

CONSTITUTION

- of -

MAINPOWER NEW ZEALAND LIMITED

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
2. COMPANIES ACT 1993	4
3. RIGHTS ATTACHING TO SHARES	5
4. ISSUE, CONSOLIDATION, SUBDIVISION, REPURCHASE AND PROVISION OF FINANCIAL ASSISTANCE FOR THE PURCHASE OF SHARES	6
5. ALTERATION OF SHAREHOLDERS' RIGHTS	7
6. SHARE CERTIFICATES	8
7. TRUSTS	8
8. CALLS ON SHARES	8
9. LIEN ON SHARES	9
10. FORFEITURE OF SHARES	10
11. TRANSFER OF SHARES	11
12. TRANSMISSION OF SHARES	12
13. LIABILITY OF SHAREHOLDERS	12
14. EXERCISE OF POWERS OF SHAREHOLDERS	13
15. MEETINGS OF SHAREHOLDERS	13
16. NOTICE OF MEETINGS OF SHAREHOLDERS	14
17. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS	14
18. QUORUM FOR MEETINGS OF SHAREHOLDERS	14
19. VOTING AT MEETINGS OF SHAREHOLDERS	15
20. PROXIES AND CORPORATE REPRESENTATIVES	16
21. MINUTES OF SHAREHOLDER MEETINGS	17
22. SHAREHOLDER PROPOSALS	17
23. APPOINTMENT AND REMOVAL OF DIRECTORS	18
24. ALTERNATE DIRECTORS	19
25. POWERS OF DIRECTORS	20
26. MANAGING DIRECTOR	21
27. PROCEEDINGS OF THE BOARD	21
28. DIRECTORS' INTERESTS	23
29. DIRECTORS' REMUNERATION AND OTHER BENEFITS	23
30. INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES	24
31. DIVIDENDS	24
32. NOTICES	25
33. LIQUIDATION	25
34. AUDITOR	25
35. METHOD OF CONTRACTING	26
36. REPORTS AND FINANCIAL STATEMENTS	26

37. OPERATION OF ENERGY COMPANY	27
38. INSPECTION OF RECORDS	28
39. COMPANY RECORDS	29
40. RECORDS OF QUALIFYING CUSTOMERS	29

CONSTITUTION OF MAINPOWER NEW ZEALAND LIMITED

1. INTERPRETATION

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

“**Act**” means the Companies Act 1993;

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

“**Class**” means a class of Shares having attached to them identical rights, privileges, limitations and conditions;

“**Company**” means MainPower New Zealand Limited;

“**Constitution**” means this constitution, as altered from time to time;

“**Director**” means a person appointed as a director of the Company;

“**Discount**” means a payment that is available to Non-Qualifying Customers on charges that relate to the use of and connection to the Company’s electricity distribution network that is approved by the Directors;

“**Financial Year**” means any year or other accounting period ending on the 31st day of March;

“**Interested**” in relation to a Director, has the meaning set out in section 139 of the Act;

“**Interest Group**” in relation to any action or proposal affecting rights attaching to Shares, means a group of Shareholders:

- (a) whose affected rights are identical;
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more Classes, except where action is taken in relation to some Shareholders in a Class and not others, or a proposal expressly distinguishes between some Shareholders in a Class and other Shareholders in that Class, in which case the Shareholders in that Class may fall into two or more interest groups;

“**Major Transaction**”, in relation to the Company, means:

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Company’s assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Company the value of which is more than 25% of the value of the Company’s assets before the disposition; or
- (c) a transaction that has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities the value

of which is more than 25% of the value of the Company's assets before the transaction;

"Non-Qualifying Customer" means a person named in the records of the Company:

- (a) who is liable (whether alone or jointly with any other person and whether pursuant to a contract with the Company or indirectly pursuant to a contract with a third party or otherwise) to the Company for the payment of an amount in respect of the use of and connection to the Company's electricity distribution network; and
- (b) who is not a Residential Qualifying Customer or Other Qualifying Customer.

"Ordinary Resolution" means a resolution passed by a simple majority of the votes of Shareholders entitled to vote and voting;

"Ordinary Share" means a share having the rights provided in clause 3.1;

"Other Qualifying Customer" means a Qualifying Customer that the Company has not classified as a Residential Qualifying Customer;

"Personal Representative" means:

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

"Qualifying Customer" means a person named in the records of the Company:

- (a) who is liable (whether alone or jointly with any other person and whether pursuant to a contract with the Company or indirectly pursuant to a contract with a third party or otherwise) to the Company for the payment of an amount in respect of the use of and connection to the Company's electricity distribution network; and
- (b) whose premises in respect of the use of and connection to the Company's electricity distribution network are located in the area over which the North Canterbury Electric Power Board (as constituted by section 10 of the Electric Power Boards Act 1925) was authorised at 1 May 1993 to supply electricity pursuant to the licence granted to that Board under section 20 of the Electricity Act 1968, but excludes a person who the Company has classified as a temporary supply customer;

"Rebate" means a payment that is available to Qualifying Customers on charges that relate to the use of and connection to the Company's electricity distribution network that are approved by the Directors;

“Rebate Share” means a redeemable preference share of \$0.10 cents issued by the Company as a “Rebate Share” having the rights provided in clause 3.2;

“Rebate Scheme” means a scheme in relation to the payment of Rebates (if any) that are available to Residential Qualifying Customers and Other Qualifying Customers on payments for the use of and connection to the Company’s electricity distribution network and where:

- (a) not less than 85% of the available Rebate approved by the Company is paid by the Company or credited by the Qualifying Customers applicable electricity retailer (as the case may be) to Residential Qualifying Customers in accordance with the individual Qualifying Customer allocation criteria provided in the Trust Deed; and where
- (b) the remaining available Rebate approved by the Company is paid by the Company or credited by the Other Qualifying Customers applicable electricity retailer (as the case may be) to Other Qualifying Customers in accordance with the individual Qualifying Customer allocation criteria provided in the Trust Deed.

