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Constitution of SeaDragon Limited

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CONSTITUTION OF SEADRAGON LIMITED

1. INTERPRETATION

1.1 Definitions

In this Constitution, unless the context requires otherwise:

Act means the Companies Act 1993;

Alternate Director means a person appointed to be the alternate of a Director pursuant to this Constitution;

Average Market Price means, on any date, the volume weighted average price of the Company's Equity Securities listed on USX calculated from trades through USX over the 20 working days before the relevant date;

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

Class means a class of Financial Products having identical rights, privileges, limitations and conditions ~~and includes or excludes Financial Products which NZX in its discretion deems to be, or not to be, of that Class;~~

Company means SeaDragon Limited;

Constitution means this constitution, as altered from time to time;

Director means a person appointed as a director of the Company;

EMS means Efficient Market Services Limited;

Equity Security means an ~~Equity Security~~ equity security, as defined in the ~~NZX Listing Rules~~ FMC Act, which has been issued, or is to be issued, by the Company, as the case may require;

Financial Product has the meaning given in the ~~NZX Listing Rules~~ FMC Act;

FMC Act means the Financial Markets Conduct Act 2013;

Independent Director has the meaning given in the NZX Listing Rules;

Interested, in relation to a Director, has the meaning given in section 139 of the Act;

~~Listed~~ ~~has the meaning given in the NZX Listing Rules;~~ **Market Rules** means the USX Market Rules of EMS in force from time to time;

Minimum Holding ~~has the meaning given in the NZX Listing Rules;~~ means:

(a) for so long as the relevant Class of the Company's Equity Securities is approved for trading on USX or any other financial product market, a holding of that Class of Equity Securities having a value of at least \$1,000, calculated at the Average Market Price; and

(b) ~~NZX Main Board~~ ~~means the main board equity security market operated by NZX;~~ ~~NZX Listing Rules~~ ~~means the NZX Listing Rules in force from time to time;~~ if the relevant Class of the Company's Equity Securities is not approved for trading on USX or any other financial product market, the minimum number of that Class of Equity Securities as determined by the Board from time to time;

~~NZX~~ means NZX Limited, its successors and assigns and as the context permits includes any duly authorised delegate of NZX (including the Tribunal);



Ordinary Resolution means a resolution passed by a simple majority of the votes of shareholders of the Company entitled to vote and voting on the resolution;

Personal Representative means:

- (a) in relation to a deceased individual shareholder, the executor, administrator or trustee of the estate of that shareholder;
- (b) in relation to a bankrupt individual shareholder, the assignee in bankruptcy of that shareholder; and
- (c) in relation to any other individual shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act;

Related Party in respect of a person means:

- (a) if that person is a company or other body corporate, any person that:
 - (i) is a related company of that person in terms of section 2(3) of the Act (read as if the expression "company" in that section included any body corporate);
 - (ii) controls that person; and
 - (iii) is controlled by that person, or is controlled by the same person that controls that person; and
- (b) if that person is a natural person (including a natural person acting as a trustee of a trust), the spouse of that person or any trust, company, or other entity controlled by or associated with that person or the spouse of that person;

Representative means a person appointed as a proxy or representative under clause 16 or a Personal Representative;

~~**Ruling** has the meaning given in the NZX Listing Rules;~~ **Shareholder-Appointed Director** means each Director appointed pursuant to clause 20.3(b);

Special Resolution means a resolution approved by a majority of 75% or more of the votes of those shareholders entitled to vote and voting on the resolution;

~~**Subsidiary** has the meaning given in the NZX Listing Rules~~

Takeovers Code means the takeovers code set out in the schedule to the Takeovers Regulations 2000 (SR 2000/210); and

~~**Tribunal** has the meaning given in the NZX Listing Rules.~~ **USX** means the Unlisted Securities Exchange operated by EMS.

1.2 Construction

In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;



- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- ~~(d) a reference to an NZX Listing Rule includes that NZX Listing Rule as from time to time amended or substituted;~~
- (d) ~~(e)~~ the singular includes the plural and vice versa and one gender includes the other genders;
- (e) ~~(f)~~ the words "written" and "writing" include electronic communications and any other means of communication resulting in permanent visible reproduction;
- (f) ~~(g)~~ the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality; and
- (g) ~~(h)~~ words or expressions defined in the Act ~~or the NZX Listing Rules~~ (as applicable) have the same meaning in this Constitution except as otherwise expressly provided in this Constitution.

1.3 Powers of shareholders

Unless otherwise specified in the Act or this Constitution any power reserved to shareholders may be exercised, and any approval of shareholders may be given, by Ordinary Resolution.

2. THE COMPANIES ACT AND THE ~~LISTING~~ MARKET RULES

2.1 Companies Act

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, as permitted by the Act, they are negated or modified by this Constitution.

~~2.2 Incorporation of listing rules~~

~~While the Company is Listed:~~

- ~~(a) those provisions of the NZX Listing Rules which are required by the NZX Listing Rules to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification;~~
- ~~(b) shareholders must not cast a vote if prohibited from doing so by the NZX Listing Rules; and~~
- ~~(c) Directors must not cast a vote if prohibited from doing so by the NZX Listing Rules.~~

~~2.3 NZX Listing Rules prevail~~

~~While the Company is Listed, and subject to clause 2.5, if there is any provision in this Constitution that is inconsistent with the NZX Listing Rules relevant to the Company, the NZX Listing Rules prevail. No provision in this Constitution will prohibit or restrict any action which is or may be permitted by the NZX Listing Rules or the NZX to be taken by the Company, the Board, each Director or the shareholders of the Company.~~

2.2 ~~2.4~~ Compliance with ~~NZX Listing~~ Market Rules

Subject to:



- (a) the terms of any ~~Ruling~~ruling from time to time given by ~~NZX~~USX; and
- (b) the requirements of the Act and any other applicable legislative or regulatory requirement,

the Company shall, for so long as it is ~~Listed~~listed with USX, comply with the ~~NZX~~ListingMarket Rules.

~~2.5~~ **NZX Rulings**

~~If NZX has granted a Ruling authorising any act or omission which would otherwise be in breach of this Constitution, that act or omission will be deemed to be authorised by this Constitution.~~

~~2.3~~ **2.6 Effect of failure to comply**

Failure to comply with: ~~(a)~~ the ~~NZX ListingMarket~~ Rules; ~~or~~

~~(b)~~ a provision of this Constitution corresponding with a provision of the ~~NZX Listing Rules (whether such provision is set out in full in this Constitution or incorporated in it pursuant to clause 2.2)~~, shall not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of Equity Security holders, or other matter entered into by, or affecting, the Company. This provision does not limit the rights of Equity Security holders against the Company or the Directors. Also, a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract.

