may be by way of fixed salary or commission on profits of the Company or by participation in any such profits, or by any or all of those modes.
- 27.4 **Directors may confer on Managing Director such powers as they think fit:** Subject to the Act and the Rules, the Board may from time to time entrust to and confer upon the Managing Director for the time being such of the powers exercisable under this Constitution by the Board as they may think fit, and may confer such powers with such restrictions as they think expedient; and they may confer such powers, either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers of the Board in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

## 28. ALTERNATE DIRECTORS

- 28.1 **Notice of appointment and removal to Company:** A Director may from time to 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 other Directors, to be that Director's alternate. All appointments and removals of Alternate Directors shall be effected by notice in writing to the Company, such notice to be left at the Office, or delivered to a meeting of the Board.
- 28.2 **Alternate Director's rights with respect to meetings:** An Alternate Director shall (subject to such person giving to the Company an address within New Zealand at which notices may be served upon such person) be entitled to receive notices of all meetings of the Board, and, during the absence of his or her appointor, attend and vote at

meetings of the Board and be counted in the quorum at such meetings, subject always to this Constitution and the Rules.

28.3 **Other rights and powers of Alternate Director:** Unless otherwise provided by the terms of such person's appointment, an Alternate Director shall have the same rights, powers and privileges (excluding the right to be elected as Chairperson or Managing Director and the power to appoint an Alternate Director) and shall discharge all the duties of, and be subject to the same provisions as, the Director in whose place such person acts.

28.4 **Remuneration of Alternate Director:** An Alternate Director may be repaid expenses and shall be entitled to be indemnified by the Company to the same extent (with such changes as the circumstances require) as if he or she was a Director, but shall not be entitled to receive from the Company any remuneration in respect of his or her appointment as Alternate Director except only such proportion (if any) of the remuneration otherwise payable to his or her appointor as such appointor may direct by notice in writing to the Company.

28.5 **Cessation of Alternate Director:** An Alternate Director shall cease to be an Alternate Director:

- (a) if the appointor ceases to be a Director, or revokes the appointment by written notice to the Company;
- (b) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director; or
- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

## 29. POWERS AND DUTIES OF BOARD

29.1 **Business of Company to be managed by the Board:** Subject to this Constitution and the Rules, the Board may exercise all such powers and do all such acts and things as the Company is empowered to do, and which are not by this Constitution or by statute directed or required to be exercised or done by the Company at a meeting of Shareholders.

29.2 **Powers of attorney:** The Board may at any time and from time to time by power of attorney executed in accordance with the Act appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution and subject always to the Act) and for such period and subject to such conditions as the Board may from time to time think fit. Any such appointment may, if the Board thinks fit, be made in favour of the members of any local board established as aforesaid, or in favour of any company, or of the members, directors, nominees, or managers of any company or firm, or in favour of any fluctuating body of persons, whether nominated directly or indirectly by the Board. Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorney or attorneys as the Board may think fit.

29.3 **General power to delegate:** The Board may otherwise delegate its powers in accordance with the Act.

29.4 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that

power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this Clause is deemed to be, and always to have been, a proper and valid exercise of that power.

### **30. DIRECTORS' REMUNERATION**

30.1 **Restriction on authorisation:** The Board may, subject to the Rules, exercise the power conferred by section 161 of the Act to authorise payments and other benefits to and for Directors.

30.2 **Payment of expenses:** Directors are entitled to be paid for all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board, or any committee of the Board, or meetings of Shareholders, or in connection with the business of the Company.

30.3 **Special remuneration:** Without limiting Clause 30.1, the Board may authorise the Company to pay special remuneration to any non-executive Director who is, or has been, engaged by the Company to carry out work in a capacity other than that of Director.

### **31. TRANSACTIONS INVOLVING DIRECTORS' SELF INTEREST**

31.1 **"Interested":** For the purposes of this Clause 31, the term "interested" bears the meaning assigned to that term in section 139 of the Act on the basis that the reference to the "company" in that section shall be read as a reference to the Company.