“Representative” means a person appointed as a proxy or representative under clause 20 or a Personal Representative;

“Residential Qualifying Customer” means a Qualifying Customer that the Company has classified as a residential customer;

“SCI” means the statement of corporate intent for the Company prepared in accordance with clause 37;

“Share” means an Ordinary Share, a Rebate Share or a Share of any other Class issued, or to be issued, by the Company;

“Shareholder” means a person whose name is entered in the share register as the holder for the time being of one or more Shares;

“Special Resolution” means a resolution passed by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting;

“Specified Date” means:

- (a) Where the Rebate Shares are held by the Trustees, the earliest of:
 - (i) 25 April 2073 or such other date that is determined by the Trustees to be the termination date of the Trust; or
 - (ii) the date on which more than 50% of the Ordinary Shares in the Company are no longer held by the Trustees; or
 - (iii) the date determined by Special Resolution; or
 - (iv) the date on which the Trust is wound up.
- (b) Where the Rebate Shares are held by Qualifying Customers, the earliest of:
 - (i) 25 April 2073 or such other date that is determined by the Trustees to be the termination date of the Trust; or

- (ii) the date on which the holder of a Rebate Share ceases to be a Qualifying Customer; or
- (iii) the date on which more than 50% of the Ordinary Shares in the Company are no longer held by the Trustees; or
- (iv) the date determined by Special Resolution; or
- (v) the date on which the Trust is wound up.

“Treasury Stock” means Shares which have been acquired by the Company and are held by the Company as treasury stock in accordance with the Act;

“Trust” means the MainPower Trust established by the deed of trust dated 24 October 1995;

“Trustees” means the trustees of the Trust; and

“Trust Deed” means the deed of trust establishing the MainPower Trust on 24 October 1995, as amended from time to time.

1.2 Construction: In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and vice versa and one gender includes the other genders;
- (e) the words “written” and “writing” include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (f) the word “person” includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (g) words or expressions defined in the Act have the same meaning in this Constitution.

2. COMPANIES ACT 1993

2.1 Companies Act: The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by the Constitution.

3. RIGHTS ATTACHING TO SHARES

3.1 Existing Ordinary Shares: Subject to the rights of Shares which confer special rights, each Ordinary Share at the date of certification of this Constitution and when subsequently issued confers on the holder the right to:

- (a) one vote on a poll at a meeting of the Shareholders on any resolution, including any resolution to:
 - (i) appoint or remove a Director or auditor;
 - (ii) adopt a constitution;
 - (iii) alter the Company's Constitution;
 - (iv) approve a Major Transaction;
 - (v) approve an amalgamation of the Company under section 221 of the Act;
 - (vi) put the Company into liquidation;
- (b) an equal share in dividends authorised by the Board on a per Share basis;
- (c) an equal share in the distribution of the surplus assets of the Company on a per Share basis; and
- (d) each holder of Ordinary Shares has the right to receive notice of and attend any meeting of Shareholders.

3.2 Existing Rebate Shares:

- (a) Subject to the rights of Shares which confer special rights, each Rebate Share at the date of this Constitution and when subsequently issued confers on the holder the right to receive notice of and attend any meetings of Shareholders and speak thereat but does not confer the right to vote at any such meetings.
 - (b) Unless expressly provided for in this clause, a Rebate Share (including each Rebate Share at the date of this Constitution) does not confer on the holder the right to:
 - (i) receive any dividend in respect of the Rebate Share unless the Rebate Scheme is not operative, in which case a Rebate Share confers a right to receive such non-cumulative preferential dividend as may be fixed and declared by the Directors in their absolute discretion;
 - (ii) any right to participate in profits or surplus assets of the Company; or
 - (iii) participate pro rata with the holders of the ordinary shares in subsequent issues of shares or to participate in any distribution of shares resulting from the capitalisation of any part of the amount for the time being standing to the credit of the Company's reserve accounts (including the share premium account and any
-

capital redemption reserve fund) or the profit and loss account or otherwise available for distribution.

- (c) The Rebate Shares must be redeemed by the Company on the Specified Date. No notice of redemption need be given to the holder of a Rebate Share but the holder of a Rebate Share shall be advised in writing that redemption has been effected.
- (d) Redemption of the Rebate Shares will be effected by the Company paying or crediting the holder of a Rebate Share the sum of \$0.10 cents in repayment of the capital paid up on the Rebate Share and no other amount.
- (e) The Rebate Scheme will be wound up by the Company on the Specified Date or at a later date by agreement with the Trustees and from this date the charges payable by Qualifying Customers for the use of and connection to the Company's electricity distribution network will be at pre-rebate levels.
- (f) Rebate Shares may only be held by the Trustees and Qualifying Customers and notwithstanding the provisions of clause 12 of this Constitution shall not be transferable other than by the Trustees to Qualifying Customers and, other than in such circumstances, the Directors shall refuse to register any purported transfer of a Rebate Share.

4. ISSUE, CONSOLIDATION, SUBDIVISION, REPURCHASE AND PROVISION OF FINANCIAL ASSISTANCE FOR THE PURCHASE OF SHARES

4.1 Issue of New Shares: The Board may, with the approval of the Shareholders by Ordinary Resolution, issue further Shares in the Company (including different Classes of Shares) which:

- (a) rank equally with, or in priority to, Existing Shares; or
- (b) are redeemable:
 - (i) at the option of the Company; or
 - (ii) at the option of the holder of the Share; or
 - (iii) on a date determined by the Board,for a consideration that is:
 - (iv) determined by the Board; or
 - (v) to be calculated in accordance with a formula; or
 - (vi) required to be fixed by a suitable qualified person who is not associated with or interested in the Company; or
- (c) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise.

