

Constitution of Market Gardeners Limited



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CONSTITUTION OF MARKET GARDENERS LIMITED

1 DEFINITIONS

In this Constitution the following expressions have, subject to clause 2, the following meanings:

A Shares means Rebate Shares with the rights set out in clause 5.1;

Associated Company means a company approved by the Board as an associated company at any relevant time for the purposes of this definition;

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

B Shares means Rebate Shares with the rights set out in clause 5.2;

Change of Control means, in relation to a corporate Shareholder, a change in the legal or beneficial ownership of any of the shares in the Shareholder or of any holding company of the Shareholder which results in any other person (who in the event that the following particulars are met shall be described as a *Change of Control Shareholder*) holding or ultimately controlling, directly or indirectly, shares in the Shareholder which, when added to the shares (if any) already so held or ultimately held by that person:

- (a) amount to at least 50% of the issued or paid up capital of the Shareholder;
- (b) enable that other person to control, directly or indirectly, at least 50% of the votes on a resolution of the shareholders of the Shareholder or to appoint the majority of the directors of the Shareholder; or
- (c) enable that other person to control the Shareholder by any other means;

provided that any change in the legal or beneficial ownership of any of the shares in the Shareholder arising from the transfer of any shares in the Shareholder to: a wholly owned subsidiary of that shareholder; or any spouse, child, adopted child, grandchild, step-child, son-in-law, or daughter-in-law of that shareholder, or to a trustee of any trust which the Board determines is exclusively or principally for the benefit of any of those persons; shall not constitute a change of control;

Companies Act means the Companies Act 1993;

Company means Market Gardeners Limited;

Constitution means this constitution as it may be altered from time to time;

Co-operative Companies Act means the Co-operative Companies Act 1996;

C Shares means Rebate Shares with the rights set out in clause 5.3;

Current Producer means a Producer who has transacted more than the Minimum Business;

D Shares means Shares described in clause 5.4;

Deferrable Parcel means Shares of any class that exceed in total a number that the Surrender Policy specifies as constituting a deferrable parcel for the purposes of the Surrender Policy;

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

Equity Securities means Shares, securities convertible into Shares, and options to acquire Shares;

Industry Trust means a trust established by the Company:

- (a) that has as its principal purposes the promotion of the Produce industry and actions for the benefit of any participant or participants in the Produce industry;
- (b) that has a trust deed that requires the trustees to report to the Shareholders in each year:
 - (i) the changes in Shares held by the trustees;
 - (ii) policies, if any, for the consideration and making of distributions applied by the trustees;
 - (iii) the distributions made by the trustees;
 - (iv) any changes to the trust deed; and
 - (v) any changes in the trustees;in the period from 1 July in the previous year to 30 June of that year;
- (c) in respect of which the trust deed and initial trustees with which the trust is established have been approved by an ordinary resolution of Shareholders for the purposes of this definition; and
- (d) that is approved by the Board as an industry trust at any relevant time for the purposes of this definition;

Managing Director means a person appointed to the office of managing director of the Company accordance with clause 23.25;

Minimum Business means any minimum value and/or amount and/or volume of transactions between the Company and/or an Associated Company and a person (either directly or through another person as approved by the Board), over a period,

and over such lines and/or types of Produce or Services, determined by the Board under clause 13.12;

Maximum Holding means any maximum number of Shares or maximum number of Shares of any class that may be held by a Shareholder determined by the Board under clause 8.1;

Minimum Holding means any minimum number of Rebate Shares of any class required to be held by a Shareholder to give an entitlement to rebates determined by the Board under clause 7.1 and for all other classes of Shares means a minimum holding of that class determined by the Board under clause 7.1;

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 under that Act, and a donee of an enduring power of attorney complying with that Act, or any person in the nature of such persons;

Produce means fruit, vegetables, flowers and other components of floral arrangements, grains and seeds, whether raw or processed;

Producer means a person who, either directly or through another person as approved by the Board:

- (a) produces and/or sells Produce to the Company or any Associated Company or through the Company or any Associated Company;
- (b) purchases Produce from the Company or any Associated Company;
- (c) supplies Services to the Company or any Associated Company;
- (d) purchases Services from the Company or any Associated Company;
- (e) not having transacted any actions described in clauses (a) – (d) of this definition with the Company or any Associated Company, the Board determines is likely to commence transacting any such actions with the Company or any Associated Company; or
- (f) having ceased to transact any actions described in clauses (a) – (d) of this definition with the Company or any Associated Company, the Board

determines is likely to resume transacting any such actions with the Company or any Associated Company;

Rebate Shares means a Share that has the right to receive a rebate;

Related Company means a related company (as that term is defined in the Companies Act) of the Company;

Relative means a person who is in relation to a Shareholder that is a Current Producer, or a director of, or shareholder holding more than 25% of the voting rights able to be cast on an ordinary resolution of the shareholders of, or a partner in, or a trustee of, a Shareholder that is a Current Producer:

- (a) a director;
- (b) a parent;
- (c) a child;
- (d) a brother;
- (e) a sister;
- (f) a spouse, civil union partner or de facto partner; or
- (g) the trustees and replacement trustees of any trust the principal beneficiaries of which are any person described in clauses (a) – (f) of this definition;

as applicable, and that the Board has approved as a person who may be transferred Shares under clauses 13.1 and 13.10;

Services means goods, services or systems ancillary or relating to the production, acquisition, marketing or sale of Produce;

Share means a share in the Company;

Shareholder means a holder of Equity Securities;

Standard Terms means any terms determined by the Board from time to time under clause 20.1; and

Surrender Policy means any policy for the surrender of Shares determined by the Board from time to time under clause 12.1.

2 **INTERPRETATION**

In the interpretation and application of this Constitution, unless the context requires otherwise:

agreement, document, policy and rule: a reference to any agreement, document, policy or rule includes a reference to that agreement, document, policy or rule as amended or replaced from time to time;

clause: a reference to a clause is to a clause of this Constitution;

defined terms: words or phrases (other than proper names) appearing in this Constitution with capitalised initial letters are defined terms and have the meaning given to them in this Constitution provided that if any term that is defined in this Constitution is also a defined term under the Companies Act or the Co-operative Companies Act then, if a conflict exists or arises between the definitions, the definition in the Co-operative Companies Act shall prevail and if the definition is not in the Co-operative Companies Act but is in the Companies Act the definition in the Companies Act shall prevail;

determination: references to the ability, obligation, power or right to approve, decide or determine any matter or thing means approve, decide or determine in the absolute and sole discretion of the Board or the person making the decision or determination;

headings: headings appear as a matter of convenience and do not affect the construction of this Constitution;

including: mentioning anything after "include", "includes" or "including" does not limit what else might be included;

legislation: a reference to any legislation is a reference to that legislation as amended or to any legislation replacing that legislation;

persons: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate including a partnership;

related terms: where a word or expression is defined in this Constitution, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

singular, plural and gender: the singular includes the plural and vice versa, and words importing one gender include the other genders; and

writing: a reference to "written" or "in writing" includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

3 CO-OPERATIVE PURPOSE

- 3.1 The Company carries on, and will carry on, the following co-operative activities as the Company's principal activities (either directly or through a subsidiary of the Company):
- (a) the acquisition of Produce from Shareholders, and the marketing and commission selling of Produce for Shareholders;
 - (b) supplying or providing Services to Shareholders;
 - (c) processing Produce supplied or provided by Shareholders;
 - (d) entering into any other commercial transactions with Shareholders; and
 - (e) supplying or providing goods or services, or both, that are ancillary to, or that otherwise facilitate, the carrying on by the Company of a co-operative activity referred to in any of clauses 3.1(a) – (d).
- 3.2 For the purposes of clause 3.1 a Shareholder may act directly or through another person as approved by the Board.

4 NOMINAL VALUE OF SHARES

Unless otherwise determined by the Board at the time of issue a Share shall have a nominal value of \$1.00. The Board may determine that any Share to be issued has a different nominal value or no nominal value. Different classes of Shares may have different nominal values as determined by the Board at the time of issue.

5 TERMS OF ISSUE OF SPECIFIC CLASSES OF SHARES

A Shares

- 5.1 A Shares are issued and are held on the terms and with the rights set out below.
- (a) An issue price and a nominal value of \$1 per A Share.
 - (b) A right to distributions and rebates as determined by the Board.
 - (c) Subject to clause 22 on a show of hands or on a vote on voices each holder of an A Share who is a Current Producer shall have one vote and on a poll or a postal vote each holder of an A Share who is a Current Producer shall have one vote for each A Share entitled to vote.
 - (d) A Shares are transferable subject to the restrictions in clause 13.

B Shares

5.2 B Shares are issued and are held on the terms and with the rights set out below.

- (a) An issue price and a nominal value of \$1 per B Share.
- (b) A right to distributions and rebates as determined by the Board.
- (c) The B Shares shall have no right to vote other than on a special resolution of an interest group comprising holders of B Shares under section 117 of the Companies Act (voting on an alteration of shareholder rights) which shall be subject to clause 22.
- (d) B Shares are transferable subject to the restrictions in clause 13.
- (e) The Board may determine to convert and reclassify any of the B Shares into A Shares or any other class of Shares. The Board may distinguish between B Shares in respect of any conversion and reclassification including on the basis of date of issue. Notice of any conversion and reclassification shall be given to the holders of the B Shares that are reclassified advising of the conversion and reclassification and the terms of the new class of Shares into which the B Shares are converted and reclassified.

C Shares

5.3 C Shares are issued and are held on the terms and with the rights set out below.

- (a) An issue price and a nominal value of \$1 per C Share.
- (b) A right to distributions and rebates as determined by the Board.
- (c) The C Shares shall have no right to vote other than on a special resolution of an interest group comprising holders of C Shares under section 117 of the Companies Act (voting on an alteration of shareholder rights) which shall be subject to clause 22.
- (d) C Shares are transferable subject to the restrictions in clause 13.
- (e) The Board may determine to convert and reclassify any of the C Shares into A Shares or B Shares or any other class of Shares. The Board may distinguish between C Shares in respect of any conversion and reclassification including on the basis of date of issue. Notice of any conversion and reclassification of C Shares shall be given to the holder of the C Shares that are converted and reclassified advising of the conversion and reclassification and the terms of the new class of Shares into which the C Shares are reclassified.