31.2 **Director may hold another office or place of profit:** A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with the office of Director for such period and on such terms (as to remuneration and otherwise) as the Board may determine and no Director or intending Director shall be disqualified from contracting with the Company either with regard to tenure of any such other office or place of profit or as vendor, purchaser, or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested be liable to be avoided nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of the Director holding that office or of the fiduciary relationship thereby established.

31.3 **Appointment:** Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more Directors to offices of employment with the Company or any company in which the Director is interested, such proposals may be divided and considered in relation to each Director separately and in such cases each of the Directors concerned shall be entitled to vote (and be counted in the quorum) in respect of each resolution, except that concerning his or her own appointment.

31.4 **Professional capacity:** Any Director may act personally or as a member of a firm in a professional capacity for the Company and such Director or such Director's firm shall be entitled to remuneration for professional services as if such person were not a Director provided that nothing herein contained shall authorise a Director or firm to act as Auditor of the Company.

### **32. PROCEEDINGS OF DIRECTORS**

32.1 **Meetings of Directors and quorum:** The Directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit, and may determine the quorum necessary for the transaction of business.

Unless otherwise determined, the quorum shall be four Directors. No business shall be transacted at a meeting of Directors unless a quorum is present.

- 32.2 **Directors may call meeting of Board:** A Director may at any time, and the Secretary or any employee of the Company upon the request of a Director shall convene a meeting of the Board by notice to each Director. If any Director has appointed an Alternate Director, notice shall be given to such Alternate Director. The validity of proceedings at any meeting of the Board shall not be called into question if any such notice was not in fact received by any Director or Alternate Director.
- 32.3 **Voting at Board meeting:** Questions arising at any Board meeting shall be decided by a majority of votes. In case of an equality of votes, the Chairperson of such meeting shall have a second or casting vote, except that in cases where two Directors form a quorum, the Chairperson of a meeting at which only two Directors are present shall not have a casting vote.
- 32.4 **Board may elect Chairperson and deputy chairperson:** The Board may elect a Chairperson and, if thought fit, a deputy Chairperson of its meetings and may determine the periods for which they are to hold office. The Chairperson shall preside at meetings of the Board and failing the Chairperson, the deputy Chairperson shall so preside (with all the rights, powers and privileges of the Chairperson in so doing) but if no such Chairperson or deputy Chairperson is elected or if at any meeting neither the Chairperson nor the deputy Chairperson is present within five minutes of the time appointed for holding any meeting, the Directors present shall choose someone of their number to be Chairperson at such meeting.
- 32.5 **Board may delegate powers to committees:** Subject to section 130(2), the Board may delegate any of its powers to committees consisting of such Director or Directors as it thinks fit and may from time to time revoke such delegation. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed upon it by the Board. The meetings and proceedings of any such committee consisting of two or more Directors shall be governed by the provisions of this Constitution regulating the meetings and proceedings of the Board, so far as the same are applicable thereto. The chairperson of any meeting of a committee of Directors shall not have a second or casting vote.
- 32.6 **All acts done by Directors to be valid:** All acts done at any meeting of the Board, or of a committee of Directors, or by any person acting as a Director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Director or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
- 32.7 **Resolution in writing:** A resolution in writing signed or assented to by all the Directors or their duly appointed Alternate Directors entitled to receive notice of a meeting of the Board, shall be as valid and effectual as if it had been passed at a Board meeting duly convened and held. Any such resolution may consist of several documents (including email, facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors and a copy of such resolution shall be entered in the minute book of meetings of the Board. Any such document sent by a Director by facsimile or email or other similar means of communications shall be deemed to be in writing and signed by such Director.
- 32.8 **Alternative forms of meeting:** A meeting of the Board may be held either:
- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

- (b) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

32.9 **Minutes to be made and when signed by Chairperson prima facie evidence:** The Board shall cause minutes to be duly entered in the minute book of meetings of the Board provided for the purpose:

- (a) of all appointments, removals and resignations of the Directors, Alternate Directors and the Auditor of the Company;
- (b) of the names of the Directors present at each Board meeting and of any committee of Directors; and
- (c) of all resolutions passed by and the proceedings of the Board and committees of Directors.

Any such minutes of a meeting of the Board or of a committee of Directors, if purporting to be signed by the Chairperson of such meeting, or by the Chairperson of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes.