~~2.4~~ **2.7 Cessation**

Clauses 2.2 to ~~2.6~~2.3 will only apply for so long as the Company is party to a listing agreement with ~~NZX~~USX. If the Company ceases to be party to a listing agreement with ~~NZX~~USX those clauses shall cease to have effect ~~in so far as they relate to the Company's listing on the NZX Main Board.~~

3. RIGHTS ATTACHING TO EQUITY SECURITIES

3.1 Ordinary shares

Each ordinary share in the Company at the date of adoption of this Constitution confers on the holder the following rights (in addition to the rights set out elsewhere in this Constitution):

- (a) subject to the rights of holders of any Equity Securities which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board; and
- (b) subject to the rights of holders of any Equity Securities which confer special rights as to surplus assets, the right to an equal share in the distribution of surplus assets of the Company.

3.2 New shares

~~Subject to clause 4, further~~Further shares in the Company (including different Classes of shares) may be issued which have any one or more of the following features:

- (a) rank equally with, or in priority to, existing shares in the Company;
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise;
- (c) confer preferential rights to distributions of capital or income;



- (d) confer special, limited or conditional voting rights;
- (e) do not confer voting rights;
- (f) are redeemable in accordance with section 68 of the Act; or
- (g) are convertible.

3.3 **Alteration of rights**

The issue by the Company of any further Equity Securities which rank equally with, or in priority to, any existing Equity Securities, whether as to voting rights or distributions, shall:

- (a) be permitted ~~(subject to clause 4)~~; and
- (b) not be deemed to be an action affecting the rights attached to those existing Equity Securities.

4. **ISSUE OF NEW EQUITY SECURITIES**

4.1 **Issue of new Equity Securities**

The Board may issue shares or other Equity Securities to any person and in any number it thinks fit ~~provided that while the Company is Listed, the issue is made in compliance with the NZX Listing Rules~~. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of shares by the Company.

4.2 **Consolidation and subdivision of Equity Securities**

Subject to any applicable provisions of this Constitution, the Board may:

- (a) consolidate and divide the Equity Securities or Equity Securities of any Class in proportion to those Equity Securities or the Equity Securities in that Class; or
- (b) subdivide the Equity Securities or Equity Securities of any Class in proportion to those Equity Securities or the Equity Securities in that Class.

4.3 **Bonus issues**

Subject to any applicable provisions of ~~the NZX Listing Rules or~~ this Constitution, the Board may resolve to apply any amount which is available for distribution to shareholders either:

- (a) in paying up in full Equity 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 Financial Products of the Company who are entitled by the terms of issue of those Financial Products to participate in bonus issues by the Company, whether at the time the bonus issue is made to the shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Equity Securities held by the shareholders referred to in clause 4.3(a)(i),

or partly in one way and partly in the other.

5. **BUYBACKS AND REDEMPTIONS OF EQUITY SECURITIES AND FINANCIAL ASSISTANCE**

5.1 **Powers**



The Company may:

- (a) purchase or otherwise acquire shares issued by it from one or more shareholders;
- (b) purchase or otherwise acquire other Equity Securities from one or more holders;
- (c) hold any Equity Securities so purchased or acquired; and
- (d) redeem any redeemable Equity Securities held by one or more holders,

in accordance with the provisions, and subject to the restrictions, of the Act, ~~and~~ [this Constitution](#) ~~and the NZX Listing Rules~~.

5.2 **Financial assistance**

The Company must not give financial assistance for the purpose of, or in connection with, the acquisition of any Equity Securities issued, or to be issued, by the Company unless the giving of that assistance is in accordance with the provisions of the Act ~~and the NZX Listing Rules~~.

6. **CALLS ON SHARES**

6.1 **Board's power**

The Board may, by notice in writing to a shareholder or shareholders, make calls in respect of all moneys unpaid on shares and which are not, by the terms applicable to the shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.

6.2 **Liability to pay**

Each relevant shareholder shall be liable (jointly and severally in the case of joint shareholders) to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant shares.

6.3 **Differential calls**

Calls may be made in respect of certain shares and not others and for different amounts in respect of certain shares from others. The Board may, at the time of issue of any shares, differentiate between the holders as to the amount of calls to be paid and the time of payment.

6.4 **Instalments**

The Board may determine that a call is payable by instalments.

6.5 **Time call is made**

A call shall be deemed to have been made at the time the resolution of the Board authorising the call was passed.

6.6 **Interest on overdue amounts**

A call not paid when due shall bear interest from the due date to the date of actual receipt by the Company at the rate fixed in the notice of call or the terms applicable to the relevant shares or, if there is no such rate, as the Board determines. The Board may waive payment of interest wholly or in part.

6.7 **Unpaid instalments**

Any amount payable on issue of a share or on any fixed date or as an instalment of a call shall be deemed to be a call and if not paid, the provisions of this clause 6 and clauses 7 and 8 shall apply as if that sum had become payable by the making of a call.

6.8 **Calls in advance**



The Board may, in its discretion, receive any moneys uncalled and unpaid upon any shares in advance of its due date and, may pay interest on the amount received at such rate (if any) and on such terms as the Board determines.

6.9 Evidence

In any proceedings for the recovery of moneys due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:

- (a) the name of the shareholder is entered in the share register as the holder (or one of the holders) of the relevant shares;
- (b) the resolution making the call is recorded in the records of the Company; and
- (c) notice of the call was sent to the shareholder,

shall be conclusive evidence of the indebtedness of the shareholder to the Company in respect of the call.

7. LIEN ON EQUITY SECURITIES

7.1 Lien on unpaid and partly paid Equity Securities

The Company shall have a first and paramount lien on Equity Securities and on dividends or other distributions from time to time declared in respect of such Equity Securities for:

- (a) all unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Equity Securities; and
- (b) any amount which the Company may be called upon to pay under any legislation in respect of the specific Equity Securities, whether or not the due date for payment has passed.

7.2 Power of sale

If any amount due in respect of an Equity Security on which the Company has a lien is unpaid for more than 10 working days after notice in writing demanding payment has been given to the shareholder or other person entitled to receive notices in respect of that Equity Security:

- (a) the Company may sell the Equity Security on such terms as the Board determines; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Equity Security to, or at the direction of, the purchaser.

7.3 Absolute title of purchaser

The title of a purchaser of any Equity Securities sold pursuant to clause 7.2 shall not be affected by any irregularity or invalidity in any sale.

7.4 Application of sale proceeds

The net proceeds of sale of any Equity Security sold pursuant to clause 7.2, after deducting expenses of sale, shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the Equity Security at the date of sale. The remedy of any person aggrieved by such sale shall be in damages only and against the Company exclusively.

8. FORFEITURE OF SHARES

8.1 Notice



If a call on a share is not paid when due, the Board may give 10 working days' notice to the shareholder requiring payment of the call, together with interest on the amount of the call and any accrued expenses incurred by the Company by reason of non-payment. The notice shall specify the place of payment and state that if the notice is not complied with the relevant share will be liable to be forfeited.