4.2 Consolidation and Subdivision of Shares: The Board may, with the approval of Shareholders by Ordinary Resolution:

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

4.3 Bonus Issues: The Board may, with the approval of Shareholders by Ordinary Resolution, resolve to apply any amount which is available for distribution to Shareholders either:

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) if applicable, the holders of any other securities of the Company who are entitled by the terms of issue of those securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in clause 4.3(a)(i), or partly in one way and partly in the other. Prior to authorising the issue of Shares pursuant to this clause 4.3 the Board must be satisfied on reasonable grounds that the Company will, immediately after the issue of such Shares, satisfy the solvency test.

4.4 Shares in Lieu of Dividends: The Board may exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly in lieu of proposed dividends or proposed future dividends.

4.5 Share Repurchases: The Company may, subject to the Act, purchase or otherwise acquire Shares issued by it from one or more Shareholders and hold its own Shares as Treasury Stock.

4.6 Financial Assistance: The Company may, subject to the Act, give financial assistance to a person for the purpose of, or in connection with, the purchase of a Share issued or to be issued by the Company. Prior to authorising the giving of financial assistance pursuant to this clause 4.6 the Board must be satisfied on reasonable grounds that the Company will, immediately after the giving of such financial assistance, satisfy the solvency test.

5. ALTERATION OF SHAREHOLDERS' RIGHTS

5.1 Special Resolution Required: Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution, the Act, or the terms on which of the Shares were issued, must be approved by Special Resolution of each Interest Group affected.

5.2 Meetings of Interest Groups: The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, except that the necessary quorum shall be a person or persons holding or representing the holders of not less than 10 Shares of the

relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

- 5.3 Issue of Further Shares:** The issue of further Shares ranking equally with existing Shares whether as to voting rights, distribution or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares of that Class.

6. SHARE CERTIFICATES

- 6.1 Issue of Share Certificates:** The Company may issue Share certificates in respect of all or any Shares and must, within 20 working days after receiving an application by a Shareholder, send to that Shareholder a Share certificate, in accordance with section 95 of the Act, provided that, in respect of a Share or Shares held jointly by several persons, the Company may only issue one Share certificate and delivery of such Share certificate to one of several joint Shareholders shall be sufficient delivery to all of them.

- 6.2 Replacement Share Certificates:** The Company:

- (a) may issue a replacement certificate for any Share certificate that is worn out or defaced; and
- (b) shall issue a replacement Share certificate for one that has been lost or destroyed, subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

7. TRUSTS

- 7.1 Trusts:** Except as required by law, no person shall be recognised by the Company as holding any Share upon any trust and the Company shall not be bound by or compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or an interest in any fractional part of a Share or (except as otherwise provided in this Constitution or by law) any other rights in respect of any Share except an absolute right to the entirety thereof in the registered holder.

8. CALLS ON SHARES

- 8.1 Board's Power:** The Board may, by notice in writing to a Shareholder or Shareholders, make calls in respect of all moneys unpaid on Shares and which are not, by the terms applicable to the Shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.

- 8.2 Liability to Pay:** Each relevant Shareholder shall be liable (jointly and severally in the case of joint Shareholders) to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant Shares.

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

- 8.4 Instalments:** The Board may determine that a call is payable by instalments.
-

- 8.5 Time Call is Made:** A call shall be deemed to have been made at the time the resolution of the Board authorising the call was passed.
- 8.6 Interest on Overdue Amounts:** A call not paid when due shall bear interest from the due date to the date of actual receipt by the Company at the rate fixed in the notice of call or the terms applicable to the relevant Shares or, if there is no such rate, as the Board determines. The Board may waive payment of interest wholly or in part.
- 8.7 Unpaid Instalments:** Any amount payable on issue of a Share or on any fixed date or as an instalment of a call shall be deemed to be a call and if not paid, the provisions of this clause 8 and clauses 9 and 10 shall apply as if that sum had become payable by the making of a call.
- 8.8 Calls in Advance:** The Board may, in its discretion, receive any moneys uncalled and unpaid upon any Shares in advance of its due date and may pay interest on the amount received at such rate (if any) and on such terms as the Board determines. The Board may at any time repay the amount so advanced upon giving the holder of the relevant Shares three months' notice in writing.
- 8.9 Evidence:** In any proceedings for the recovery of moneys due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:
- (a) the name of the Shareholder is entered in the Share register as the holder (or one of the holders) of the relevant Shares;
 - (b) the resolution making the call is recorded in the records of the Company; and
 - (c) notice of the call was sent to the Shareholder,
- shall be conclusive evidence of the indebtedness of the Shareholder to the Company in respect of the call.

9. LIEN ON SHARES

- 9.1 Lien on Unpaid and Partly Paid Shares:** The Company shall have a first and paramount lien on every Share registered in the name of a holder which is not a fully paid Share (and any dividends or other distributions in respect of that Share) for:
- (a) all unpaid calls, instalments, or other amounts, and any interest payable on those amounts, relating to that Share; and
 - (b) any amounts the Company may be called upon to pay under any legislation in respect of that Share.
- 9.2 Power of Sale:** If any amount due in respect of a Share on which the Company has a lien is unpaid for more than 14 days after notice in writing demanding payment has been given to the Shareholder or the person entitled to receive notices in respect of that Share:
- (a) the Company may sell the Share on such terms as the Board determines; and
 - (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Share to, or at the direction of, the purchaser.
-

- 9.3 Absolute Title of Purchaser:** The title of a purchaser of any Share sold pursuant to clause 9.2 shall not be affected by any irregularity or invalidity in any sale.
- 9.4 Application of Sale Proceeds:** The net proceeds of sale of any Share sold pursuant to clause 9.2, after deducting expenses of sale shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the Share at the date of sale.
- 9.5 Unclaimed Proceeds:** Net proceeds unclaimed for one year after Shares have been sold pursuant to clause 9.2 may be used for the benefit of the Company until claimed. All net proceeds unclaimed for five years after Shares have been sold pursuant to clause 9.2 may be forfeited by the Board for the benefit of the Company. The Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.
- 9.6 Remedy:** The only remedy of any person aggrieved by the sale of any Share pursuant to clause 9.2 shall be damages against the Company.