32.10 **Application of Third Schedule:** The provisions of the Third Schedule of the Act shall not apply to the proceedings of the Board.

32.11 **Appointment of Secretary:** The Board may appoint a person to undertake such secretarial duties in respect of the Company as the Board shall specify and the Board shall have the power to terminate such appointment and to appoint another person in the place of the person whose appointment has been terminated.

### 33. INDEMNITY AND INSURANCE

33.1 **Indemnity of Directors and Employees for costs:** The Company may, with the prior approval of the Board, indemnify a Director or Employee of the Company or any Related Company for any costs incurred by him or her in any proceeding:

- (a) that relates to liability for any act or omission in his or her capacity as a Director or Employee of the Company or a Related Company; and
- (b) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

33.2 **Indemnity of Directors for liability:** The Company may, with the prior approval of the Board indemnify a Director of the Company or any Related Company in respect of:

- (a) 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
- (b) costs incurred by that Director in defending or settling any claim or proceeding relating to any liability under Clause 33.2(a);

not being criminal liability or liability in respect of a breach of the duties specified in section 131 of the Act.

33.3 **Indemnity of Employees for liability:** The Company may, with the prior approval of the Board, indemnify an Employee of the Company or a Related Company in respect of:

- (a) liability to any person other than the Company or a Related Company for any act or omission in his or her capacity as an Employee; or
- (b) costs incurred by the Employee in defending or settling any claim or proceeding relating to any liability under Clause 33.3(a),

not being criminal liability or liability in respect of a breach of any fiduciary duty owed to the Company or a Related Company.

**33.4 Insurance for Directors and Employees:** The Board may cause the Company to effect insurance for a Director or Employee of the Company or any Related Company in respect of:

- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or Employee; or
- (b) costs incurred by that Director or Employee in defending or settling any claim or proceeding relating to any liability under Clause 33.4(a); or
- (c) costs incurred by that Director or Employee in defending any criminal proceedings in which he or she is acquitted.

The Directors who vote in favour of authorising the effecting of insurance under this Clause 33.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

**33.5 Definitions:** For the purposes of this Clause 33 only:

- (a) the term "Director" includes a former director of the Company;
- (b) the term "Employee" includes a former employee;
- (c) "effect insurance" includes pay, whether directly or indirectly, the costs of the insurance; and
- (d) "indemnify" includes relieve or excuse from liability, whether before or after the liability arises; and "indemnity" has a corresponding meaning.

## **34. CONTRACTING BY THE COMPANY**

**34.1 Method of contracting:** The Company may enter into a contract or other enforceable obligation in any manner permitted by the Act. The Board may by resolution determine either generally or in any particular case that a contract or other enforceable obligation may be entered into on behalf of the Company by any person or class of persons. For the purposes of section 180(1)(a)(iii), a deed which is to be entered into by the Company may be signed on behalf of the Company by a Director and any other person authorised by the Board whose signatures must be witnessed.

## **35. LIQUIDATION**

**35.1** Upon liquidation of the Company the following shall apply:

- (a) **Assets to be distributed proportionately:** Subject to:
  - (i) the terms upon which any Class of Securities in the Company have been issued; and

(ii) this Clause 35.1,

the surplus assets of the Company (if any) shall be distributed among the Shareholders in proportion to their shareholding.

(b) **Distribution in kind:** The liquidator may with the approval of a Special Resolution of the Company:

(i) divide amongst the Shareholders in kind the whole or any part of the surplus assets (whether they consist of property of the same kind or not);

(ii) vest the whole or any part of any surplus assets in trustees upon trust (in general terms set out in the resolution) for the benefit of the Shareholders of the Company,

provided that no Shareholder shall be compelled to accept any property whereon there is any liability.

(c) **Liquidator's powers:** For the purposes of Clause 35.1(a) the liquidator may, as the liquidator considers fair:

(i) attribute values to specific assets;

(ii) determine how the division of assets will be carried out as between the Shareholders or different Classes of Shareholders; and/or

(iii) determine the specific terms of any trust for Shareholders.

(d) **Partly paid shares:** If any payment is due to the Company in respect of any Shares the liquidator may deduct or require such payment before making a Distribution of cash or asset to the holder of those Shares.