8.2 Forfeiture

If the notice is not complied with the share may, before payment of the overdue amount has been made, be forfeited by resolution of the Board. Such forfeiture will include all dividends and any other distributions declared in respect of the forfeited shares and not paid or satisfied before forfeiture.

8.3 Sale of forfeited shares

A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board determines. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

8.4 Application of sale proceeds

The net proceeds of sale of any forfeited share shall be applied in the same manner as set out in clause 7.4.

8.5 Absolute title of purchaser

The title of a purchaser of a forfeited share shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the share.

8.6 Consequences of forfeiture

A person whose shares have been forfeited shall cease to be a shareholder in respect of those shares and shall surrender the share certificate (if any) for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the shares together with interest thereon until the Company receives payment in full of all money owing for those shares.

8.7 Evidence of forfeiture

A statutory declaration by a Director or any other person authorised by the Board that a share has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

8.8 Right of set off

The Board may deduct from the dividends payable to any shareholder, all sums of money as may be due from that holder to the Company on account of calls, instalments upon the specific shares in respect of which the dividend is declared, and on account of amounts that the Company may be called upon to pay under any statute or legislative enactment in respect of the shares of a deceased or other holder.

9. TRANSFER OF FINANCIAL PRODUCTS

9.1 Transferor to remain holder until registration

The transferor of a Financial Product shall remain the holder of the Financial Product until the name of the transferee is entered in the relevant Financial Product register.

9.2 Right to transfer

Subject to any restrictions contained in this Constitution, shares may be transferred:

- (a) under a system of transfer approved under the FMC Act;



- (b) under any other share transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which shares are listed and which is applicable to the Company; or
- (c) by an instrument of transfer which complies with this Constitution.

9.3 Method of transfer

A Financial Product which is disposed of in a transaction which complies with the requirements of a system of transfer referred to in clause 9.2(a) or 9.2(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer would have complied with the provisions of the FMC Act if it had 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 the Company's registrar.

9.4 Forms of transfers

An instrument of transfer to which the provisions of clause 9.3 are not applicable shall comply with the following provisions:

- (a) the form of the instrument of transfer shall be any usual or common form or any other form which the Board or the Company's registrar may approve;
- (b) the instrument of transfer must be signed or executed by or on behalf of the transferor; and
- (c) where the Financial Products being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

9.5 Power to refuse to register

The Board may decline to accept or register any transfer of Financial Products where:

- (a) the Company has a lien on such Financial Product;
- (b) the transfer is not accompanied by the certificate (if any) for the Financial Product to which it relates or such other evidence as the Board or the Company's registrar may reasonably require to show the right of the transferor to make the transfer; or
- (c) the registration, together with the completion of any further transfer then held by the Company and awaiting registration, would result in the proposed transferee or a transferor having a holding below a Minimum Holding; ~~or (d) while the Company is Listed, the transfer would be contrary to any permitted restriction on transfer referred to in the NZX Listing Rules,~~

provided that the Board resolves to exercise its powers under this clause 9.5 within 30 working days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five working days of the resolution being passed by the Board.

9.6 Trusts not to be entered on registers

The Company must not enter any notice of a trust on the share register, or any other register of Equity Securities, whether that trust is express, implied or constructive.

9.7 Sale of less than Minimum Holding

The Company may at any time give notice to any person holding less than a Minimum Holding of ~~Financial Products~~ Equity Securities of any Class that if at the expiration of



three months after the date the notice is given that person still holds ~~Financial-Products~~Equity Securities which are less than a Minimum Holding (in each case, calculated on the date of such notice), the Company may exercise the power of sale of those ~~Financial-Products~~Equity Securities set out in this clause ~~9.7-9.7.~~ If that power of sale ~~becomes exercisable the~~is exercised:

- (a) the Company may arrange for the sale of those ~~Financial-Products-on-market~~Equity Securities (including on market through a broker on behalf of the Company);
- (b) the holder of the ~~Financial-Products~~Equity Securities shall be deemed to have authorised the Company to act on that holder's behalf and to execute all necessary documents for the purposes of that sale;
- (c) ~~Company shall account to the holder of the Financial-Products for the net~~the proceeds of sale of the ~~Financial-Products (after deduction~~Equity Securities must be applied as follows:
 - (i) first, in payment of any reasonable sale expenses), ~~which shall be held on trust for that holder by the Company~~;
 - (ii) secondly, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Equity Securities (including any interest payable on such amounts); and
 - (iii) the balance, if any, must be paid to the ~~holder~~Equity Security holder (or, if applicable, his or her Personal Representative) on surrender of any certificates for the ~~Financial-Products~~Equity Securities sold; and
- (d) the title of a purchaser of any ~~Financial-Products~~Equity Securities sold pursuant to this clause 9.7 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself; and
- (e) the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

9.8 **Registration of transfers**

Every instrument of transfer shall be delivered to the Company's registrar, together with such evidence as the Board or the Company's registrar may reasonably require to show the right of the transferor to make the transfer.

9.9 **Participation in share transfer systems**

The Company may participate in any share transfer system approved under the FMC Act ~~and implemented by NZX~~ or in any share transfer system which operates in relation to trading in financial products on any other stock exchange on which the Company's Financial Products are traded and, in so participating, it shall comply with the requirements ~~of NZX or~~ of the relevant share transfer system. The Board may register any transfer of Financial Products presented for registration in accordance with the requirements of any such system and will not be obliged to enquire as to the due execution of any transfer effected by reason of such system.

9.10 **Power to divide share register**

The share register may be divided into two or more registers kept in different places.

9.11 **Untraced shareholders**

- (a) The Board will be entitled to transfer to a trust (the **Trust**) set up for that purpose, the shares of any person where three or more dividends paid in respect



of the shares in question have remained unclaimed for at least one year after having been authorised and 10 working days' prior notice to the intention of transfer the shares to the Trust has been given.

- (b) If any further shares have been issued in respect of the shares referred to in paragraph (a) above, the Board may also transfer the further shares to the Trust notwithstanding that the requirement that three dividends remain unclaimed for at least one year after having been authorised may not have been satisfied with respect to such further shares.
- (c) If at the end of a three year period commencing on the date of transfer of the shares to the Trust, and after 10 working days' prior notice of the intention to sell has been given, no person has claimed ownership of the shares, the Board may arrange for the sale of those shares ([including on market](#) through [a broker on behalf of](#) the [NZX Company](#)).
- (d) To give effect to any transfers or sale under paragraphs (a) to (c) of this clause, the Board may authorise some person to execute an instrument of transfer of the shares sold to, or in accordance with the directions of, the transferee and an instrument of transfer executed by that person will be as effective as if it had been executed by the holder of, or person entitled by transmission to, the shares. The transferee will not be bound to see to the application of the purchase monies nor will title to the shares be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.
- (e) Upon any sale of the shares by the Trust, the net proceeds of sale (after deduction of reasonable sale expenses) will belong to the Company. The Board will, nevertheless, agree to pay the net proceeds of sale to a claimant who produces satisfactory evidence of entitlement but the Board will have no requirement to account for any money earned on the net proceeds, which may be employed in the business of the Company or invested in such investments as determined by the Board.