D Shares

- 5.4 D Shares are issued and are held on the terms and with the rights set out in the registered prospectus dated 14 November 2013 under which the relevant D Shares were offered and issued.

Rebate Shares

- 5.5 The Board may change the classification of any Rebate Shares so that the Rebate Shares are in a different class or group for the purpose of paying rebates or distributions or for any other purpose as and when the Board determines.

6 POWER TO ISSUE AND REDEEM REDEEMABLE SHARES

The Company may:

- (a) issue redeemable Shares;
- (b) redeem redeemable Shares in accordance with the Companies Act and the terms of issue of the redeemable Shares; and
- (c) exercise an option to redeem redeemable Shares in relation to one or more holders of redeemable Shares, in accordance with the Companies Act and the terms of issue of the redeemable Shares.

7 MINIMUM HOLDING

- 7.1 The Board may determine a minimum number of Shares of any class that must be held by any Shareholder at and/or from any time, and/or during any period, for any purpose including to become a Shareholder and/or to qualify to receive any rebate determined by the Board. The Board may create, change, suspend or cease any Minimum Holding from time to time as the Board determines.
- 7.2 Where a Minimum Holding in respect of Rebate Shares is determined based on the type and/or number and/or value and/or volume of, and/or the profit derived by the Company from, transactions by the Shareholder with the Company or any Associated Company then as between Shareholders the Minimum Holding shall be the same so that no Shareholder shall be required to hold more Rebate Shares than another Shareholder in respect of the same applicable type, number, value and/or volume and/or profit of transactions. The Company may distinguish between the Company and any Associated Company and set different amounts in respect of the type, number, value and/or volume and/or profit of transactions with the Company or any Associated Company.
- 7.3 On the Board determining a Minimum Holding it shall give notice of the details of that Minimum Holding to all holders of Shares of the relevant class. This clause is in addition to, and does not limit, the requirements and application of clause 30.
- 7.4 The Board may give notice to a Shareholder requesting the Shareholder to either purchase further Shares or apply for further Shares to the Minimum Holding within a

period of not less than 3 months specified by the Board. If the Shareholder does not acquire or subscribe for the Shares within the period specified by the Board then the Board may either:

- (a) refuse to pay any rebates to the Shareholder if the Board has established Minimum Holdings that are applicable to qualify for rebates in respect of transactions with the Company or any Associated Company and the Shareholder has fewer Shares than the Minimum Holding required;
- (b) pay rebates and distributions to the credit of the Shareholder and apply those rebates and distributions to pay up the amount payable on Shares issued to the Shareholder to increase the Shareholder's shareholding towards or to meet the Minimum Holding;
- (c) surrender or repurchase the Rebate Shares held by the Shareholder in accordance with clause 12; or
- (d) require the sale of the Equity Securities held by the Shareholder within a time period specified by the Board and the Board may arrange for the sale of those Equity Securities for that purpose.

7.5 The Board shall not use the power in clause 7.4 to require any Shareholder to subscribe for further Shares by paying any money to the Company. This clause shall not prevent the Company applying rebates and distributions in accordance with clause 7.4(b).

7.6 For the purposes of clause 7.4 the Shareholder concerned is deemed to have appointed any Director as that Shareholder's attorney to execute all documents relating to the sale and transfer, surrender, or repurchase, of Equity Securities.

7.7 The proceeds of the sale, surrender or repurchase of Equity Securities under clauses 7.4(c) or 7.4(d) less all reasonable costs incurred by the Company in respect of the sale, surrender or repurchase shall be held by the Company on trust for the Shareholder and paid to the Shareholder.

8 MAXIMUM HOLDING

8.1 The Board may determine the maximum number of Shares, and/or the maximum number of Shares of any class of Shares, that may be held by any Shareholder. The Board may create, change, suspend or cease any Maximum Holding from time to time as the Board determines. The Board shall not determine a maximum number that would restrict a Shareholder from holding sufficient Shares to exercise the maximum number of votes permitted under clause 22.4.

8.2 The Board may require the surrender of all or any Shares held by a Shareholder in excess of the Maximum Holding and any Shareholder holding Shares in excess of the Maximum Holding shall surrender the Shares the Board requires to be surrendered.

9 **ISSUE OF EQUITY SECURITIES**

- 9.1 Section 45 of the Companies Act (pre-emptive rights applying to the issue of new shares) does not apply to the Company.
- 9.2 Subject to the terms of this Constitution the Board shall determine the class and terms of issue of any Equity Securities.
- 9.3 The Board shall not issue Equity Securities that may lead the Company to cease to be a co-operative company under the Co-operative Companies Act without the prior approval of a special resolution.
- 9.4 Rebate Shares may only be issued to a Producer or an Industry Trust or a Relative.
- 9.5 The Company shall not issue Shares to any Shareholder where the Shares to be issued would result in the relevant Shareholder holding more than the Maximum Holding. Where any such Shares would have been issued by way of rebate or distribution the Shareholder shall be paid the issue price or nominal value of the Shares that would have been issued as the rebate or distribution.
- 9.6 The Board may only issue Equity Securities in accordance with the following provisions.
- (a) The Board may issue Rebate Shares and other Shares to a person who is a Producer applying for the Shares to become a Shareholder and where the class and number of Shares that are issued is the Minimum Holding of Shares required to become a Shareholder.
- (b) The Board may issue Rebate Shares and other Shares to an Industry Trust subject to the following provisions.
- (i) The number of Rebate Shares and other Shares that may be issued in, or in respect of, a financial year of the Company shall not exceed in total the number of Rebate Shares and other Shares the Company would have issued to a Shareholder who in, or in respect of, that financial year supplied to the Company the Produce that was supplied to the Company by subsidiaries of the Company and in respect of that supply no Rebate Shares or other Shares were issued.
- (ii) For the purposes of clause 9.6(b)(i) only Produce supplied by companies that:
- became a subsidiary of the Company by the acquisition of the shares in that company from a third party; or
 - were established by the Company to acquire assets and/or business of a third party;
- either in one transaction or by more than one transaction, shall be taken into account.

- (c) The Board may issue fully paid Equity Securities to Shareholders on a basis that maintains the proportionate rights of those Shareholders holding Shares of the class entitled to participate in the bonus issue.
 - (d) The Board may issue Equity Securities of the same class as a class on issue under an offer that if accepted by all Shareholders receiving the offer would maintain the proportionate rights of the Shareholders holding the class of Equity Securities offered.
 - (e) The Board may issue Equity Securities as part of a rebate or distribution including under any rebate or distribution reinvestment plan and through any amount payable in respect of the issue of those Equity Securities being satisfied by the application of a rebate or distribution.
 - (f) The Board may issue Shares to an existing Shareholder to increase the number of Shares held by that Shareholder to the Minimum Holding for that class of Shares.
 - (g) The Board may issue Equity Securities to any holder of existing Equity Securities in accordance with specific rights attached to those existing Equity Securities including any rights of conversion or to participate in issues attached to those Equity Securities.
 - (h) The Board may issue Equity Securities under any takeover offer made by the Company to shareholders or holders of other securities of another company in exchange for shares or other securities in the other company or the issue of Equity Securities to the vendor of an asset being acquired by the Company in payment or part payment of the purchase price of the asset.
 - (i) The Board may issue to any Shareholder any Equity Securities that were offered to existing Shareholders and that were not taken up within the period prescribed by the Board when making the offer.
 - (j) The Board may issue redeemable preference shares under clause 12.20.
 - (k) The Board may otherwise issue Equity Securities under an offer that has been approved by an ordinary resolution.
- 9.7 No person shall be entitled to become a Shareholder by reason of being a Producer. The decision of the Board on whether or not a person is entitled to be or become a Shareholder, and whether or not to issue Equity Securities to any person, shall be conclusive and final.
- 9.8 The Board shall determine any information and other material to be provided by a person seeking to become a Shareholder and/or be issued Equity Securities and the form on which any application to become a Shareholder and/or be issued Equity Securities is made.

9.9 The Board may from time to time set and implement policies applying to the issue of Shares. The Board may from time to time change the policies including to create, change, suspend or cease any such policies, as the Board determines.

10 **BOARD MAY MAKE CALLS**

10.1 The Board may make calls on any Shareholder for any money that is unpaid on that Shareholder's Shares and not otherwise payable at a specified time or times under this Constitution or the terms of issue of those Shares or any contract for the issue of those Shares.

10.2 If an amount called is not paid in full at the time specified for payment, the Shareholder must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. The Board may waive some or all of any interest payable.

11 **CONSOLIDATION AND SUBDIVISION**

11.1 The Board may:

- (a) consolidate Shares or any class of Shares in proportion to those Shares or the Shares in that class; or
- (b) subdivide Shares or any class of Shares in proportion to those Shares or the Shares in that class.

11.2 The nominal value of Shares that are consolidated or subdivided shall alter in proportion to the consolidation or subdivision.

12 **SURRENDER OF SHARES**

Surrender Policy

12.1 The Board may determine a policy for the surrender of Shares including by setting the number of Shares of any class that will be a Deferrable Parcel that may be surrendered (together with any Shares issued in respect of those Shares) over the period and in the amounts specified or determined under the policy. The Board may create, change, suspend or cease any Surrender Policy from time to time as the Board determines. Any Surrender Policy shall be subject to the Co-operative Companies Act and this Constitution.