10. FORFEITURE OF SHARES

- 10.1 Notice:** If a call on a Share is not paid when due, the Directors may give 14 days' notice to the Shareholder requiring payment of the call, together with interest on the amount of the call and all expenses that the Company may have incurred by reason of the non-payment. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Share will be liable to be forfeited.
- 10.2 Forfeiture:** If the notice is not complied with the Share may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.
- 10.3 Sale of Forfeited Shares:** A forfeited Share may be sold or otherwise disposed of by the Board as it considers fit. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.
- 10.4 Application of Sale Proceeds:** The net proceeds of sale of any forfeited Share shall be applied in the same manner as set out in clause 9.4.
- 10.5 Absolute Title of Purchaser:** The title of a purchaser of a forfeited Share shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Share.
- 10.6 Consequences of Forfeiture:** A person whose Shares have been forfeited shall cease to be a Shareholder in respect of those Shares and shall surrender the Share certificate for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon.
- 10.7 Evidence of Forfeiture:** A statutory declaration by a Director or any other person authorised by the Board that a Share has been forfeited on a specified date shall be conclusive evidence of that forfeiture.
- 10.8 Unclaimed Proceeds:** Net proceeds unclaimed for one year after Shares have been sold pursuant to clause 10.3 may be used for the benefit of the Company until claimed. All net proceeds unclaimed for five years after Shares have been sold pursuant to clause 10.3 may be forfeited by the Board for the benefit of the
-

Company. The Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.

- 10.9 Remedy:** The only remedy of any person aggrieved by the sale of any Share pursuant to clause 10.3 shall be damages against the Company.

11. TRANSFER OF SHARES

- 11.1 Transferor to Remain Holder Until Registration:** The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the Share register.

- 11.2 Authorised Transactions:** Any Shares disposed of in an “authorised transaction” within the meaning of the Financial Markets Conduct Act 2013 may be transferred by an instrument complying with clause 11.4.

- 11.3 Transfer Executed Outside New Zealand:** Where an instrument of transfer would have complied with the provisions of Financial Markets Conduct Act 2013 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or otherwise in any usual manner for execution by such a corporation, or in any other case if the signature of the transferor has been witnessed by a person who has added his or her occupation and address after his or her signature.

- 11.4 Form of Transfer:** Every instrument of transfer of Shares not falling within clauses 11.2 and 11.3 shall comply with the following provisions:

- (a) the form of the instrument of transfer must comply with section 372 of the Financial Markets Conduct Act 2013;
- (b) the form of the instrument of transfer shall be any usual or common form or any other form which the Board may approve;
- (c) the instrument of transfer must be signed or executed by or on behalf of the transferor; and
- (d) where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

- 11.5 Power to Refuse to Register:** The Board may decline to register any transfer of Shares where:

- (a) the Company has a lien on any of the Shares; or
 - (b) the Shares are not fully paid up; or
 - (c) the transfer is not accompanied by the certificate (if any) for the Shares to which it relates or other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; or
 - (d) the Board has notice of any agreement by the Shareholder to transfer the Shares only to some specified person or subject to some specified condition; or
 - (e) the transfer is in respect of more than one Class of Share; or
 - (f) the transferor has not complied with the provisions of clause 12,
-

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

11.6 Registration of Transfers: Every instrument of transfer shall be delivered to the Company's registered office to be entered in the Share register, together with the Share certificate (if any) for the Shares to be transferred. If there is no Share certificate for those Shares or if the Share certificate has been lost, damaged or destroyed, the transferee shall provide such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.

11.7 Power to Divide Share Register: The Share register may be divided into two or more registers kept in different places.

11.8 Transfer of Securities Other Than Shares: This clause 11 shall also apply to transfers of securities of the Company other than Shares with any necessary modifications.

12. TRANSMISSION OF SHARES

12.1 Transmission on Death of Shareholder: If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Shareholder's Personal Representative, shall be the only person recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder. Nothing in this clause shall release the estate of deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.

12.2 Rights of Personal Representatives: A Shareholder's Personal Representative:

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

12.3 Joint Personal Representatives: 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.

12.4 Change of Trustees: Shares in the Company standing in the name of the Personal Representatives of a deceased Shareholder may be transferred upon any change of Personal Representative of such deceased Shareholder.

13. LIABILITY OF SHAREHOLDERS

13.1 The liability of a Shareholder to the Company is limited to:

- (a) any amount unpaid on a Share held by the Shareholder;
-

- (b) any liability expressly provided for in this Constitution;
- (c) any liability expressly provided for in the terms of issue of a Share held by the Shareholder; and
- (d) any liability to repay a distribution received by the shareholder to the extent that the distribution is recoverable under section 56 of the Act.

14. EXERCISE OF POWERS OF SHAREHOLDERS

14.1 Methods of Holding Meetings: A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

14.2 Exercise Power by Meeting or Written Resolution: A power reserved to the Shareholders by the Act or by this Constitution may be exercised either:

- (a) at a meeting of Shareholders; or
- (b) by a resolution in writing signed in accordance with section 122 of the Act.

14.3 Powers of Shareholders:

- (a) a Major Transaction must be approved by Special Resolution; and
- (b) unless otherwise specified in the Act or this Constitution any power reserved to Shareholders may be exercised and any approval of Shareholders may be given by Ordinary Resolution.

15. MEETINGS OF SHAREHOLDERS

15.1 Annual Meetings: The Company shall hold an annual meeting in each calendar year in addition to any other meetings in that year not later than:

- (a) 6 months after the balance date of the Company; and
- (b) 15 months after the previous annual meeting.