10. TRANSMISSION OF FINANCIAL PRODUCTS

10.1 Transmission on death

If a Financial Products holder dies, the survivor, if the deceased was a joint holder, or the Financial Product holder's Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Financial Products of the deceased holder. Nothing in this clause 10.1 shall release the estate of a deceased joint holder from any liability in respect of any Financial Product or constitute a release of any lien which the Company may have in respect of any Financial Product.

10.2 Rights of Personal Representatives

A Financial Product holder's Personal Representative is entitled to:

- (a) exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the Financial Products held by that holder; and
- (b) be registered as holder of those Financial Products, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this clause 10.2(b).



10.3 Joint Personal Representatives

Where a Financial Product is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Financial Product.

11. MEETINGS OF SHAREHOLDERS

11.1 Methods of holding meetings

A meeting of shareholders may be held by a quorum of the shareholders:

- (a) being assembled together at the time and place appointed for the meeting; or
- (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 paragraphs (a) and (b), in each case as determined by the Board.

11.2 Meetings of other groups

A meeting of the holders of ~~Equity Securities~~ Financial Products in an interest group may be called by the Board at any time, and shall be called on the written request of persons holding ~~Equity Securities~~ Financial Products carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the group in question. All the provisions of this Constitution relating to meetings of shareholders apply, with all necessary modifications, to a meeting of a group of ~~Equity Security~~ Financial Product holders, except that:

- (a) the necessary quorum is three persons holding, or representing the holders of, ~~Equity Securities~~ Financial Products in the ~~interest~~ group;
- (b) if the Board so elects, one meeting may be held of holders constituting more than one group and proper arrangements are made to distinguish between the votes of members of each group; and
- (c) any holder of ~~Equity Securities~~ Financial Products in the group, present in person or by Representative, may demand a poll.

12. NOTICE OF MEETINGS OF SHAREHOLDERS

12.1 Written notice

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 of the Company not less than 10 working days before the meeting. A proxy form must be sent with each notice of meeting.

~~12.2 Rights of Equity Security holders~~

~~Equity Security holders of all Classes (whether or not they have the right to vote) are entitled to attend annual and special meetings and to receive copies, or have access to electronic copies, of all notices, reports and financial statements issued generally to holders of Financial Products carrying votes.~~

12.2 ~~12.3~~ Contents of notice

~~(a) For so long as the Company is Listed, a~~ (a) notice of meeting ~~must comply with the requirements for notices as set out in the NZX Listing Rules. Whether or not the Company is Listed, the notice~~ must state:



- (a) ~~(i)~~ 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) ~~(ii)~~ the text of any special resolution to be submitted to the meeting;
 - (c) ~~(iii)~~ the text of any resolution for the purposes of sections 207I or 207J of the Act to be submitted to the meeting;
 - (d) ~~(iv)~~ in the case of special resolutions required by section 106(1)(a), (b) or (c) of the Act, the right of a shareholder under section 110 of the Act; and
 - (e) ~~(v)~~ in the case of special resolutions required by section 118 of the Act, the right of a shareholder under section 118 of the Act.
- ~~(b) — The notice must contain or be accompanied by sufficient explanation, reports, valuations, and other information, as to enable a reasonable person entitled to vote to understand the effect of each resolution proposed, including those matters required by the NZX Listing Rules.~~

12.3 ~~12.4~~ **Irregularity in notice**

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. The accidental omission to give a notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at the meeting.

12.4 ~~12.5~~ **Adjourned meetings**

If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

13. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

13.1 Chairperson of the Board to act

Subject to clause 13.2, if the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of shareholders, that Director must chair the meeting.

13.2 Other chairperson

If no chairperson of the Board has been elected or if at any meeting of shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or the chairperson is unwilling or unable to act for all or part of the meeting, the Directors present, if any, may elect one of their number to be chairperson of the meeting or such part of the meeting. If no Director is willing or able to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairperson.

13.3 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of shareholders.

14. QUORUM FOR MEETINGS OF SHAREHOLDERS

14.1 Quorum required



Subject to clause 14.3, no business may be transacted at a meeting of shareholders if a quorum is not present.

14.2 Size of quorum

- (a) A quorum for a meeting of shareholders is present if three shareholders having the right to vote at the meeting are present in person or by Representative.
- (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.

14.3 Lack of quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) in the case of a meeting called by the Board on the request of shareholders under section 121(b) of the Act, the meeting is dissolved; and
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the shareholders or their Representatives present will constitute a quorum.

15. VOTING AT MEETINGS OF SHAREHOLDERS

15.1 ~~Voting at meetings to be by poll~~ Meetings in one place

~~For so long as the Company is Listed, and required by the NZX Listing Rules, the chairperson must demand a poll on each resolution. Votes must be counted according to the votes attached to the shares of each shareholder entitled to vote and voting.~~

In the case of a meeting of shareholders held under clause 11.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:

- (a) voting by voice; or
- (b) voting by show of hands.

15.2 ~~Scrutineers~~ Audio, audio and visual, or electronic meetings

~~If a poll is taken, the chairperson may appoint a scrutineer for the purposes of the poll.~~

~~15.3 Declaration of result~~

~~The chairperson may declare the result of a poll either at or after the meeting, and, when the outcome of the poll is known, may do so regardless of whether all votes have been counted. The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting on the issue for which the poll was taken. In cases of dispute as to the admission or rejection of a vote, the chairperson shall determine the dispute and a determination made in good faith shall be final and conclusive.~~

In the case of a meeting of shareholders held under clause 11.1(b) or 11.1(c), unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson of that meeting.

~~15.3~~ 15.4 Postal votes

Unless the Board determines otherwise, shareholders may not exercise the right to vote at a meeting by casting a postal vote, ~~whether on a show of hands, voice, vote or~~



~~on a poll.~~ If the Board determines that shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the First Schedule of the Act together with any other procedures determined by the Board. For clarity, a postal vote may be cast using electronic means permitted by the Board.

15.4 ~~15.5~~ Number of votes

Subject to the provisions of clause ~~15.6~~15.13 and subject to any rights or restrictions attached to any share~~7~~4:

- (a) where voting is by voice or a show of hands, every shareholder present in person or by Representative has one vote; and
- (b) on a poll every shareholder present in person or by Representative has:
 - (i) ~~(a)~~ one vote in respect of every fully paid share held by that shareholder; and
 - (ii) ~~(b)~~ in respect of each share held by that shareholder which is not fully paid, a fraction of the vote which would be exercisable if that share was fully paid. That fraction must be proportionate to the payment which has been made (excluding amounts credited and amounts paid in advance of a call).