Right of Board to require surrender

12.2 If at any time the Board determines that a Shareholder:

- (a) has ceased to be, or is not, a Producer or Current Producer;

- (b) has not purchased or used any of the Company's Services either directly or indirectly for five years or any shorter period the Board determines shall apply from time to time;
- (c) has not increased its shareholding as requested under clause 7.4;
- (d) failed to provide a statutory declaration or other information or materials as required by clause 14;
- (e) holds Shares other than in accordance with this Constitution;
- (f) has transferred any Shares, or received a transfer of any Shares, in breach of clause 13; or
- (g) holds any Shares in respect of which the beneficial ownership or the right to exercise any votes attached to the Shares or any control over the Shares is held by a person other than the Shareholder and the Board has not given written approval of the arrangements;
- (h) has failed to comply in a material respect with any Standard Terms or requirements relating to transactions with the Company or any Associated Company contained in any contract between the Company or any Associated Company and the Shareholder, whether directly or indirectly;
- (i) has been subject to a Change of Control and:
 - (i) the Change of Control Shareholder is not a Current Producer and the Shareholder holds Rebate Shares;
 - (ii) the Board is of the opinion that the Change of Control Shareholder would not be an appropriate person to admit to membership if the Change of Control Shareholder sought to become a Shareholder personally;
 - (iii) the Change of Control Shareholder is a person to whom a transfer of Shares would be prohibited by any legislation or other lawful direction; or
 - (iv) the Change of Control Shareholder holds in aggregate a relevant interest (as that term is defined in the Financial Markets Conduct Act 2013) in more than 5% of the Shares of any class;

provided that (ii) shall not apply where the Change of Control Shareholder is a Current Producer and is already a Shareholder;

- (j) has, directly or indirectly, conducted a business as a wholesaler of multiple lines of Produce acquired from other persons (whether directly or as agent) in competition with the business of the Company in a way or to an extent that is or will be material and adverse to the business of the Company taking into account all market conditions and industry practice,

or has taken actions for the purpose of and preparatory to conducting such a business;

- (k) has otherwise failed to comply with this Constitution;
- (l) is acting as a person through which a Producer is transacting business with the Company or an Associated Company and is not otherwise a Producer in its own right;
- (m) was an Industry Trust and has ceased to be an Industry Trust; or
- (n) is a Relative to whom Shares were transferred under clause 13.1 and who the Board determines should no longer hold Shares in the capacity of a Relative;

the Board may, subject to clauses 12.3 and 12.4, resolve to surrender those Shares.

- 12.3 Where the Board has determined under clause 12.2(l) that a Shareholder is acting as a person through which a Producer is transacting business with the Company or an Associated Company and is not otherwise a Producer in its own right the Board shall permit the Shareholder a reasonable opportunity to transfer the Shares held by that Shareholder to the Producer before the Board proceeds to exercise the power to surrender the Shares held by that Shareholder.
- 12.4 Where the Board has determined under clause 12.2(n) that a Relative to whom Shares were transferred under clause 13.1(e) should no longer hold Shares in the capacity of a Relative the Board shall permit the Relative a reasonable opportunity to transfer the Shares held by that Relative to the Shareholder from whom Shares were transferred under clause 13.1(e) before the Board proceeds to exercise the power to surrender the Shares held by that Relative.
- 12.5 In determining whether a Shareholder has ceased to be a Producer the temporary cessation of producing and/or supplying Produce or of taking or providing Services, or the intermittent producing and/or supplying Produce or taking or providing Services, shall not result in that person ceasing to be a Producer.
- 12.6 If the Shareholder does not within 30 days after being notified of the resolution under clause 12.2 transfer or agree to the surrender of the Shares the Shareholder shall be deemed to have appointed the Company as the Shareholder's agent for the sale of the Shares and to have authorised the Company to surrender the Shares.

Ability of Shareholder to request or require surrender

- 12.7 A Shareholder shall be entitled to require the surrender of Shares in the circumstances and as permitted by the Co-operative Companies Act and subject to this Constitution. A Shareholder may not otherwise require the surrender of any Shares.
- 12.8 Notwithstanding any provision of this Constitution the Board may determine to accept from any Shareholder a surrender of any Shares on terms agreed between the Company and the Shareholder.

12.9 The Board may require any Shareholder requesting or requiring the surrender of Shares to provide evidence of the basis for the request or requirement for surrender satisfactory to the Board.

Date surrender takes effect

12.10 The surrender of any Shares at the option of the Shareholder, or by agreement between the Shareholder and the Company, takes effect on the date on which the Board resolves to accept the surrender.

12.11 The surrender of any Shares at the option of the Company takes effect at the expiration of a month after notice in writing requiring the surrender is given to the Shareholder.

Entitlements

12.12 From the date any surrender of Shares takes effect the Shares shall cease to have any entitlement whether as to rebates, distributions, voting or otherwise.

Amount payable on surrender

12.13 The amount payable for any Shares surrendered shall be the lesser of:

- (a) the nominal value of those Shares on the date on which the surrender is effective provided that if any Shares having a nominal value are not fully paid up then the amount payable in respect of those Shares shall be the amount paid up; and
- (b) if the Board determines that the value of the net tangible assets of the Company per Share is less than the nominal value of those Shares, an amount less than the amount payable under clause 12.13(a) that is fair to the Shareholder and the Company in the opinion of the Board.

12.14 If the amount payable for any Shares surrendered is determined under clause 12.13(b) and the Shareholder disputes the amount then the amount payable shall be determined by arbitration by a sole arbitrator under the Arbitration Act 1996 (with the Shareholder and the Company having rights of appeal under that Act).

12.15 The amount payable for the Shares being surrendered shall be paid on the date the Board determines payment shall be made.

Surrendered Share cancelled

12.16 Shares that are surrendered shall be cancelled on the date the surrender takes effect unless the Board determines to hold those Shares as treasury stock in accordance with the Co-operative Companies Act (and as permitted by clause 15).

Right to suspend surrender

12.17 Notwithstanding any other provision of this Constitution the Board shall be entitled to suspend or refuse the surrender of any Shares during any period when in the Board's determination the surrender would be in breach of the Co-operative Companies Act or endanger the financial stability and solvency of the Company.

Limit on number of Shares surrendered

12.18 Any Surrender Policy may specify a number of Shares that constitutes a Deferrable Parcel. If a Shareholder requests the surrender of, or is required to surrender, more Shares than the Deferrable Parcel then the Board may determine that the surrender of the Shares (including the Shares below the number that constitutes the Deferrable Parcel and any Shares issued in respect of the Shares being surrendered) occurs over the period and in the amounts specified or determined under the Surrender Policy.

Principles of surrender

12.19 In surrendering or redeeming any Shares the Board shall, unless it considers on the grounds of hardship or other special circumstances that other priorities will apply, surrender or redeem Shares in the order in which the Shareholders requested to have their Shares surrendered or redeemed or the Shares were required to be surrendered or redeemed by the Company notwithstanding the class of Shares.

Request for conversion of Shares

12.20 A Shareholder may in lieu of surrender request the Board to convert and reclassify the Shares into redeemable preference Shares. The Board may agree to any request at its discretion. If the Board agrees to the request the redeemable preference Shares shall have the rights determined by the Board under clause 12.21. The conversion and reclassification shall only occur if the Shareholder accepts the rights the redeemable preference Shares would have on conversion and reclassification.

12.21 The Board shall determine whether or not the redeemable preference Shares shall:

- (a) have a right to a fixed dividend and the amount of any fixed dividend;
- (b) have any right to vote or shall only have a right to vote in the event of a breach of the terms of issue or on any resolution under section 117 of the Companies Act (voting on an alteration of shareholder rights);
- (c) be redeemable at the request of the Shareholder or shall only be redeemed at the discretion of the Company; and
- (d) have any other rights.

13 TRANSFER OF EQUITY SECURITIES

Transfer of Rebate Shares

13.1 Rebate Shares may only be transferred:

- (a) by a Current Producer to a person who the Board is satisfied is purchasing the Produce business of the Current Producer and will transact business with the Company;
- (b) to a Producer with the prior approval of the Board;
- (c) on the death of a Shareholder to the Personal Representative of the deceased Shareholder or to the persons entitled to receive the Shares on the distribution of the estate of the deceased Shareholder, and such transfer shall occur without limiting, and without prejudice to, any other provision of this Constitution;
- (d) to an Industry Trust with the prior approval of the Board; or
- (e) by a Current Producer to a Relative of the Current Producer with the prior approval of the Board.

Instruments of transfer

13.2 Transfers shall be implemented in the following manner:

- (a) 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 Share register; and
- (b) where Shares being transferred are partly paid the transfer must be signed by both the transferor and the transferee and the liability of the transferor for any unpaid calls shall cease from the date of registration of the transfer.

Refusal to register transfer

13.3 The Board may refuse to register the transfer of any Shares or delay that registration or decline to recognise any instrument of transfer in any of the following circumstances:

- (a) where the Company has a lien on the Shares;
- (b) where it is not proved to the Board's satisfaction that the proposed transferee is a responsible person;
- (c) where the Board is of the opinion that the proposed transferee is not a desirable person to admit to membership;
- (d) where the proposed transferee is indebted or under any liability to the Company in respect of those Shares or otherwise;

- (e) if the instrument of transfer is not accompanied by the certificate(s) of the Shares to which it relates (if any) and any other evidence Board reasonably requires to show the right of the transferor to make the transfer;
- (f) where the transferee of the Shares will hold less than the Minimum Holding of Shares;
- (g) where the transfer will result in the transferee holding in aggregate a relevant interest (as that term is defined in the Financial Markets Conduct Act 2013) in more than 5% of the Shares of that class;
- (h) where the Shares are partly paid and calls due (together with any accrued interest and any expenses the Shareholder is required to pay to the Company as a consequence) are unpaid; or
- (i) where any declaration, information or material requested by the Board under clause 14 in relation to the transfer is not provided to the Board;

provided that paragraphs (b), (c), and (f) shall not apply where a proposed transferee is a Current Producer and is already a Shareholder.

13.4 The Board must refuse to register the transfer of any Shares in any of the following circumstances:

- (a) where the transferee of the Shares is not a Producer or an Industry Trust and the transfer is of Rebate Shares;
- (b) where the transferee is a person to whom a transfer is prohibited by any legislation or other lawful direction; or
- (c) where the transferee of the Shares holds, or would hold if the transfer was registered, more than the Maximum Holding of Shares.

Notice of decision to delay or refuse to register transfer

13.5 If the Board determines to delay or refuse to register a transfer it shall within 5 working days of the determination give to the transferor notice of its determination and the reasons for its determination.