15.2 Time and Place of Annual Meeting: Each annual meeting shall be held at such time and place as the Board appoints.

15.3 Special Meetings: All meetings other than annual meetings shall be called special meetings.

15.4 Calling of Special Meetings: A special meeting:

- (a) may be called by the Board at any time;
 - (b) shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting; and
-

- (c) shall be called by the Board for the purpose of approving a Major Transaction prior to the Company entering into the Major Transaction.

16. NOTICE OF MEETINGS OF SHAREHOLDERS

- 16.1 Written Notice:** Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and the auditor of the Company (if any) not less than 10 working days and not more than 30 working days before the meeting.
- 16.2 Contents of Notice:** The notice must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any Special Resolution to be submitted to the meeting.
- 16.3 Irregularity in Notice:** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.
- 16.4 Adjourned Meetings:** If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

17. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 17.1 Chairperson of the Board to Act:** If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, that Director must chair the meeting.
- 17.2 Other Chairperson:** If no chairperson of the Board has been elected or if at any meeting of Shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or the chairperson is unwilling or unable to act, the Directors present, if any, may elect one of their number to be chairperson of the meeting. If no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to be chairperson.
- 17.3 Adjourned Meetings:** The chairperson may, and if directed by the meeting must, adjourn the meeting to a new time and place. No business can be transacted at any adjourned meeting other than unfinished business at the original meeting.
- 17.4 Regulation of Procedure:** Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of Shareholders.

18. QUORUM FOR MEETINGS OF SHAREHOLDERS

- 18.1 Quorum Required:** Subject to clause 18.3 no business may be transacted at a meeting of Shareholders if a quorum is not present.
-

18.2 Size of Quorum: A quorum for a meeting of Shareholders is present if three Ordinary Shareholders are present in person or by Representative or if Ordinary Shareholders or their Representatives are present who are between them able to exercise 75% of votes to be cast on the business to be transacted by the meeting.

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

(a) in the case of a meeting called by the Board on the written request of Ordinary Shareholders under section 121(b) of the Act, the meeting is dissolved; or

(b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the Ordinary Shareholders or their Representatives present will constitute a quorum.

19. VOTING AT MEETINGS OF SHAREHOLDERS

19.1 Meetings in One Place: In the case of a meeting of Shareholders held under clause 14.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:

(a) voting by voice; or

(b) voting by show of hands.

19.2 Audio-Visual Meetings: In the case of a meeting of Shareholders held under clause 14.1(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

19.3 Postal Votes: Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that Shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the First Schedule to the Act together with any other procedures determined by the Board.

19.4 Number of Votes: Subject to any rights or restrictions attached to any Share:

(a) where voting is by voice or a show of hands, every Shareholder present in person or by Representative has one vote; and

(b) on a poll every Shareholder present in person or by Representative has:

(i) one vote in respect of every fully paid Share held by that Shareholder; and

(ii) in respect of each Share held by that Shareholder which is not fully paid, a proportion of the vote or votes which would be exercisable if that Share was fully paid equivalent to the proportion of the total issue price of that Share which has been paid (disregarding any payment in advance).

19.5 Declaration of Chairperson Conclusive: A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 19.6.

19.6 Right to Demand Poll: At a meeting of Shareholders a poll may be demanded by:

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

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

19.7 Time of Demand for Poll: A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

19.8 Timing of Poll: The chairperson may determine the time and manner in which a poll is to be taken and any business, other than that upon which a poll has been demanded and where the poll is in respect of a resolution to adjourn the meeting, may be proceeded with pending the taking of the poll.

19.9 Counting of Votes on Poll: If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting. In the case of an equality of votes, the chairperson will not have a casting vote and the motion put to the vote will not be carried.

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

19.11 Validity of Votes: In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination made in good faith shall be conclusive.

19.12 No Vote if Amounts Unpaid: No Shareholder shall be entitled to vote at any meeting in respect of Shares on which any call or other moneys are due and unpaid.

20. PROXIES AND CORPORATE REPRESENTATIVES

20.1 Proxies Permitted: A Shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

20.2 Form of Proxy: A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.

- 20.3 Lodging Proxy:** No proxy is effective in relation to a meeting unless the proxy form is deposited at the registered office of the Company not less than 48 hours before the start of the meeting.
- 20.4 Validity of Proxy Vote:** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 20.5 Corporate Representatives:** A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. A corporate representative shall have the same rights and powers as if the representative were a proxy.

21. MINUTES OF SHAREHOLDER MEETINGS

- 21.1 Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings.

22. SHAREHOLDER PROPOSALS

- 22.1 Notice to the Board:** A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.
- 22.2 Notice to Shareholders at Company's Expense:** If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 22.3 Notice to Shareholders at Proposing Shareholder's Expense:** If the notice is received by the Board not less than five working days and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 22.4 Late Notice:** If the notice is received by the Board less than five working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 22.5 Proposing Shareholder's Right to Give Written Statement:** If the Directors intend that Shareholders may vote on the proposal they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.
-

22.6 Defamatory, Frivolous or Vexatious Statements: The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous, or, vexatious.

22.7 Deposit of Costs by Proposing Shareholder: Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

23. APPOINTMENT AND REMOVAL OF DIRECTORS

23.1 Number: The number of Directors must not at any time be more than eight nor less than five.

23.2 Existing Directors: The Directors in office at the date of certification of this Constitution shall continue in office and shall be deemed to have been appointed pursuant to this Constitution.