15.5 Chairperson's casting vote

The chairperson of a meeting is not entitled to a casting vote.

15.6 Declaration of chairperson conclusive

A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 15.7.

15.7 Right to demand poll

At a meeting of shareholders a poll may be demanded by:

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

For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

15.8 Time of demand for poll

A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.



15.9 **Timing of poll**

The chairperson may determine the time and manner in which a poll is to be taken and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

15.10 **Counting of votes on poll**

If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by Representative and voting.

15.11 **Scrutineers**

If a poll is taken, the chairperson may appoint a scrutineer for the purposes of the poll.

15.12 **Declaration of poll result**

The chairperson may declare the result of a poll either at or after the meeting, and, when the outcome of the poll is known, may do so regardless of whether all votes have been counted. The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting on the issue for which the poll was taken. In cases of dispute as to the admission or rejection of a vote, the chairperson shall determine the dispute and a determination made in good faith shall be final and conclusive.

15.13 ~~15.6~~ **Voting restrictions**

No shareholder shall be entitled to vote at any meeting in respect of shares on which any call or other moneys are due and unpaid ~~or where they are otherwise disqualified from voting in accordance with the NZX Listing Rules.~~

~~15.7~~ **Chairperson's casting vote**

~~The chairperson of a meeting is not entitled to a casting vote.~~

15.14 ~~15.8~~ **Votes of joint holders**

Where two or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

15.15 ~~15.9~~ **Validity of votes**

~~(a) — Subject to clause 15.9(b), in~~ In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination made in good faith shall be conclusive.

~~(b) — For so long as the Company is Listed, no resolution of, or proceeding at, a meeting of shareholders will be void on the basis of a breach of the voting restrictions contained in the NZX Listing Rules.~~

15.16 ~~15.10~~ **Electronic voting**

The Board may permit, in relation to a particular meeting or generally:

- (a) the appointment of proxies or Representatives to be made by electronic means;
- (b) postal votes to be cast by electronic means; and
- (c) to the extent permitted by ~~law, votes to be cast on resolutions at meetings of the~~ Act, shareholders ~~(or of other groups) to vote by signifying their assent or dissent~~ by electronic means. ~~The procedures in relation to such electronic appointment or electronic voting shall be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic appointment of proxies or Representatives or electronic voting in accordance with this clause, such electronic appointments may be made or~~



~~electronic votes cast notwithstanding any other provision of this Constitution.~~
(including, for clarity, by voting on a personal computer or other electronic device, with such vote being transmitted to the meeting), instead of the shareholder voting by another method permitted by the Act or this Constitution.

16. PROXIES AND CORPORATE REPRESENTATIVES

16.1 Proxies permitted

A shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder. A proxy need not be a shareholder of the Company.

16.2 Form of proxy

- (a) A proxy must be appointed by notice in writing in the form directed by the Board signed by or, in the case of an electronic notice, sent by the shareholder ~~and the notice,~~ or by appointing the proxy online as per the Company's instructions in a notice of meeting. The notice of appointment must state whether the appointment is for a particular meeting or a specified term.
- (b) The proxy form must:
- (i) as a minimum (so far as the subject matter and form of the resolutions reasonably permit) provide for a binary voting choice (for or against) on all resolutions, to enable the shareholder to instruct the proxy as to the casting of the vote;
 - (ii) not be sent with any name or office (e.g., chairperson of directors) filled in as a proxy holder; and
 - (iii) contain a statement outlining who is subject to voting restrictions in relation to each resolution.
- (c) Notwithstanding clause 16.2(a), the Company may provide in the proxy form that:
- (i) if, in appointing a proxy, a shareholder does not name a person as their proxy but otherwise completes the proxy form in full; or
 - (ii) a shareholder's named proxy does not attend the meeting, a named person or office will act as that shareholder's proxy and vote in accordance with their express direction. If such statement is included in the proxy form, the proxy form and meeting must:
 - (iii) clearly and prominently disclose the intention to appoint a named person or office in the circumstances set out in 16.2(~~bc~~)(i) and 16.2(~~bc~~)(ii); and
 - (iv) provide that the named person or office acting as proxy must: ~~(A) —~~ only vote in accordance with the express directions of the relevant shareholder; and
 - (v) ~~(B)~~ not vote on a resolution if expressly granted a discretion on how to vote on a resolution and such resolution is subject to a voting restriction that applies to the proxy ~~under the NZX Listing Rules.~~

16.3 Lodging proxy



No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by or on behalf of the Company at any place specified for that purpose in the notice of meeting [and by the time specified for that purpose](#). The notice of meeting may provide for different matters for different kind of proxies (for example, a different specified time for the receipt of a proxy by electronic means). In any case, the time or times specified may not be later than 48 hours before the start of the meeting. If the ~~written~~ notice appointing a proxy is signed under a power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

16.4 **Validity of proxy vote**

A vote given in accordance with the terms of ~~an instrument~~ [a notice of appointment](#) of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

16.5 **Corporate representatives**

A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. A representative shall have the same rights and powers as if the representative were a proxy.

17. **MINUTES OF SHAREHOLDER MEETINGS**

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

18. **SHAREHOLDER PROPOSALS**

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 of the Act apply to any notice given pursuant to this clause.

19. **ADJOURNED MEETINGS AND DISORDERLY MEETINGS**

19.1 **Chairperson's discretion to adjourn meetings**

The chairperson [may](#), at any time during a meeting at which a quorum is present ~~may~~, adjourn the meeting (including either to a later time at the same meeting or to an adjourned meeting).

19.2 **Provisions relating to adjourned meetings**

No business can be transacted at any adjourned meeting other than the unfinished business at the original meeting. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as the original meeting. Otherwise, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

19.3 **Adjournment of disorderly meetings**

If any 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 reasons, either adjourn or dissolve the meeting.

19.4 **Completion of unfinished business**

If any meeting is dissolved by the chairperson pursuant to clause 19.3, the unfinished business of the meeting shall be dealt with as follows:

- (a) in respect of any resolution concerning the approval or authorisation of a distribution, the Board may, in the exercise of the powers conferred on it by the Act, authorise the distribution;
- (b) in respect of any resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors; and
- (c) the chairperson may direct that any item of business which is uncompleted at the meeting, and which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion in accordance with clauses 15.

20. **APPOINTMENT AND REMOVAL OF DIRECTORS**

20.1 **Number**

- (a) The number of Directors must not at any time be more than nine nor less than three and subject to these limitations the number of Directors to hold office shall be fixed from time to time by the Board.
- (b) At least ~~two Directors must be ordinarily resident in New Zealand.~~ ~~(c) At least two Directors must be Independent Directors.~~

20.2 **Existing Directors to continue in office**

The Directors in office at the date of adoption of this Constitution shall continue in office subject to the provisions of this Constitution.