Transmission on death of Shareholder

13.6 If a Shareholder dies the survivor if the deceased was a joint Shareholder, or the Personal Representative, shall be the only persons recognised by the Company as having any interest in the Shares of the deceased Shareholder. Nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company has in respect of any Share.

Rights of Personal Representatives

- 13.7 A Personal Representative of a Shareholder is entitled:
- (a) to exercise all rights in respect of Shares held by the Shareholder subject to the terms of issue and this Constitution; and
 - (b) to be registered as holder of those Shares, but the registration shall not operate as a release of any rights and shall occur without limiting, and without prejudice to, any other provision of this Constitution (including any lien) to which the Company was entitled prior to registration of the Personal Representative as holder.

Joint Personal Representatives

- 13.8 Where a Share 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 Share.

Application of clause to Equity Securities other than Shares

- 13.9 Subject to the terms of issue of any Equity Securities the provisions of this clause 13 shall apply to all Equity Securities with any necessary modifications for Equity Securities which are not Shares.

Transfers to Relatives

- 13.10 Where Shares are transferred to a Relative under clause 13.1(e) the following provisions shall apply.
- (a) The Company shall maintain a record of the transfer including the identity of the Shareholder from whom the Shares were transferred.
 - (b) The Relative to whom the Shares are transferred accepts that the Relative can only require the Shares be surrendered on the death of the Relative or in conjunction with the surrender of the Shares of the Shareholder from whom the Shares were transferred.
 - (i) The Relative may require the Company to surrender all of the Shares held by the Relative where the Shareholder from whom Shares were transferred to the Relative surrenders or is required to surrender or transfer in lieu of surrender all of that Shareholder's Shares. The Shares held by the Relative shall be deemed to comprise part of the Shares of that Shareholder's Shares for the purposes of determining whether that Shareholder is surrendering a Deferrable Parcel under clause 12.18 and the provisions of that clause in relation to the surrender of a Deferrable Parcel shall apply to the Shares of both the Relative and that Shareholder on a pro rata basis calculated on the number of Shares held by each of the Relative and that Shareholder.

- (ii) For the purposes of section 20(2) of the Co-operative Companies Act the reference to the "personal representative has ceased to be a transacting shareholder" shall be accepted to be a reference to the personal representative of the deceased Relative even though the personal representative has never been a transacting shareholder.
 - (iii) For the purposes of section 20(3)(a) of the Co-operative Companies Act the period of time the Relative who is a Shareholder has not been a transacting shareholder entitling the Relative to require the surrender of the Relative's Shares shall be 20 years instead of 5 years.
 - (iv) The Relative who is a Shareholder shall not be entitled to require the surrender of his or her Shares under section 20(3)(b) of the Co-operative Companies Act if the Relative has not been a transacting shareholder.
- (c) The Relative is not a Producer or Current Producer by reason of having been transferred Shares from a Current Producer or by reason of being a Shareholder.
 - (d) If the Relative is not a Current Producer in the Relative's own right the Relative shall have no voting rights in accordance with clause 22.1.

Determining status as current producer and supply of information

13.11 The Board shall determine whether any person is or is not a Current Producer.

13.12 The Board may from time to time determine a minimum value and/or amount and/or volume of any type of transactions between the Company and/or any Associated Company and a person (either directly or through another person as approved by the Board), over a period, and over such lines and/or types of Produce or Services, that must have occurred in order for the person to be a Current Producer. The Board may distinguish between the Company and any Associated Company and set different values and/or amounts and/or volumes and/or periods and/or lines and/or types in respect of transactions with the Company or any Associated Company. The Board may from time to time change the basis on which the assessment is made including to create, change, suspend or cease any value and/or amount and/or volume and/or period and/or lines and/or types as the Board determines.

13.13 Where a person (*Person A*) transacts with the Company or any Associated Company through another person (*Person B*) as approved by the Board:

- (a) the transactions of Person A shall not be included in any assessment of the transactions of Person B with the Company or Associated Company for any purpose;
- (b) the transactions of Person B shall not be included in any assessment of the transactions of Person A with the Company or Associated Company for any purpose; and

- (c) an assessment undertaken in accordance with clauses 13.13(a) and 13.13(b) shall be used for the purposes of determining whether a Shareholder is a Current Producer.

13.14 A Shareholder shall provide to the Board as soon as practicable any information the Board requests for the purpose of determining whether a Shareholder is or is not a Current Producer.

13.15 A Shareholder shall provide to the Board as soon as practicable any information the Board requests for the purpose of identifying the transactions between the Company or any Associated Company and the Shareholder.

13.16 Where a Shareholder transacts with the Company or any Associated Company through another person the Shareholder shall procure that other person to provide to the Board as soon as practicable any information the Board requests for the purpose of identifying the transactions between the Company or any Associated Company and the Shareholder.

13.17 The Company and the Board shall be entitled to rely on any information provided by any person to determine what transactions have occurred between the Company or any Associated Company and Shareholders and third parties.

13.18 Where any information requested by the Board under clauses 13.14 – 13.16 is not provided the Board may exclude from any consideration by the Board, or otherwise ignore, any transactions relevant to the information sought.

14 **RIGHT TO HOLD SHARES**

14.1 The Board may at any time by written notice require any Shareholder to lodge with the Company within 10 working days a statutory declaration and/or any other information or material as the Board determines disclosing or proving in respect of any Shares held by the Shareholder:

- (a) the beneficial ownership of and the right to hold those Shares in accordance with this Constitution; and
- (b) in respect of any proposed transfer of Shares the beneficial ownership of the Shares following that proposed transfer and the right of the proposed transferee to hold those Shares in accordance with this Constitution.

14.2 Where Shares have been issued or transferred before 23 November 2016 with the approval of the Board to a person and in circumstances that would have been permitted under this constitution if approved by the Board on 24 November 2016 then that issue or transfer shall be deemed to have been approved by the Board under the relevant provision of this constitution as at 24 November 2016. This clause shall not limit or prevent the exercise of any obligations, powers or rights provided for in this constitution that would apply if the issue or transfer had been approved by the Board under the relevant provision of this constitution on 24 November 2016.

15 **COMPANY MAY ACQUIRE AND HOLD SHARES**

- 15.1 The Company may purchase or otherwise acquire Shares and may hold those Shares in accordance with the Companies Act and Co-operative Companies Act.
- 15.2 If the Company intends to transfer any Shares which it has acquired and held, the transfer will be treated as a new issue of Shares and the Board must first comply with the requirements of this Constitution for issues of Shares.
- 15.3 The Board may purchase or otherwise acquire Shares from any Shareholders and in any numbers or proportions as it determines, in accordance with the Companies Act and Co-operative Companies Act.

16 **FORFEITURE AND LIEN**

Notice

- 16.1 If a Shareholder fails to pay any call or instalment of a call on the due date, the Board may serve a notice on the Shareholder requiring payment of the unpaid amount together with any accrued interest and any expenses incurred by the Company by reason of the non-payment.
- 16.2 The notice shall name a day (that is not earlier than the 10th working day from the date of service of the notice) before which the payment is to be made. The notice shall state that in the event of non-payment by the date appointed the Share in respect of which the call was made will be liable to be forfeited. The notice shall also state how payment is to be made.

Non-compliance

- 16.3 If payment of the amount specified in the notice is not received by the date specified in the notice any Share in respect of which the notice has been given may, before the payment has been made, be forfeited by a resolution of the Board. Forfeiture shall include all rebates or distributions authorised in respect of the forfeited Share and not actually paid or made before the forfeiture.

Entry of forfeiture

- 16.4 When any Share is forfeited:
- (a) notice of the resolution shall be given to the Shareholder or former Shareholder;
 - (b) the forfeiture shall be entered in the Share register;
 - (c) the share certificate of the Share (if any) shall be cancelled by the Company and the Shareholder or former Shareholder shall return the Share certificate to the Company within 10 working days of receiving notice of the resolution; and

- (d) as soon as the Share is sold or disposed of, the date and manner of the sale or disposition shall be entered in the Share register.

Forfeited share

- 16.5 A forfeited Share shall be deemed to be the property of the Company and may be sold or otherwise disposed of on any terms and in any manner the Board determines. The Board may, at any time before a sale or disposition, annul the forfeiture on any terms the Board determines.

Ceasing to be Shareholder

- 16.6 A person whose Share has been forfeited shall cease to be a Shareholder in respect of the forfeited Share, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable by the Shareholder to the Company in respect of the Share (including any accrued interest and any expenses the Shareholder is required to pay to the Company as a consequence). The Shareholder's liability shall cease if and when the Company receives payment of all money in respect of the Share.

Lien

- 16.7 The Company shall have a first lien upon:

- (a) all Equity Securities and upon the proceeds of sale or surrender or redemption of Equity Securities of a Shareholder;
- (b) all rebates and distributions payable to a Shareholder;
- (c) all other moneys due or to become due to a Shareholder by the Company or any Associated Company;

for:

- (d) calls or amounts payable in respect of Equity Securities issued to the Shareholder including Shares issued to the Shareholder to increase the number of Shares held by the Shareholder in order to meet, or towards meeting, a Minimum Holding; and
- (e) any other debt, liability or obligation owing by the Shareholder to the Company or any Associated Company.

Sale of Equity Securities

- 16.8 The Company, may sell any Equity Security on which the Company has a lien if:

- (a) a sum in respect of which the lien exists is due and unpaid; and
- (b) the Company has given the Shareholder notice in writing demanding payment, naming a day (that is not earlier than the 10th working day from the

date of service of the notice) before which payment of the sum is to be made, stating how payment is to be made, and stating that in the event of non-payment by the date appointed the relevant Equity Security will be liable to be sold; and

- (c) the sum is not paid before the specified date.

Execution

- 16.9 To give effect to any sale or disposition under clauses 16.5 or 16.8 a Director, on behalf of the Company, may execute a transfer of the Share or other Equity Security to the purchaser.