23.3 Appointment and Removal by Ordinary Resolution:

- (a) A Director may be appointed by Ordinary Resolution;
- (b) Two or more persons may be appointed as Directors by one resolution if such procedure has already been approved by the Shareholders entitled to vote and voting without dissent;
- (c) The Directors may at any time and from time to time appoint any person to be a Director either to fill a casual vacancy or as an additional Director. Any Director so appointed shall, however, only hold office until the next annual general meeting and shall then be eligible for re-election but shall not be included in computing the number of Directors to retire pursuant to clause 23.5 and clause 23.6;
- (d) No more than two persons who are members or employees of a "territorial authority" (within the meaning of the Local Government Act 1974) may be appointed or continue to act as a Director;
- (e) All Directors shall be subject to removal from office as director by Ordinary Resolution;
- (f) Any Director who is removed by Ordinary Resolution shall have no right or claim to continue in office and his or her only remedy against the Company (if any) shall be in damages.

23.4 Vacation of Office: A Director shall cease to hold office as a Director if the Director:

- (a) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally;
 - (b) becomes disqualified from being a Director pursuant to section 151 of the Act;
 - (c) resigns from office by notice in writing to the Company; or
 - (d) is removed from office pursuant to this Constitution or the Act.
-

23.5 Rotation: At the annual general meeting in each year:

- (a) one third of the Directors (not including the Managing Director (if any)), for the time being, or if their number is not three or a multiple of three, then the number nearest to one third; and
- (b) notwithstanding paragraph (a) of this clause 23.5, all Directors other than the Managing Director (if any) who have acted as a Director for a continuous period of three years or more since being appointed in accordance with clause 23.3 or three years or more since being reappointed in accordance with clause 23.8 (as the case may be),

will retire from office, provided that the number of Directors required to retire pursuant to paragraph (a) of this clause 23.5 will be reduced by the number of Directors who have retired pursuant to clause 23.4(c) since the date of the Company's last annual general meeting.

23.6 Directors Appointed on Same Day: The Directors (other than the Managing Director (if any)) to retire in each year in accordance with clause 23.5(a) will be those who have been longest in office and thereafter where two or more Directors have been in office an equal length of time the Director or Directors to retire will, in the absence of an agreement between the Directors, be determined by lot.

23.7 Replacement of Retiring Directors: A Director may be appointed by Ordinary Resolution to replace a Director who retires pursuant to clause 23.5.

23.8 Retiring Directors Eligible for Re-Election: A Director who retires pursuant to clause 23.5 may be re-appointed as a Director by Ordinary Resolution.

23.9 Board Composition: Where a Director is appointed by Ordinary Resolution of the Shareholders, the Shareholders will consult with the Board prior to the appointment to ensure as far as is possible that the candidate(s) for appointment have the relevant skills and competencies the Board requires when considered in the context of the skills and competencies of the existing Directors.

24. ALTERNATE DIRECTORS

24.1 Appointment:

- (a) Each Director may from time to time appoint any person who is approved by a majority of the other Directors to be the Director's alternate director (an "Alternate Director").
- (b) No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.
- (c) One person may act as Alternate Director to more than one Director and, while he or she is so acting, is entitled to a separate vote for each Director he or she is representing and if he or she is already a Director his or her vote or votes as an Alternate Director shall be in addition to his or her own vote.

24.2 Form of Appointment and Removal: Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.

- 24.3 Rights of Alternate Director:** Each Alternate Director will be entitled to:
- (a) receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
 - (b) attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
 - (c) in the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.
- 24.4 Remuneration and Expenses Each Alternate Director's:**
- (a) remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
 - (b) expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.
- 24.5 Cessation of Appointment:** An Alternate Director will cease to be an Alternate Director:
- (a) if the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment;
 - (b) on the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director; or
 - (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.
- 24.6 Liability of a Director for his or her Alternate Director:** A Director shall not be liable for the acts of any Alternate Director appointed by him or her.

25. POWERS OF DIRECTORS

- 25.1 Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.
- 25.2 Exercise of Powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.
- 25.3 Delegation of Powers:** The Board may delegate to the Managing Director, an Executive Director, a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.
- 25.4 Appointment of Attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
-

25.5 Ratification by Shareholders: Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

26. MANAGING DIRECTOR

26.1 Appointment and Removal: The Board may from time to time appoint a Director to be a Managing Director either for a fixed term or otherwise and on such other terms (including remuneration) as the Board determines. The Board may from time to time remove any such Managing Director and appoint another in his or her place. Any Managing Director who is removed by resolution of the Board shall cease to be a Director (although he or she shall be eligible for reappointment as a Director in accordance with clause 23.8) and shall have no right or claim to continue in office and his or her only remedy against the Company (if any) shall be in damages. Any Director holding the office of Managing Director at the date of adoption of this Constitution shall continue in office.

26.2 Resignation: A Managing Director shall, subject to the provisions of any contract between him or her and the Company, be subject to the same provisions concerning resignation (other than rotation of Directors pursuant to clause 23.5), removal and disqualification as the other Directors. If a Managing Director ceases to hold the office of Director from any cause he or she immediately ceases to be Managing Director.

27. PROCEEDINGS OF THE BOARD

27.1 Methods of Holding Meetings: A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum at the commencement of such meeting, acknowledge their presence and can simultaneously hear each other throughout the meeting (such acknowledgement being prima facie evidence that each Director was present and formed part of the quorum throughout the meeting unless the chairperson of the meeting has given his or her express consent for a Director to disconnect him or herself from a meeting held pursuant to this clause 27.1(b)).

27.2 Notice of Meeting: A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board. Notice of a meeting of Directors must be given to:

- (a) every Director who is in New Zealand, and
- (b) any Alternate Director (as defined in clause 24.1) who is in New Zealand who is an alternate of a Director who is not able to attend the meeting.