20.3 ~~Appointment at meeting of Equity Security holders~~ **Appointment by shareholders**

~~For so long as the Company is Listed, a Director may be nominated and appointed at the Company's annual or special meeting of Equity Security holders in accordance with relevant NZX Listing Rules.~~

- (a) A Director may be appointed by Ordinary Resolution.
- (b) A shareholder (when aggregated with any Shares held by that person's Related Parties) is entitled, at any time by notice in writing to the Company, to appoint (and remove) one Director for every complete 15% of the total number of shares it holds. For this purpose, and as at the date on which this Constitution comes into effect:
 - (i) Mark Stewart is deemed to have been appointed by Pescado Limited;
 - (ii) Mark Sadd is deemed to have been appointed by Comvita Limited; and
 - (iii) Jeremy Curnock Cook is deemed to have been appointed by One Funds Management Limited as trustee of Asia Pacific Healthcare Fund II and BioScience Managers Ventures Pty Limited as general partner of BioScience Management Partnership LP.



(c) Subject to clause 20.3(d), a Shareholder-Appointed Director may only be removed by the shareholder who appointed that Shareholder-Appointed Director (each such shareholder being the **Appointing Party**).

(d) An Appointing Party must immediately remove any Shareholder-Appointed Director appointed by it under clause 20.3(b) if the Appointing Party is no longer entitled to appoint that Director under clause 20.3(b).

20.4 **Appointment by Board**

~~Subject to the NZX Listing Rules, the~~The Board may at any time appoint additional Directors to fill a casual vacancy or as an addition to existing Directors.

20.5 **Director rotation**

A Director must not hold office (without re-election) past the third annual meeting following the Director's appointment or 3 years, whichever is longer. However, a Director appointed by the Board must not hold office (without re-election) past the next annual meeting following the Director's appointment. This clause 20.5 does not apply to Shareholder-Appointed Directors.

20.6 **Removal by ordinary resolution**

All Directors (other than Shareholder-Appointed Directors) are subject to removal from office by ~~ordinary resolution (as that term is defined in the NZX Listing Rules)~~Ordinary Resolution.

20.7 **Appointment of Directors to be voted on individually**

Each resolution ~~of the holders of Equity Securities~~ to appoint, elect or re-elect a Director must be for the appointment, election or re-election of one Director only.

20.8 **No shareholder qualification for Directors**

There is no shareholding qualification for Directors.

20.9 **Vacation of office**

A Director shall cease to hold office as a Director if the Director:

- (a) dies;
- (b) becomes bankrupt;
- (c) becomes disqualified from being a Director pursuant to section 151 of the Act;
- (d) resigns from office by notice in writing to the Company;
- (e) is removed from office pursuant to this Constitution or the Act; or
- (f) is absent from two consecutive meetings of the Board without leave being granted by a resolution of the Board.

20.10 **Timing of retirement and appointment**

If:

- (a) a Director retires at a meeting of shareholders and is not re-elected, 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;



- (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.

21. ALTERNATE DIRECTORS

21.1 Appointment

No Director may appoint an alternate Director to act for him or her except with the consent of a majority of his or her co-Directors (an **Alternate Director**). A Director may not act as alternate for another Director. No Director may appoint a deputy or agent otherwise than as an Alternate Director.

21.2 Form of appointment and removal

Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.

21.3 Rights of Alternate Director

Each Alternate Director will be entitled to:

- (a) receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
- (b) attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
- (c) in the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.

21.4 Remuneration and expenses

Each Alternate Director's:

- (a) remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
- (b) expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

21.5 Cessation of appointment

An Alternate Director will cease to be an Alternate Director:

- (a) if the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment;
- (b) on the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director; or
- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

22. MANAGING DIRECTOR

22.1 Appointment and removal

The Board may from time to time appoint one of the Directors to be the managing Director on such terms (including remuneration) as the Board determines, but subject to any requirements (including as to rotation) of ~~the NZX Listing Rules~~[this Constitution](#). The Board may from time to time remove any person from the office of managing Director and appoint another or others in his or her place. Any managing



Director who is removed by resolution of the Board shall have no right or claim to continue in office and his or her only remedy against the Company (if any) shall be in damages. Any Director holding the office of managing Director at the date of adoption of this Constitution shall continue in office.

22.2 **Resignation**

A managing Director shall, subject to the provisions of any contract between him or her and the Company, be subject to the same provisions concerning rotation, resignation, removal and disqualification as the other Directors. If a managing Director ceases to hold the office of Director from any cause he or she immediately ceases to be managing Director.

22.3 **No alternate managing Director**

The power to appoint alternate Directors conferred on Directors by this Constitution does not confer on any managing Director the power to appoint an alternate managing Director.

23. **PROCEEDINGS OF THE BOARD**

23.1 **Methods of holding meetings**

A meeting of the Board may be held by a number of the Directors who constitute a quorum:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) participating in the meeting by means of audio, or audio and visual, or electronic communication by which all the Directors participating can simultaneously hear each other throughout the meeting; or
- (c) by a combination of the methods described in clauses 23.1(a) and 23.1(b).

23.2 **Notice of meeting**

A Director or, if requested by a Director to do so, an employee of the Company or a [Subsidiary](#) of the Company approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause 23.2 and clause 23.3. Each Director must be given not less than two days' notice of a meeting of the Board, unless the Director waives that right or in the opinion of the chairperson or of Directors who would together constitute a quorum at the meeting, the meeting is necessary as a matter of urgency, in which event such notice as is practicable in the circumstances shall be given. Notice may be given to a Director in any of the following ways:

- (a) by telephone to the telephone number given by the Director to the Company for purposes of receiving notices, in which case the notice will be deemed to be given when the call is answered at that time;
- (b) by delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered;
- (c) by sending the notice by email to the email address given by the Director to the Company for the purpose of receiving notices;
- (d) by posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted; or



- (e) by sending by electronic means in accordance with any request made by the Director from time to time for such purpose.

23.3 Contents of notice

A notice of a meeting must specify the date, time and place of the meeting and, if the meeting is to be by means of audio or audio and visual communication, the manner in which the Director will be contacted to participate at the time of the meeting.

23.4 Waiver of irregularity

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

23.5 Quorum

Unless otherwise determined by the Board, a quorum for a meeting of the Board is three Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

23.6 Insufficient number of Directors

Directors may continue to act where there is a vacancy in their body, but where the number of Directors has fallen below the minimum set by this Constitution, the continuing Directors may act to remedy the shortfall in Directors or to summon a meeting of the Equity Security holders, but for no other purpose.

23.7 Chairperson

The Directors may elect one of their number as chairperson of the Board and determine the period for which the chairperson is to hold office. If no chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

23.8 Votes

Every Director has one vote. In the case of an equality of votes the chairperson will not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.

23.9 Resolutions in writing

A resolution in writing, signed or assented to by all Directors then entitled to ~~vote on that resolution~~ receive notice of a meeting of the Board, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Each Director must be given notice of the form of the proposed resolution. Any such resolution may consist of several documents (including electronic or other similar means of communication) in like form, each signed or assented to by one or more Directors (whose assent may be given by electronic communication, including email). A copy of any such resolution must be entered in or kept with the records of Board proceedings.