Position of transferee

- 16.10 Upon registration of the transfer of the Share or other Equity Security sold or disposed of by the Company under clauses 16.5 or 16.8 to the purchaser the transferee shall hold the Share or other Equity Security free from all calls due before the purchase. The transferee shall not be required to see to the application of the purchase money. The transferee's title to the Share or other Equity Security shall not be affected by any irregularity or invalidity in the sale or disposal process.

Former Shareholder's remedy

- 16.11 The remedy of any Shareholder or former Shareholder and of any person claiming under or through the Shareholder or former Shareholder in respect of the forfeiture of any Share and any sale or other disposal of the forfeited Share, or the sale of any Equity Security under the lien, shall be against the Company exclusively and in damages only.

Proceeds

- 16.12 The net proceeds of the sale or other disposal of any forfeited Share which is sold within 12 months of the date of forfeiture, or of any other Equity Security sold for the purpose of enforcing the lien, shall be applied:
- (a) first, to meet or reimburse the Company's expenses of sale or disposal;
 - (b) secondly, to satisfy any unpaid calls or instalments and any interest on those amounts;
 - (c) thirdly, to satisfy any amount in respect of which the lien existed; and
 - (d) fourthly, in payment to the previous holder of the Share or other Equity Security.

Evidence

16.13 A certificate by a Director that the power of sale has arisen and is exercisable by the Company under this clause 16, or that the Share has been forfeited on the date stated, shall be conclusive evidence of the facts stated in that certificate.

Further powers

16.14 To give effect to any sale after forfeiture or to enforce the lien the Board may authorise a person to transfer the Share or other Equity Security sold to the purchaser. If any certificate for a forfeited Share is not delivered up to the Company the Board may issue a new certificate.

17 ACTIONS THAT DO NOT AFFECT SHAREHOLDERS' RIGHTS

The following actions shall not, and shall be deemed to not, affect the rights attached to Shares:

- (a) the issue of Equity Securities ranking equally with, in priority to, or ranking behind, any existing Shares, whether as to voting rights, entitlement to rebates or distributions, or otherwise;
- (b) issuing any Shares in accordance with the conversion rights attaching to Equity Securities;
- (c) accepting the surrender of Shares held by any Shareholder where other Shares of the same class are not being surrendered;
- (d) surrendering any Shares;
- (e) redeeming any Shares;
- (f) forfeiting any Shares;
- (g) creating or changing or ceasing any Minimum Holding;
- (h) creating or changing or ceasing any Maximum Holding
- (i) creating, changing, suspending or ceasing any policies applying to the issue of Shares under clause 9.9, Minimum Business under clause 13.11, Standard Terms or Surrender Policy, or the status of any company as an Associated Company;
- (j) reclassifying Equity Securities into another class as provided for in this Constitution or the terms of issue of any Equity Securities; or
- (k) consolidating or subdividing Shares.

18 **SHARE REGISTER MAY BE DIVIDED**

The Share register may be divided into 2 or more registers kept in different places.

19 **REBATES AND DISTRIBUTIONS**

- 19.1 Each Shareholder who holds a Minimum Holding of Shares carrying a right to rebates shall be eligible to receive rebates as permitted under Co-operative Companies Act and determined by the Board.
- 19.2 Rebates may be calculated by reference to the number and/or value and/or volume of, and/or the profit derived from, any type of transactions by the Shareholder (either directly or through another person as approved by the Board), as the Board determines from time to time.
- 19.3 A rebate or distribution may be or include any assets of the Company and in particular any fully paid shares or securities of other companies.
- 19.4 The Company may pay and apply any rebate or distribution in respect of any Shares in paying up further Shares of the same or a different class of Shares issued or to be issued to the Shareholder as determined by the Board.
- 19.5 A rebate or distribution shall be paid or made to the person or persons who:
- (a) are the registered holder or holders of the relevant Shares or Shareholders at the record time determined by the Board and if no record time is determined by the Board then at the time the rebate or distribution is authorised; and
 - (b) remain the registered holder or holders of the relevant Shares or Shareholders at the time the rebate or distribution is paid or made.
- 19.6 If more than one person is registered as the holder of any Shares then any rebate or distribution to be paid or made in respect of those Shares may be paid or made to any of those persons and the Company shall not be required to enquire as to the application of the rebate or dividend as between the joint holders.
- 19.7 A rebate or distribution payable in cash may be paid by cheque or by direct credit to the bank account directed by the Shareholder from time to time as the Company determines. Payment by cheque may be sent by post:
- (a) to the address of the Shareholder recorded in the Share Register;
 - (b) in the case of joint holders of Shares to any one of the joint holders at the address recorded in the Share Register; or
 - (c) to any person and address that the Shareholder directs.

The Company shall not be responsible for any loss arising in payment.

- 19.8 Any Shareholder may waive in whole or in part the right to participate in or receive rebates.
- 19.9 No rebate or distribution shall bear interest against the Company unless the terms of issue of a Share expressly provide for the payment of interest in respect of a rebate or distribution.
- 19.10 The Company may deduct from any rebate or dividend payable or to be made to any Shareholder any amount due by the Shareholder to the Company or any Associated Company on account of any of the following and apply the amount deducted in or towards satisfaction of the amount due:
- (a) calls or amounts payable in respect of Equity Securities issued to the Shareholder including Shares issued to the Shareholder to increase the number of Shares held by the Shareholder in order to meet, or towards meeting, a Minimum Holding; and
 - (b) any other debt, liability or obligation owing by the Shareholder to the Company or any Associated Company.
- 19.11 All rebates and distributions unclaimed for one year after having been authorised may be intermingled with the other money held by the Company and may be used by the Company for the benefit of the Company until claimed. All rebates and distributions unclaimed for five years after having been authorised shall be forfeited and retained by the for the benefit of the Company. The Board may at any time after forfeiture determine to annul the forfeiture and pay the rebate or distribution to any person producing evidence that the person is entitled to the rebate or distribution subject to the other provisions of this Constitution.

20 **STANDARD TERMS**

- 20.1 The Board may determine terms for the purchase, sale or supply of Produce and/or Services to apply between the Company or any Associated Company and Shareholders (either directly or through another person as approved by the Board) either alone or with any other person and applying to Shareholders exclusively or in common with other persons that are not Shareholders. The Board may create, change, suspend or cease any Standard Terms from time to time as the Board determines.
- 20.2 Any Standard Terms shall be binding on the Company and any Associated Company and each Shareholder. The Company and any Associated Company and each Shareholder must comply with any Standard Terms in effect at any relevant time. The Company shall procure that any Associated Company complies with any Standard Terms in effect at any relevant time. Where a Shareholder transacts with the Company or an Associated Company through another person the Shareholder shall procure that the other person complies with any Standard Terms in effect at any relevant time.

21 **SHAREHOLDERS' MEETINGS**

Right to receive notice and attend meetings

- 21.1 Holders of all Shares shall be entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of Shares carrying voting rights.
- 21.2 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.

Chairperson

- 21.3 If the Board has appointed a chairperson he or she shall chair a meeting of Shareholders. If there is no chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling or considers it inappropriate to act (either in relation to the entire meeting or in relation to any particular business to be considered at the meeting), the Directors present shall elect one of their number to be chairperson of the meeting (or for that part of the meeting which relates to the particular business).
- 21.4 If at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes after the time appointed for holding the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.

Quorum

- 21.5 A quorum for a meeting of shareholders is present if 7 Shareholders who are Current Producers or their proxies, or shareholders able to exercise votes on 5% of the Shares carrying voting rights (other than on a resolution under section 117 of the Companies Act (voting on an alteration of shareholder rights)), are present.
- 21.6 Subject to clause 21.7 no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 21.7 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called under section 121(b) of the Companies Act (special meeting called on the written request of shareholders) 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 any other date, time and place the Board determines, and if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting the Shareholders or their proxies present shall be a quorum.

21.8 If a meeting of Shareholders is adjourned for less than 30 working 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. When a meeting is adjourned for 30 working days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

Proxies

21.9 A Shareholder may exercise the right to attend and, if entitled to vote, vote at a Shareholders' meeting either by being present in person or by proxy. A proxy holder shall be a natural person who is either a Director or a Current Producer who holds A Shares or the representative of a Current Producer appointed under clause 21.24.

21.10 A proxy form shall be sent with each notice of meeting of Shareholders and:

- (a) shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote;
- (b) shall not be sent with any name or office filled in as proxy but a footnote to the proxy form may specify persons or office holders who are willing to act as proxy if the Shareholder wishes to appoint one of them; and
- (c) shall specify how the proxy form must be signed and delivered to the Company in order to be valid.

The Board shall otherwise determine the form and wording of the proxy form.

21.11 No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company not less than 48 hours before the scheduled start of the meeting.

21.12 A proxy form must be in the form and wording sent with the relevant notice of meeting. Any proxy form that is not in the form and wording sent with the relevant notice of meeting shall be invalid.

21.13 The Company is under no obligation to check the authority of the signatory on the proxy form and is entitled to assume that the proxy form has been signed with the proper authority of the Shareholder.

21.14 The appointment of a proxy may be withdrawn at any time not less than 48 hours before the scheduled start of the meeting by notice in writing to the Company duly signed and delivered in the same manner that the proxy form was required to be signed and delivered.

21.15 The appointment of a proxy may be withdrawn and a new proxy appointed, and the voting instructions on a proxy form may be changed, by another proxy form duly signed and delivered at any time not less than 48 hours before the scheduled start of the meeting.