27.3 Waiver of Irregularity: An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the

meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

- 27.4 Quorum:** A quorum for a meeting of the Board may be fixed by all of the Directors, and unless so fixed, is a majority of the Directors. No business may be transacted at a meeting of the Board if a quorum is not present.
- 27.5 Insufficient Number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the minimum number (if any) fixed by clause 23.1, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of Shareholders, but for no other purpose.
- 27.6 Chairperson:** The Directors may elect any one of their number (other than the Managing Director (if any)) as chairperson of the Board and (if they think) a deputy chairperson and determine the period for which the chairperson or deputy chairperson is to hold office which may not be longer than three years and may from time to time re-appoint such chairperson or deputy chairperson for further periods not exceeding three years at any one time. If no chairperson or deputy chairperson is elected, or if at any meeting the chairperson or deputy chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.
- 27.7 Votes:** Every Director has one vote. In the case of an equality of votes, the chairperson will not have a casting vote and the motion put to the vote will not be carried. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents or expressly abstains from voting on, or voting against, the resolution.
- 27.8 Resolutions in Writing:** A resolution in writing, signed or assented to by a majority of Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings.
- 27.9 Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of the Board. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings.
- 27.10 Validity of Acts:** All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:
- (a) any defect in the appointment of any Director or person acting as a Director; or
 - (b) that they or any of them were disqualified; or
 - (c) any irregularity in a notice of meeting.
- 27.11 Other Procedures:** Except as set out in this section 29, the Board may regulate its own procedure the provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.
-

28. DIRECTORS' INTERESTS

28.1 Disclosure of Interests: A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 28.2.

28.2 Personal Involvement of Directors: Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise Interested in, any company promoted by the Company or in which the Company may be directly or indirectly Interested as a shareholder or otherwise, and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

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

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

as if the Director were not Interested in the transaction.

29. DIRECTORS' REMUNERATION AND OTHER BENEFITS

29.1 Remuneration and Benefits: Other than in respect of remuneration of Executive Directors, the Board may only exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section with prior approval of the Shareholders by Ordinary Resolution.

29.2 Existing Remuneration: Each Director will continue to be paid and receive the benefits which he or she is entitled to at the date of certification of this Constitution.

29.3 Expenses: Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.

30. INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

30.1 Indemnity for Directors: Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

30.2 Indemnities and Insurance: In addition to the indemnity set out in clause 30.1, the Company may:

- (a) indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act;
- (b) indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; and
- (c) effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.

30.3 Interpretation: Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause.

31. DIVIDENDS

31.1 Power to Authorise: The Board may, subject to the Act and this Constitution, authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything which is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will, immediately after payment of the dividends satisfy the solvency test.

31.2 Method of Payment: Any payments by the Company to Shareholders will be made in a manner determined by the Board.

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

31.4 Deductions: The Board may deduct from dividends payable to any Shareholder in respect of any Shares any:

- (a) unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares; and
 - (b) amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.
-

31.5 Entitlement Date: Dividends and other distributions or payments to Shareholders will be payable to the persons who are registered as Shareholders on an entitlement date fixed by the Board.

31.6 Unclaimed Dividends: Dividends or other monetary distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.

31.7 No Interest: No dividend shall bear interest against the Company.

32. NOTICES

32.1 Method of Service: All notices, reports, accounts or documents may be served by the Company on any Director or Shareholder either personally, by posting it by post or courier in a prepaid envelope addressed to such Director or Shareholder at their last known address or by email to the email address of such Director or Shareholder.

32.2 Joint Holders: A notice may be given by the Company to the joint holders of a Share in the Company by giving the notice to the joint holder named first in the Share register in respect of the Share.

33. LIQUIDATION

33.1 Distribution of Surplus: Subject to the rights attached to any Share and to clauses 33.2 and 33.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Shareholders in proportion to their shareholding. If any Shareholder's Shares are not fully paid up the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.

33.2 Distribution in Kind: With the approval of the Shareholders by Ordinary Resolution, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

- (a) attribute values to assets as the liquidator considers appropriate; and
- (b) determine how the division will be carried out as between the Shareholders or different Classes of Shareholders.

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

34. AUDITOR

34.1 Appointment of Auditor: An auditor shall be appointed by Ordinary Resolution at each annual meeting of the Company.

34.2 Fees and Expenses: If an auditor is appointed at an annual meeting of the Company, the manner of payment of the auditor's fees and expenses shall be approved by Ordinary Resolution.

35. METHOD OF CONTRACTING

35.1 Deeds: A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors; or
- (b) by one Director whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company; or
- (d) any Director, or any other person authorised by the Board, whose signature must be witnessed.

35.2 Other Written Contracts: An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

35.3 Other Obligations: Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

36. REPORTS AND FINANCIAL STATEMENTS

36.1 Until such time as the Trust no longer holds a controlling interest in the Company, the Company will-

- (a) within 3 months after the end of the first half of each Financial Year, deliver to the Ordinary Shareholders a report of the Company's operations during that half year;
- (b) include in the report referred to in clause 36.1(a) the information required by the SCI to be included therein;
- (c) within 4 months after the end of each Financial Year, deliver to the Ordinary Shareholders:
 - (i) a report of the Company's operations and those of its subsidiaries (if any) during the Financial Year;
 - (ii) audited financial statements for that Financial Year prepared in accordance with generally accepted accounting practice;
 - (iii) the auditor's report on-
 - (A) those financial statements; and
 - (B) the performance targets and other measures by which performance has been judged in relation to the objectives of the Company and its subsidiaries; and

- (d) include in the report referred to in clause 36.1(c)(c)(i) –
 - (i) such information as is necessary to enable an informed assessment of the operations of the Company and its subsidiaries (if any), including a comparison of the performance of the Company and its subsidiaries (if any) with any relevant SCI; and
 - (ii) stating the maximum dividend (if any) recommended to be payable by the Company in respect of its equity securities (other than fixed interest securities) for the financial year to which the report relates.