23.10 Minutes

The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

23.11 Validity of acts



All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:

- (a) any defect in the appointment of any Director or person acting as a Director; or
- (b) that they or any of them were disqualified; or
- (c) any irregularity in a notice of meeting.

23.12 **Other procedures**

Except as set out in this clause 23, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

24. **INTERESTED DIRECTORS**

24.1 **Disclosure of Interests**

A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of Interest of Directors) but failure to comply with that section does not affect the operation of clause 24.2.

24.2 **Personal involvement of Directors**

Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a Director or other officer of, or otherwise Interested in, any company promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,
and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

24.3 **Interested Directors may vote**

A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

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

as if the Director were not Interested in the transaction.

25. **24-DIRECTORS' REMUNERATION**



25.1 ~~24.1~~ **Authorisation**

The Board may, ~~subject to the NZX Listing Rules,~~ exercise the power conferred by section 161 of the Act to authorise remuneration and other benefits to and for Directors.

25.2 ~~24.2~~ **Expenses**

Each Director is 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.

~~24.3~~ **Special remuneration**

~~Without limiting clause 24.1 the Board may authorise special remuneration to any Director who is or has been engaged by the Company or a Subsidiary to carry out any work or perform any services which is not in the capacity of a director of the Company or a Subsidiary.~~

26. ~~25.~~ **INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES**

26.1 ~~25.1~~ **Indemnity for Directors**

Every Director shall 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. The Board may determine the amounts and terms and conditions of such an indemnity.

26.2 ~~25.2~~ **Other indemnities and insurance**

In addition to the indemnity set out in clause ~~25.1,~~26.1, the Company may:

- (a) indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act. The Board may determine the amounts and terms and conditions of any such indemnity;
- (b) indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act. The Board may determine the amounts and terms and conditions of any such indemnity; and
- (c) with the prior approval of the Board 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. The Board may determine the amounts and terms and conditions of any such insurance.

26.3 ~~25.3~~ **Interpretation**

Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause ~~25.~~

~~26.~~ **INTERESTED DIRECTORS**

~~26.1~~ **Interested Directors may not vote**

~~A Director must not vote on a Board resolution for, or be counted in a quorum for the consideration of, any matter in which that Director is Interested.~~

~~26.2~~ **Exception to voting prohibition**

~~Notwithstanding clause 26.1, a Director may vote on a Board resolution for, and be counted in a quorum for the consideration of, a matter in which that Director has an interest, if the matter:~~



~~(a) is one in respect of which Directors are expressly required under the Act to sign a certificate; or (b) relates to the grant of indemnity under section 162 of the Act~~²⁶.

27. DIVIDENDS

27.1 Method of payment

Any dividend or other money payable in cash may be paid in such manner as the Board sees fit to the entitled Financial Product holders or, in the case of joint holders, to the Financial Product holder first named on the register, or to such other person and in such manner as the Financial Product holder or joint holders may direct.

27.2 Currency of payment

The Board may, in its discretion, differentiate between shareholders as to the currency in which dividends are to be paid. In exercising that discretion the Board may have regard to the registered address of a shareholder, the register on which a shareholder's shares are registered or any other matter the Board considers appropriate. In any case where a dividend is to be paid in a currency other than New Zealand currency, the amount payable will be converted from New Zealand currency in a manner, at a time and at an exchange rate determined by the Board.

27.3 Deductions

The Board may deduct from dividends payable to any shareholder in respect of any shares any:

- (a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific shares in respect of which the Company has a lien; and
- (b) any amount which the Company may be called upon to pay under any legislation in respect of the specific shares, whether or not the due date for payment has passed.

27.4 Unclaimed dividends

Dividends or other monetary distributions unclaimed for one year after the due date for payment may be used 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 to regard it as being impressed with any trust. All dividends or other monetary distributions unclaimed for five years or more after the due date for payment may be forfeited by the Board for the benefit of the Company. The Company shall, nevertheless, annul the forfeiture and subject to compliance with the solvency test, shall pay the dividend or other monetary distribution to the person producing evidence of entitlement.

28. NOTICES

28.1 Method of service

All notices, statements, reports, accounts or other documents required to be sent to a shareholder shall be sent in the manner set out in section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a shareholder.

28.2 Service of notices outside New Zealand

If a Financial Product holder has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand or an electronic address, then notices



shall be posted or emailed to the holder at the relevant address and shall be deemed to have been received by the holder 72 hours after the time of the posting or immediately in the case of notices sent to an email address.

28.3 **Joint holders**

A notice may be given by the Company to the joint holders of a Financial Product by giving the notice to the joint holder named first in the register in respect of the Financial Product.

29. **INSPECTION OF RECORDS**

Except as provided in the Act or unless the Board determines otherwise in any particular case, no holder of Financial Products shall be entitled to:

- (a) inspect any records, books, papers, correspondence or documents of the Company; or
- (b) require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

30. **LIQUIDATION**

30.1 **Distribution of surplus**

Subject to the rights of the holders of any Financial Products in the Company and to clauses 30.2 and 30.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the shareholders in proportion to their shareholding. 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.

30.2 **Distribution in kind**

With the approval of the shareholders by Ordinary Resolution, the liquidator of the Company may divide amongst the shareholders in kind the whole or any part of the surplus assets of the Company (whether or not they are of the same kind) and 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 the shareholders or different Classes of shareholders.

30.3 **Trusts**

With the approval of the shareholders by Ordinary Resolution, 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.

31. **METHOD OF CONTRACTING**

31.1 **Manner of execution**

A contract or other enforceable obligation may be entered into by the Company as follows:

- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
 - (i) two or more Directors;



- (ii) any Director or another person authorised by the Board, whose signature must be witnessed; or
 - (iii) one or more attorneys appointed by the Company in accordance ~~with this constitution~~ [section 181 of the Act](#);
- (b) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

31.2 **Company may appoint attorneys**

The Company may, ~~by an instrument in writing executed in accordance with clause 31.1, exercise the power conferred by section 181 of the Act to~~ appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. ~~An act~~ [Any such power](#) of ~~an attorney in accordance with the instrument binds the Company~~ [attorney may be on such terms as the Board thinks fit.](#)

32. **COMPULSORY ACQUISITION PROVISIONS**

[The provisions of the Schedule apply if, and for such time as, the Company is not a code company \(as that term is defined in the Takeovers Code\).](#)



SCHEDULE: COMPULSORY ACQUISITION PROVISIONS

1. INTERPRETATION

In this Schedule, unless the context otherwise requires:

acquisition notice means the notice referred to in paragraph 3;

compulsory sale means that the outstanding security holders must sell their equity securities in the Company to the dominant owner;

dominant owner means a person who becomes the holder or controller, or two or more persons acting jointly or in concert who become the holders or controllers, of 90% or more of the voting rights in the Company;

equity security has the same meaning as in the Takeovers Code;

outstanding securities means all equity securities in the Company that the dominant owner does not already hold or control;

outstanding security holders means the holders of the outstanding securities;

voluntary sale means that the outstanding security holders have the right to sell their equity securities in the Company to the dominant owner; and

voting right has the same meaning as in the Takeovers Code.