- 21.16 The appointment of a proxy may not be withdrawn, and voting instructions on a proxy form may not be changed, after 48 hours before the scheduled start of the meeting.
- 21.17 The appointment of a proxy is, subject to clauses 21.14 and 21.15, effective in respect of any reconvened meeting following an adjournment of the meeting in respect of which the proxy was appointed.
- 21.18 The Board or, if the Board determines, the Company's auditors or solicitors or any other independent person appointed by the Board for the purpose, shall determine whether any proxy form is valid including by being in the correct form and terms and properly completed and signed.
- 21.19 Where the Company receives more than one proxy form from a Shareholder the last valid proxy form received by the Company (as determined by the Board) shall prevail.
- 21.20 Where the Shareholder gives the proxy voting instructions on the proxy form and the proxy attends the meeting the Company shall count the votes as having been exercised in accordance with those instructions.
- 21.21 A Shareholder may attend a meeting of Shareholders even though the Shareholder has appointed a proxy for that meeting and the appointment is not withdrawn. Where a Shareholder appoints a proxy and the appointment is not withdrawn and the Shareholder attends the meeting:
- (a) the Company shall count the votes of the Shareholder as having been exercised in accordance with any instructions as to voting on the proxy form; and
 - (b) in respect of any vote for which there are no instructions on voting on the proxy form the proxy may vote and the Shareholder may not vote.
- 21.22 The proxy may vote as the proxy determines in respect of any resolution put to the meeting (whether or not provided for in the notice of meeting and proxy form) for which there are no voting instructions given by the Shareholder on the proxy form.
- 21.23 A vote given in accordance with the terms of a proxy form shall be valid despite the previous death or mental disorder of the Shareholder, revocation 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 notification of the death, mental disorder, revocation or transfer has been received by the Company not less than 48 hours before the scheduled start of the meeting.

Corporations act by representatives

- 21.24 A body corporate which is a Shareholder and which wishes to attend and be represented at a meeting of Shareholders must appoint a representative who is a natural person and is either a director, shareholder or employee of the Shareholder. or a Director, or a Current Producer who holds A Shares, to attend a meeting of

Shareholders on its behalf in the same manner as that in which a Shareholder who is a natural person could appoint a proxy.

21.25 Subject to clause 21.24 all of the provisions of this Constitution in relation to a proxy apply to a representative to the extent possible.

Adjournments of meetings

21.26 The chairperson of the meeting may adjourn a meeting 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.

Polls

21.27 Except as provided in clause 21.28, if a poll is demanded it shall be taken in the manner the chairperson of the meeting directs and the results of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

21.28 A poll demanded on the election of a chairperson of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at the time the chairperson of the meeting directs and any business other than that upon which a poll has been demanded may proceed pending the taking of a poll.

Postal votes

21.29 The Board may determine that any right to vote at a meeting of Shareholders may be exercised by postal vote, including by electronic means, in accordance with the Companies Act and this constitution and otherwise as determined by the Board.

Casting vote

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

Loss of voting right if calls unpaid

21.31 If a sum due to the Company in respect of a Share has not been paid (together with any accrued interest and any expenses the Shareholder is required to pay to the Company as a consequence), the voting rights attached to that Share may not be exercised other than on a resolution under section 117 of the Companies Act (voting on an alteration of shareholder rights).

Current Producers

21.32 Unless otherwise determined by the Board the determination of whether a Shareholder is a Current Producer for the purposes of any meeting of Shareholders (including for the purposes of being appointed as a proxy or corporate representative or the right to vote) shall be made as at 5pm on the 40th working day before the date of the meeting.

Auditors

- 21.33 A resolution that the auditor of the Company not be reappointed or that another person be appointed as the auditor of the Company to replace the auditor of the Company may only be voted on if notice of the resolution has been given in the notice of meeting.
- 21.34 If the auditor of the Company is appointed by the Company and the fees and expenses of the auditor are not fixed by the Company at the meeting and the Company does not determine at the meeting the manner in which the fees and expenses shall be fixed then the Company shall be deemed to have authorised at the meeting the Board to fix the fees and expenses.

Scrutineers

- 21.35 The chairperson of the meeting may appoint a scrutineer or scrutineers to count votes cast at a meeting of Shareholders on a vote put to a meeting of Shareholders.

Papers

- 21.36 The Company shall destroy all proxy forms and voting papers after each meeting unless the Board resolves to retain the proxy forms and/or voting papers for any period determined by the Board.

Meeting procedure

- 21.37 Except as provided in this Constitution and the Companies Act, the chairperson of the meeting shall determine the procedure at any meeting of Shareholders including who may attend and speak at the meeting (including persons that are not Shareholders) and whether a meeting may be recorded in any form.

22 VOTING RIGHTS

- 22.1 Subject to clauses 22.3 – 22.5 each holder of an A Share who is a Current Producer shall have the voting rights set out in clause 5.1(c). Holders of other classes of Shares shall have the voting rights in respect of those Shares provided in the terms of issue or this constitution subject to clauses 22.3 – 22.5.
- 22.2 Equity Securities that are convertible into Shares shall not have voting rights.
- 22.3 On a special resolution of an interest group under section 117 of the Companies Act (voting on an alteration of shareholder rights) a Shareholder in that interest group will on a poll or postal vote have one vote for each Share held up to a maximum of 1,000 votes and on a vote by show of hands or on voices have one vote.
- 22.4 No Shareholder may cast votes on Shares held by the Shareholder in excess of 1,000 votes whether on a poll or a postal vote or otherwise.
- 22.5 Where a Shareholder is acting as a person through which a Producer who is a Shareholder is transacting business with the Company or an Associated Company

the transactions of the Producer shall be excluded for the purposes of determining whether the Shareholder is a Current Producer entitled to vote.

23 **DIRECTORS**

Role with Current Producer

- 23.1 For the purposes of this clause 23 a Director or alternate Director or prospective Director or alternate Director shall be deemed to be a Shareholder who is a Current Producer if he or she is a director of, or shareholder in, or a partner in, or a trustee of, a Shareholder that is a Current Producer.

Number appointed by Shareholders

- 23.2 The minimum number of Directors appointed by the Shareholders (other than alternate Directors) shall be five.
- 23.3 The maximum number of Directors appointed by the Shareholders (other than alternate Directors) shall be six. Where there are, or will be, at any relevant time only five Directors appointed by the Shareholders holding office, whether by reason of resignation or retirement or removal or otherwise, the Directors will determine whether there will be an additional Director appointed so that there are six Directors appointed by the Shareholders.

Nomination of directors appointed by Shareholders

- 23.4 No person (other than a Director retiring at the meeting) shall be elected as a Director by the Shareholders unless the person has been nominated by two other Shareholders who would be entitled to attend and vote at a meeting of Shareholders and who have signed a notice to the Company nominating the person for election attaching a notice in writing signed by the person confirming his or her willingness to be elected (in each case on a form provided by the Company). For the purposes of this clause the entitlement to attend and vote at a meeting of Shareholders shall be determined on the basis the meeting is held on the date of nomination.
- 23.5 A Shareholder that is in default in payment of any call or other amount due to the Company in respect of Equity Securities may not nominate any person to be a Director or be nominated for appointment as a Director.
- 23.6 Any person nominated to be appointed as a Director by the Shareholders must be a Shareholder who is a Current Producer at the date on which that person is nominated as a Director and in order to be appointed must at the time 48 hours before the scheduled time for the meeting of Shareholders at which that person's appointment will be considered be a Shareholder who is a Current Producer.
- 23.7 The opening date for nominations of a Director to be appointed by the Shareholders at an annual meeting shall be after the previous annual meeting and the closing date and time for nominations shall be 5pm on the 30th of June before the annual meeting. Notice of the closing date shall be given to shareholders in each year.

23.8 Notice of every valid nomination received by the Company before the closing date for nominations and that has not been withdrawn shall be given by the Company to all Shareholders. Failure to give notice shall not invalidate the nomination but, subject to clause 23.9, the meeting as far as the election of Directors is concerned shall be adjourned until notice has been given.

23.9 If the nominations for office do not exceed the number of positions available the persons nominated who at the time 48 hours before the scheduled time for the meeting of Shareholders at which that person's appointment would have been considered are Shareholders who are Current Producers shall be declared elected and shall take office at the close or adjournment of the meeting.

23.10 If the nominations for office exceed the number required an election for office shall be made by postal ballot in accordance with provisions of clauses 23.32 and 23.34.

23.11 The procedure for nominating Directors other than at an annual meeting shall be determined by the Board provided that election shall be carried out in accordance with clauses 23.32 and 23.34 amended as to dates to give effect to the election procedure.

23.12 The procedures in clause 23.23 shall apply at each annual meeting to ensure there is a majority of Directors appointed by the Shareholders who are Shareholders who are Current Producers.

Appointment by Directors

23.13 In addition to the Directors appointed by Shareholders the Board:

- (a) may appoint one person as Managing Director; and
- (b) shall appoint two persons, and may appoint a third person, who have special knowledge, experience and expertise that the Board determines will be of benefit to the Company.

23.14 Where a vacancy in the Directors appointed by the Shareholders arises the Board shall, subject to clause 23.3, as soon as practicable appoint a Shareholder who is a Current Producer to be a Director to fill the vacancy. Any person who is appointed as a Director by the Board under this clause shall retire from office at the next annual meeting, but shall be eligible for re-election at that meeting.

23.15 Only the Directors appointed by the Shareholders shall vote when making the appointments under clause 23.13(b). The Directors appointed shall hold office for three years (or any shorter period the Directors determine) and may be reappointed at the end of any term.

Alternate Directors

23.16 A Director may appoint another person who is a Shareholder who is a Current Producer to be an alternate Director for him or her during the Director's absence or inability to act as Director. No Director may appoint another person to act as

alternate Director for him or her except with the consent of a majority of the other Directors. A Director may not be appointed to act as an alternate Director. No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate.

- 23.17 Any appointment of an alternate Director may be revoked at any time by the appointer. The appointment of an alternate Director may also be revoked by a majority of the other Directors.
- 23.18 Any appointment or revocation of appointment of an alternate Director by a Director shall be effected by written notice to the Company.
- 23.19 An alternate Director shall be entitled to all notices of meetings of the Board and any minutes or documents sent to Directors and to attend and vote at any meetings of Directors but shall not attend and vote except in the place of the Director for whom he or she is an alternate. An alternate Director shall not be entitled to be remunerated other than out of the remuneration of the Director appointing him or her.
- 23.20 The appointment of an alternate Director shall be cancelled and an alternate Director shall cease to hold office whenever the Director who appointed him or her ceases to be a Director. A Director retiring at any meeting and re-elected shall not have ceased to be a Director for the purposes of this clause.