37. OPERATION OF ENERGY COMPANY

- 37.1** Until such time that the Trust no longer holds a controlling interest in the Company, the Company will comply with sections 36, 37 (other than section 37(2)), 39, 40, 41 and 43 of the Energy Companies Act 1992 as if the Trust was an “Approved Person” and the Company was an “Energy Company” for the purposes of the Energy Companies Act 1992, except where those provisions are modified by this clause 37.
- 37.2** In accordance with section 39(1) of the Energy Companies Act 1992, the Company must provide the Ordinary Shareholders with a draft SCI not later than one month after the commencement of each Financial Year.
- 37.3** Each SCI shall specify for both the Company (the parent) and for the group comprising the Company, its associates and subsidiaries (if any), and in respect of the Financial Year in which it is delivered and each of the following two Financial Years, the following information:
- (a) the objectives of the group;
 - (b) the nature and scope of the activities to be undertaken;
 - (c) the ratio of consolidated Ordinary Shareholders’ funds to total assets, and definitions of those terms;
 - (d) the accounting policies;
 - (e) the performance targets and other measures (including the rate of return on Ordinary Shareholders’ funds after payment of tax) by which the performance of the group may be judged in relation to its objectives;
 - (f) an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the Ordinary Shareholders;
 - (g) the kind of information to be provided to the Ordinary Shareholders by the group during the course of those Financial Years, including the information to be included in each half-yearly report;
 - (h) the procedures to be followed before any member of the group subscribes for, purchases, or otherwise acquires shares in any company or other organisation;
 - (i) the details of all transactions intended to be entered into between any member of the group and -
-

- (i) any local authority that is a shareholder in any member of the group;
 - (ii) every company that, in relation to any member of the group, is a related company (as defined in section 2(3) of the Act);
 - (iii) every company in relation to which any member of the group is a related company (as so defined); and
 - (iv) every company that, in relation to any local authority that is a shareholder in any member of the group, would be a related company (as so defined) if the local authority were a company;
- (j) an estimate of the amount and proportion of the Company's electricity distribution network operating revenue that relates to the use of and connection to the Company's electricity distribution network that is to be credited to Residential Qualifying Customers and to Other Qualifying Customers in the form of Rebates;
- (k) an estimate of the amount and proportion of the Company's electricity distribution network operating revenue that relates to the use of and connection to the Company's electricity distribution network that is to be paid or credited to Non-Qualifying Customers in the form of Discounts;
- (l) the Company's health, well-being and safety initiatives;
- (m) the Company's initiatives to run its business in an environmentally sustainable way to help mitigate the impacts of climate change;
- (n) such other matters as are agreed by the Ordinary Shareholders and the Company.

37.4 The Ordinary Shareholders shall have two months from the date of receipt of the draft SCI from the Company to provide the Company with feedback on the form and content of the SCI.

37.5 The Company shall have one month from the date of receipt of the feedback given by the Ordinary Shareholders under clause 37.4 to take that feed-back into account and to provide the final form of SCI to the Ordinary Shareholders together with the Company's response to the Ordinary Shareholders feed-back if the feed-back has not been reflected (in whole or in part) in the final form of the SCI.

37.6 The Ordinary Shareholders may exercise the right to require modifications to the SCI in accordance with section 40(2) of the Energy Companies Act 1992 but the reference to paragraphs (a) to (i) in that section shall be read as a reference to clauses 37.3(a) to 37.3(n), but subject always to the requirements of section 40(3) of the Energy Companies Act 1992.

38. INSPECTION OF RECORDS

38.1 Except as provided in the Act and clauses 39 and 40 of this Constitution, or unless the Board (acting reasonably) determines otherwise in any particular case, Shareholders shall not be entitled to:

- (a) inspect any records, books, papers, correspondence or documents of the Company; or
-

- (b) require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

39. COMPANY RECORDS

39.1 The Company must keep the following documents at its registered office and make them available to a Shareholder on request:

- (a) the Constitution;
- (b) minutes of all meetings and resolutions of Shareholders within the last seven years;
- (c) an interests register;
- (d) minutes of all meetings and resolutions of Directors and Directors' committees within the last seven years;
- (e) certificates given by Directors under the Act within the last seven years;
- (f) the full names and addresses of the current Directors;
- (g) copies of all written communications to all Shareholders or all holders of the same class of shares during the last seven years, including annual reports made under section 208 of the Act;
- (h) copies of all financial statements and group financial statements required to be completed by the Act or the Financial Reporting Act 1993 for the last seven completed accounting periods of the Company;
- (i) the accounting records required by section 194 of the Act for the current accounting period and for the last seven accounting periods of the Company; and
- (j) the Share register.

40. RECORDS OF QUALIFYING CUSTOMERS

40.1 Record Keeping: The Company will keep up to date records of all Qualifying Customers and make those records available to the Trust after receipt of a written request for provision of those records and where the records are required for the proper governance, management and administration of the Trust.

40.2 Content of Records: The information held, at a date to be advised by the Trust, by the Company for use by the Trust about each Qualifying Customer will include:

- (a) For Residential Qualifying Customers whom the Company has classified as residential customers –
 - (i) ICP Number;
 - (ii) The name/s of the Residential Qualifying Customer at this ICP as per their contract with the Company;
 - (iii) Postal address; and
 - (iv) Email address
-

- (b) For Other Qualifying Customers whom the Company has classified as irrigation customers -
 - (i) ICP Number;
 - (ii) The name/s of the Other Qualifying Customer at this ICP as per their contract with the Company;
 - (iii) Postal address;
 - (iv) Appropriate bands of motor capacity; and
 - (v) Email address

- (c) For Other Qualifying Customers whom the Company has classified as street lighting customers, unmetered supply customers, industrial customers and as other non-residential customers-
 - (i) ICP Number;
 - (ii) The name/s of the Other Residential Qualifying Customer at this ICP as per their contract with the Company;
 - (iii) Postal address;
 - (iv) Appropriate bands of electricity consumed during the period of twelve (12) months ended on this date; and
 - (v) Email address

40.3 Privacy Act 2020: The Company will ensure that it complies with the provisions of the Privacy Act 2020 in providing information about Qualifying Customers under this clause 40.