2. RIGHTS AND OBLIGATIONS

2.1 Notification of dominant ownership

If a person becomes a dominant owner, that person must immediately send a written notice of that fact to the Company.

2.2 Dominant owner's right

The dominant owner has the right to acquire all the outstanding securities in accordance with this Schedule.

2.3 Outstanding security holder's right

The outstanding security holders have the right to sell their outstanding securities to the dominant owner in accordance with this Schedule.

3. ACQUISITION NOTICE

3.1 Acquisition notice

The dominant owner must send to the Company and outstanding security holders a notice in writing (the **acquisition notice**) that complies with paragraph 3.2 within 20 working days after the dominant owner becomes the dominant owner.

3.2 Contents of acquisition notice

An acquisition notice must:

(a) state that the dominant owner holds or controls 90% or more of the voting rights in the Company;

(b) state either:

(i) that the outstanding security holders must sell their equity securities in the Company to the dominant owner; or



- (ii) that the outstanding security holders have the right to sell their equity securities in the code company to the dominant owner;
- (c) specify the consideration to be provided for the outstanding securities;
- (d) set out the outstanding security holders' rights under this Schedule;
- (e) specify the date on which the acquisition notice is sent to the outstanding security holders;
- (f) be accompanied by an instrument of transfer for the outstanding securities held by the outstanding security holder to whom the acquisition notice is sent; and
- (g) specify the return address for the instrument referred to in paragraph (f).

4. DETERMINATION OF CONSIDERATION

4.1 Cash consideration

- (a) The consideration specified in the acquisition notice must be a cash sum.
- (b) The consideration specified under paragraph 4.1(a) is the consideration payable for the outstanding securities.
- (c) Paragraph 4.1(a) does not apply if, within 10 working days after sending the acquisition notice, the dominant owner receives written objections to the specified consideration from outstanding security holders who hold the lesser of:
 - (i) 2% or more of a class of equity securities; or
 - (ii) 10% or more of the outstanding securities of a class.
- (d) If the dominant owner receives objections that together comply in all respects with paragraph 4.1(c), the dominant owner must immediately refer to expert determination the amount of the consideration to be provided for the securities of the relevant class that must be a cash sum equal to the fair and reasonable value of those securities.
- (e) For the purposes of this rule, the fair and reasonable value of an equity security must be calculated by:
 - (i) first assessing the value of all the equity securities in the class of equity securities of which the equity security forms part; and
 - (ii) then allocating that value pro rata among all the securities of that class.
- (f) On receipt of the expert determination required under paragraph 4.1(d), the dominant owner must send a copy of it free of charge to any shareholder that requests it within one working day of receipt of the request.

4.2 Expert determination

- (a) A reference to expert determination under paragraph 4.1(d) is a reference to an independent person appointed by the Board.
- (b) The independent person acts as an expert and not as an arbitrator in making the determination.
- (c) The dominant owner must pay the costs of the expert determination.
- (d) The independent person must make the expert determination within 20 working days after the date of his or her appointment to make the expert determination.



5. PAYMENT OF CONSIDERATION AND TRANSFER OF OUTSTANDING SECURITIES

5.1 Return of instrument of transfer

- (a) An outstanding security holder who receives an acquisition notice accompanied by an instrument of transfer may, within 15 working days after the date on which the acquisition notice is sent, return to the dominant owner, at the address specified in the acquisition notice, the duly executed instrument of transfer along with any other documents that are necessary to enable the dominant owner to be registered as the holder of the securities belonging to the outstanding security holder.
- (b) Paragraph 5.1(a) applies whether or not the outstanding security holder has objected to the specified consideration under paragraph 4.1(c).

5.2 Payment of consideration if documents returned

- (a) If an outstanding security holder returns to the dominant owner the documents referred to in paragraph 5.1, the dominant owner must, within five working days after the dominant owner receives those documents, send to the outstanding security holder the consideration specified in the acquisition notice.
- (b) Paragraph 5.2(a) applies whether or not there has been a reference to expert determination under paragraph 4.1(c).

5.3 Payment of consideration if documents not returned

- (a) If an outstanding security holder does not return to the dominant owner the documents referred to in paragraph 5.1, then, in the case of a compulsory sale, the dominant owner must, within five working days after the expiry of the 15-working-day period referred to in paragraph 5.1(a):
- (i) pay the consideration specified in the acquisition notice to the Company, which must:
- (A) deposit it in an interest-bearing trust account with a registered bank; and
- (B) hold it in trust for the outstanding security holder until it is claimed; and
- (ii) send to the Company an instrument of transfer for the outstanding securities, executed on behalf of the outstanding security holder by the dominant owner or its agent.
- (b) Paragraph 5.3(a) applies whether or not there has been a reference to expert determination under paragraph 4.1(d).

5.4 Position if consideration fixed by expert determination

- (a) If the consideration fixed by expert determination under paragraph 4.1(d) exceeds the consideration specified in the acquisition notice, the dominant owner must immediately pay, in the same manner as the consideration specified in the acquisition notice is to be paid, the balance owing to:
- (i) the outstanding security holders; or
- (ii) the Company.



(b) If the consideration fixed by expert determination is less than the consideration specified in the acquisition notice, the dominant owner may recover the excess paid from:

(i) the outstanding security holder; or

(ii) the Company (if the consideration is held by the Company).

5.5 Registration of dominant owner as holder of outstanding securities

(a) In the case of a compulsory sale, the Directors must register the dominant owner or its nominee as the holder of the outstanding securities on receipt by the Company of:

(i) in relation to outstanding security holders who have returned the documents referred to in paragraph 5.1:

(A) the executed instruments of transfer and related documents; and

(B) evidence to the reasonable satisfaction of the Company that the consideration has been sent to the outstanding security holders in accordance with paragraph 5.2; and

(ii) in relation to outstanding security holders who have not returned the documents referred to in paragraph 5.1:

(A) the executed instrument or instruments of transfer; and

(B) evidence to the reasonable satisfaction of the Company that the consideration has been dealt with in accordance with paragraph 5.3(a).

(b) In the case of a voluntary sale, the Directors must register the dominant owner or its nominee as the holder of the outstanding securities on receipt by the Company of:

(i) the executed instruments of transfer and related documents received by the dominant owner in accordance with paragraph 5.1; and

(ii) evidence to the reasonable satisfaction of the Company that the consideration has been sent to the outstanding security holders in accordance with paragraph 5.2.



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