Removal

- 23.21 All Directors appointed by the Shareholders may be removed from office as a Director by special resolution notice of which is given in the notice of meeting.
- 23.22 All Directors appointed by the Board may be removed from office as a Director by notice from the Board. Only Directors appointed by the Shareholders shall vote in respect of the removal of a Director appointed by the Board under clause 23.13(b).
- 23.23 At the end of each annual meeting (after the retirement, removal, election and reappointment of Directors at that annual meeting) a majority of the Directors appointed by the Shareholders must (subject to this clause) be Shareholders who are Current Producers. If at the end of any annual meeting a majority of the Directors appointed by the Shareholders could not be Shareholders who are Current Producers then:
- (a) the number of Directors who are not Shareholders who are Current Producers (in this clause *non-qualifying Directors*) required to resign in order to enable the appointment of new Directors so that a majority of the Directors appointed by the Shareholders are Shareholders who are Current Producers shall resign from office on the 31st of May before the annual meeting with such resignation taking effect at the annual meeting and notice of those circumstances shall be given to the Shareholders as soon as practicable after that 31st of May; and

- (b) the non-qualifying Directors shall determine which of them are to resign or not seek re-election and which of them are to continue to hold office and any dispute between them as to who shall resign or not seek re-election shall be resolved by the members of the Board who are Shareholders who are Current Producers.

For the purposes of this clause the status of any Director as a Shareholder who is a Current Producer shall be determined as at the 15th of May before the annual meeting and any change in status of any Director from being a Shareholder who is Current Producer after that date and before the annual meeting shall be ignored.

An employee may only be a Managing Director

- 23.24 No person who is an employee of the Company shall be entitled to hold office as a Director unless appointed under clauses 23.13(a) and 23.25.

Managing Director

- 23.25 The Board may appoint a person to the office of Managing Director either for a fixed term not exceeding three years or without any limitation as to the period for which he or she holds office. The Directors may fix his or her remuneration which may be in addition to his or her remuneration as an ordinary Director. The Board may terminate that appointment.

- 23.26 The Managing Director shall not be subject to any provisions as regards status as a Shareholder who is a Current Producer, shareholding qualification, rotation, resignation and removal as the other Directors but may be removed from office as a Director by the Board at any time or may be removed from office as a Director by the Shareholders by special resolution notice of which is given in the notice of meeting.

- 23.27 If the Managing Director ceases to hold office as a Director from any cause he or she shall cease to be Managing Director without any right to compensation arising from or in relation to ceasing to hold office as a Director or Managing Director.

- 23.28 The Board may confer upon a Managing Director any of the powers exercisable by the Board (except the power to issue Equity Securities, make calls, convert or re-classify Shares, forfeit or surrender or redeem Shares, or borrow money) on any terms the Board thinks fit, either collaterally with or to the exclusion of their own powers, and may revoke, withdraw, alter or vary all or any of those powers.

Rotation of Directors appointed by the Shareholders

- 23.29 All Directors appointed by the Shareholders shall be subject to rotation and re-election every three years. Subject to clause 23.30 at the nearest annual meeting to the third anniversary of the appointment of each Director that person shall retire but shall be eligible for re-election.

23.30 Notwithstanding clause 23.29 not less than one and not more than three Directors shall be subject to re-election in each year under clause 23.29. If the Directors cannot agree on those to retire then the persons shall be determined by lot.

23.31 The following Directors shall be exempt from the obligation to retire under clauses 23.29 and 23.30:

- (a) Directors appointed by the Directors under clause 23.14 who are subject to re-election under clause 23.14; and
- (b) the Directors appointed under clauses 23.13(b).

Re-election

23.32 The Shareholders may at a meeting at which a Director appointed by the Shareholders retires fill the vacated office by electing a person in accordance with clause 23.34. In default a retiring Director shall if offering himself or herself for re-election be deemed to have been re-elected unless at that meeting it is resolved by a resolution, notice of which is given in the notice of meeting, to not fill the vacated office or that the Director not be re-appointed.

Vacation of office

23.33 Without limiting section 157 of the Companies Act (specified events resulting in a director ceasing to hold office), the office of Director shall be vacated if the Director:

- (a) absents himself or herself from the meetings of the Board for a period of three months or does not attend at least one-half of the meetings of the Board held in each year, without special leave of absence from the other Directors;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) becomes prohibited from being a Director by reason of any order made under the Companies Act;
- (d) resigns from office;
- (e) is removed from office under clause 23.21 – 23.23 or 23.26;
- (f) is removed from office or his appointment is cancelled pursuant to clause 23.18 or 23.20; or
- (g) retires by rotation under clauses 23.29 – 23.31.

Ballot

23.34 The election of Directors by Shareholders shall be carried out by postal ballot or electronic means as determined by the Board in accordance with the following provisions.

- (a) The Board shall cause voting papers or screens to be prepared showing in alphabetical order the persons who have been nominated for office as Directors. The voting paper or screen shall otherwise be in the form and on the terms the Board determines.
- (b) The Board shall appoint a person to be responsible for the preparation and posting of voting papers or preparation of the electronic means of voting (in this clause 23.34 the *Returning Officer*).
- (c) Any Shareholder who at the posting of the voting papers, or time the electronic means of voting is made available, for the election of Directors is in default in payment of any call or other sum payable in respect of Shares (including any accrued interest and any expenses the Shareholder is required to pay to the Company as a consequence) for more than 20 working days after written notice has been sent to the Shareholder requiring payment shall not be entitled to vote.
- (d) Not less than 10 working days before the annual or special meeting the voting papers shall be posted to every Shareholder entitled to vote to the address entered in the register of Shareholders or the electronic means of voting shall be made available to every Shareholder entitled to vote. The declaration of the Returning Officer that voting papers were posted shall be conclusive evidence that they were posted or that the electronic means of voting was made available shall be conclusive evidence that the electronic means of voting was made available.
- (e) Any Shareholder who loses or destroys his or her voting paper shall be entitled to receive another voting paper in the place of the voting paper lost or destroyed on written application to the Returning Officer. The voting paper issued in replacement shall be endorsed at the top to show that it is a replacement voting paper and shall show the serial number (if any) of the voting paper it replaces. Both the original voting paper and the replacement voting paper shall be invalid if both are presented for the purpose of voting.
- (f) Voting shall be done by identifying the name or names for whom the voter does wish to vote. The vote of any person who votes for more than the number of Directors required or who defaces his voting paper by any writing or whose voting paper is deposited at the registered office of the Company or electronic vote is made later than 48 hours before the time for holding the special meeting or annual meeting shall not be counted.
- (g) The Company is under no obligation to check the authority of the signatory on the ballot paper or of the person who makes the electronic vote and is entitled

to assume that the ballot paper has been signed or that the electronic vote is made with the proper authority of the Shareholder.

- (h) Two scrutineers shall be appointed by the Board to determine the validity and count postal votes or electronic votes received for director elections and report to the chairperson the result of voting. The candidates receiving the highest number of votes in the election of Directors shall be declared elected. The number of votes cast for each candidate may, at the discretion of the Chairperson of the meeting, be advised to the meeting. The directors elected take office at the conclusion or the adjournment of the meeting.

Directors holding office at time of adoption of Constitution

23.35 The persons holding office as Directors on adoption of this Constitution continue in office and are deemed to have been appointed as Directors under this Constitution. Similarly the chairperson of the Board continues in office and is deemed to have been appointed as chairperson under this Constitution.

24 INTERESTED DIRECTORS

24.1 Subject to clause 24.2 a Director who is interested in a transaction entered into, or to be entered into, by the Company:

- (a) shall declare that interest to the Board immediately the Director becomes aware of the interest;
- (b) subject to subclause 24.1(c) may vote on a matter relating to the transaction;
- (c) may attend a meeting of the Board at which a matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum but if the Board considers it appropriate the Board may require that Director to withdraw from the meeting while the matter in respect of which that interest arose is discussed and require that Director to refrain from voting on the matter if the Board considers this to be in the best interests of the Company;
- (d) may sign a document relating to the transaction on behalf of the Company; and
- (e) may do any other thing in his or her capacity as a Director in relation to the transaction.

24.2 Where a Director is a Producer and a matter before the Board affects all Producers then the Director shall not be required to declare an interest and shall be entitled to be involved in that meeting, to discuss the transaction, and to be counted in the quorum and vote in respect of that transaction.

25 **CHAIRPERSON AND DEPUTY CHAIRPERSON OF THE BOARD**

- 25.1 The Directors must elect a Director as chairperson of the Board and a Director as the deputy chairperson of the Board. A Managing Director cannot be appointed as the chairperson or as the deputy chairperson of the Board.
- 25.2 The Directors may at any time replace any chairperson or deputy chairperson of the Board. Any person appointed as chairperson or deputy chairperson of the board shall retire from that position at the first meeting of the Board after the annual meeting but may be reappointed as chairperson or deputy chairperson of the Board at that meeting.
- 25.3 The deputy chairperson of the Board shall act as the chairperson of the Board whenever the chairperson of the Board is unable or unwilling to act as chairperson of the Board.

26 **BOARD MEETINGS**

- 26.1 The following provisions of this clause 26 govern the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Companies Act (default provisions governing meetings of directors) does not apply to proceedings of the Board.

Procedure

- 26.2 The Board may meet together for the despatch of business, adjourn, or otherwise regulate their meetings and proceedings as, subject to this Constitution, it thinks fit.

Notice of meeting

- 26.3 Any two Directors or the chairperson of the Board acting alone may summon or convene a meeting of the Board.
- 26.4 Notice of every meeting stating the date, time and place of the meeting must be given to all Directors at the address or facsimile number or email address given by a Director for that purpose or if no address or facsimile number or email address is given at the residential address of that Director.
- 26.5 Any irregularity in the calling of a meeting may be waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure or all Directors entitled to be given notice of the meeting waive the irregularity at the time or at a later date.

Procedure

- 26.6 If a Director is absent from New Zealand, or is in New Zealand and cannot attend the meeting in person, then every reasonable attempt shall be made to contact that Director and include that Director in the meeting by audio or audio and visual means.

- 26.7 At least 48 hours' notice shall be given of a proposed Board meeting unless the chairperson of the Board (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given.
- 26.8 If at least 75% of the Board are present at a meeting then the meeting may waive the notice period in clause 26.7.
- 26.9 A Director who has leave of absence and who has not given a contact address or number or has indicated that he or she will not be available for meetings of Directors shall not be taken into account for the purposes of determining the percentage of the Board present at a meeting for the purposes of clause 26.8.

Quorum

- 26.10 The Board may from time to time by a resolution on which more than half the Directors holding office vote in favour determine the quorum for meetings of the Board. If the Board has not determined a quorum for meetings of the Board then the quorum shall be half the number of Directors if there is an even number of Directors and a majority of the number of Directors if there is an odd number of Directors. The Board may not determine a quorum that is less than the quorum that applies if the Board has not determined a quorum.
- 26.11 A meeting of the Board at which a quorum is present shall be competent to exercise any of the powers under this Constitution or the Act for the time being vested in or exercisable by the Directors generally.
- 26.12 If a quorum is not present at a meeting then the meeting may be adjourned for at least 48 hours and notice of the day, time and place for the adjourned meeting shall be given to all directors at least 36 hours prior to the time of the adjourned meeting.

Board may act during vacancy

- 26.13 Directors may act notwithstanding any vacancy in their body.

Chairperson

- 26.14 The Chairperson of the Board shall act as chairperson of meetings of the Board provided that if at any meeting the chairperson is not able to be present or is not present within 15 minutes after the time appointed for holding the meeting, or is unwilling to act in respect of the meeting or any part of the meeting, the Directors present may choose one of their number to be chairperson of the meeting or part of the meeting.

Other meeting methods

- 26.15 A meeting of the Board may be held by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum can hear each other. Each of the Directors taking part in such a meeting must be

able to hear each of the other Directors taking part at the commencement of the meeting.

26.16 At the commencement of the meeting each Director must acknowledge his or her presence for the purpose of the meeting to all the other Directors taking part.

26.17 A Director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson of the meeting. A Director is deemed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously obtained the express consent of the chairperson to leave the meeting.

Voting

26.18 Questions arising at any meeting of the Board shall be determined by a majority of votes of the Directors.

26.19 Each Director shall have one vote.

26.20 In the case of an equality of votes the chairperson shall have a second or casting vote.

26.21 A Director may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Companies Act.

Proceedings of committees

26.22 Any committee of the Board shall in the exercise of the powers delegated to it conform to any charter or regulation that may be determined by the Board.

26.23 A committee may elect a chairperson of its meetings. If no chairperson is elected or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting the Directors present may choose one of their number to be chairperson of the meeting.

26.24 Subject to any relevant charter or regulation:

- (a) a committee may meet and adjourn as it determines;
- (b) questions arising at any meeting shall be decided by a majority of votes of the Directors present; and
- (c) in the case of an equality of votes the chairperson shall have a second or casting vote except that where three Directors form a quorum the chairperson of a meeting at which only three Directors are present shall not have a casting vote.

26.25 Subject to clauses 26.22 – 26.24 and any relevant charter or regulation the provisions of this Constitution relating to proceedings of the Board also apply to

proceedings of any committee of the Board except to the extent the Board determines otherwise.

Defects in appointment

26.26 All acts done by any meeting of the Board or any committee of the Board, or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Director, committee or person or that they or any of them were disqualified, be as valid as if every person had been duly appointed and was qualified to be a Director and the committee was duly appointed.

Written resolutions

26.27 A resolution in writing signed or assented by all the Directors for the time being entitled to receive notice of a meeting of the Board shall be as valid and effective as if it had been passed at a meeting of the Board duly called and constituted.

26.28 Any resolution may be signed or assented by facsimile, electronic means or otherwise.

26.29 Any resolution may be signed in counterpart copies.

Minutes

26.30 The Board shall cause minutes to be kept for the purpose of recording:

- (a) the names of the Directors present at each meeting of the Board; and
- (b) all resolutions and proceedings at all meetings of the Board.

26.31 Any minutes of any meeting signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting shall be prima facie evidence of the matters stated in the minutes.

27 DIRECTORS' REMUNERATION

Fixing remuneration

27.1 No remuneration shall be paid to a Director in his or her capacity as a Director unless that remuneration has been authorised by an ordinary resolution. Each resolution shall express Directors' remuneration as either:

- (a) a monetary sum per annum payable to all Directors taken together; or
- (b) a monetary sum per annum payable to any person who from time to time holds office as a Director.

27.2 If the remuneration for Directors is authorised under clause 27.1(a), then in the event of an increase in the total number of Directors holding office, the Board may,

without the authorisation of an ordinary resolution, increase the total remuneration by the amount that is necessary to enable the Company to pay to the additional Director or Directors remuneration equal to the average amount then being paid to each of the other non-executive Directors (other than the chairperson).

- 27.3 No resolution which increases the amount fixed under a previous resolution shall be passed at a meeting of Shareholders unless notice of the amount of the proposed increase has been given in the notice of meeting.
- 27.4 The Board shall determine how the total remuneration of the Directors is divided between Directors irrespective of whether the remuneration was approved under clause 27.1(a) or (b).
- 27.5 Nothing in this clause shall affect the remuneration of any Managing Director in his or her capacity as an executive.

Expenses

- 27.6 Without limiting section 161 of the Companies Act (remuneration and other benefits for directors) and notwithstanding clauses 27.1 – 27.4, the Directors:
- (a) shall be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendance at meetings of the Board and when, in any other manner, engaged on the business or affairs of the Company; and
 - (b) may award special remuneration out of the funds of the Company by a fixed sum or hourly rate or salary to any Director or committee of the Board rendering any special services in going abroad or otherwise for any of the purposes of or in the interests of the Company or for undertaking any work additional to that required of Directors of a company similar to the Company.

Other positions

- 27.7 A Director may be or become a director or employee of, or otherwise interested in, any company promoted by the Company or in which the Company is interested as shareholder or otherwise, and no Director shall be accountable to the Company for any remuneration or other benefits received by him or her as a director or employee of, or from his or her interest in, any such other company unless the Board otherwise directs.

Payments upon ceasing to hold office

- 27.8 Where a Director who was a Director on 22 November 2016 ceases to hold office as a Director the Company shall pay to that Director on ceasing to hold office any accrued retirement entitlement. The accrued retirement entitlement is the amount the Director would have been entitled to receive on retiring as a Director under the Company's policy for such payments in effect as at 27 March 1998 if the Director had retired on 22 November 2016. The Company may not otherwise make a payment to a Director or former Director, or his or her dependents, by way of a

lump sum or pension, upon or in connection with the retirement or cessation of office of that Director.

- 27.9 Nothing in clause 27.8 shall affect any amount paid to a Managing Director on or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any normal subsidy related to the contribution) made by a Director to a superannuation scheme.

28 **INDEMNITY FOR DIRECTORS AND EMPLOYEES**

The Company may indemnify any Director and any employee of the Company or a Related Company for any liability or costs for which a Director or employee may be indemnified under the Companies Act. The Board shall determine the terms and conditions of any indemnity.

29 **INSURANCE FOR DIRECTORS AND EMPLOYEES**

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

30 **ADVICE AND IMPLEMENTATION OF POLICIES AND OTHER MATTERS**

30.1 The:

- (a) Minimum Holding, policies applying to the issue of Shares, Surrender Policy, and Minimum Business, set out in the material accompanying the Notice of annual meeting for the annual meeting of the Company held on 23 November 2016; and
- (b) Company's standard terms entitled "Full terms and conditions with buyers – effective 28 May 2012" and the Company's standard terms entitled "Full terms and conditions with suppliers – effective 28 May 2012";

shall be deemed to have been determined by the Board under this constitution and shall have effect from 23 November 2016 as though determined by the Board under this constitution (clauses 7.1, 9.9, 12.1, 13.12 and 20.1 respectively). The provisions of clauses 30.2 (requiring notice of those things being determined be given) and clause 30.3 (the period before those things take effect) shall not apply to those things.

30.2 The Company shall advise Shareholders, by such means as the Board determines, of the creation, change, suspension, or cessation, of any Minimum Holding, Maximum Holding, policies applying to the issue of Shares, Minimum Business, Standard Terms, Surrender Policy, or the status of any company as an Associated Company.

30.3 The creation, change, suspension, or cessation, of any Minimum Holding, Maximum Holding, policies applying to the issue of Shares, Surrender Policy, Minimum

Business, or Standard Terms, shall take effect on a date determined by the Board. The date determined by the Board may not be less than three months after the date the Company advises Shareholders of the creation, change, suspension or cessation under clause 30.1. The Board may during the period before the creation, change, suspension or cessation becomes effective determine that the creation, change, suspension or cessation shall not occur, and if the Board does so the Board will advise Shareholders of that determination.

31 **EXECUTION OF DEEDS**

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

- (a) two or more Directors;
- (b) one or more attorneys appointed by the Company in accordance with the Companies Act; or
- (c) two or more persons expressly authorised by the Board for that purpose in respect of all transactions or particular transactions.

32 **DISTRIBUTION OF SURPLUS ASSETS**

32.1 If the Company is liquidated the liquidator shall, at the direction of Shareholders by special resolution, but subject to any other sanction required by the Act:

- (a) divide among the Shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may:
 - (i) fix values for surplus assets as the liquidator considers to be appropriate, and
 - (ii) determine how the division will be carried out as between Shareholders or different classes of Shareholder;

and

- (b) vest the whole or any part of any surplus assets in trustees upon trusts for the benefit of such of those Shareholders as the liquidator thinks fit,

but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

32.2 Subject to the terms upon which any class of Shares is issued on the liquidation of the Company the surplus assets shall be distributed among the Shareholders in proportion to the capital paid on the Shares held by them.

33 **SEVERABILITY**

If any provision of this constitution is held by any court to be illegal, void or unenforceable, that determination will not impair the enforceability of the other provision of this constitution.