



Constitution of Synlait Milk Limited

Under the Companies Act 1993

Constitution of Synlait Milk Limited

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Constitution of Synlait Milk Limited

1. Defined terms and interpretation

1.1 Defined terms

In this Constitution, unless the context otherwise requires:

Act means the Companies Act 1993;

Alternate Director means a Director appointed pursuant to clause 23;

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

Bright Group Company means any company which is a subsidiary as defined by section 5(1) of the Act, of Bright Dairy and Food Co Limited

Bright Shareholder means Bright Dairy Holding Limited or any Bright Group Company to whom Bright Dairy Holding Limited (or any other Bright Group Company) has transferred all of its Shares.

Business Day means a time between 8.30am and 5.30pm on a day on which NZX is open for trading;

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

Company means **Synlait Milk Limited**;

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

Director means a person appointed as, or holding the office of, a director of the Company;

Distribution means, in relation to a distribution by the Company to a Shareholder:

- (a) the direct or indirect transfer of money or property, other than Shares, to or for the benefit of a Shareholder; or
- (b) the incurring of a debt to or for the benefit of a Shareholder; or

in relation to Shares held by that Shareholder, whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness or by some other means;

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

Initial Percentage means the number of ordinary Shares held by the Bright Shareholder at the time the Company is Listed divided by the total number of ordinary Shares in the Company on issue at the time the Company is Listed, expressed as a percentage;

Interested has the meaning given to it in section 139 of the Act;

Interest Group, in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical; and
- (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 holders of Shares in a Class and not others or a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares in that Class, the holders of Shares in that Class may fall into two or more interest groups;

Listed means a company that is a party to a listing agreement with NZX and has Securities Quoted on the NZX Main Board;

Listing Rules means the NZSX listing rules of NZX in force from time to time;

Managing Director means a Director appointed by the Board to the office of managing director in accordance with clause 24 of this Constitution;

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

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

NZ Markets Disciplinary Tribunal has the meaning given to it in the Listing Rules;

Ordinary Resolution means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question;

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;

Quoted has a meaning which corresponds to the meaning given to the term “Quotation” in the Listing Rules;

Register or **Share Register** means the share register of the Company required to be kept under section 87 of the Act;

Representative means a person appointed as a proxy or a Personal Representative;

Ruling has the meaning given to it in the Listing Rules;

Security has the meaning given to it in the Listing Rules;

Share means a share issued, or to be issued, by the Company, as the case may require;

Shareholder means:

- (a) a person whose name is entered in the Share Register as the holder for the time being of one or more Shares;
- (b) until the person’s name is entered in the Share Register, a person named as a Shareholder in an application for the registration of the Company at the time of registration of the Company; and
- (c) until the person’s name is entered in the Share Register, a person who is entitled to have that person’s name entered in the Share Register as a Shareholder under a registered amalgamation proposal in respect of which the Company is the amalgamated company;

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

Subsidiary means a subsidiary of the Company as defined in the Listing Rules; and

Treasury Stock means Shares in the Company which have been acquired by the Company and are held by the Company as treasury stock in accordance with the Act and includes Shares in the Company held by a Subsidiary other than in accordance with section 82(6) of the Act.

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 statutory instrument as from time to time amended or re-enacted or substituted;
- (d) a reference to a Listing Rule includes that Listing Rule as from time to time amended or substituted;
- (e) the singular includes the plural and vice versa and one gender includes the other genders;
- (f) the words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (g) the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (h) words or expressions defined in the Act or the Listing Rules have the same meaning in this Constitution except as otherwise expressly provided in this Constitution. In the event of any conflict between a word or expression defined in the Act and in the Listing Rules, the meaning in the Listing Rules will prevail unless this will result in a failure to comply with the requirements of the Act or any other legislation or regulatory requirement, in which case the meaning in the Act will prevail.

1.3 Use of electronic means

Where a legal requirement under the Act is reproduced in this Constitution, that legal requirement may be met, for the purposes of this Constitution, by using electronic means in accordance with the Electronic Transactions Act 2002 in the same manner as is required by the Electronic Transactions Act 2002 to meet that legal requirement under the Act. In this clause, the term "legal requirement" has the meaning given to it by the Electronic Transactions Act 2002.

1.4 Receipt of electronic communications

For the purposes of section 11 of the Electronic Transactions Act 2002, a document under this Constitution which is sent in electronic form and via an electronic communication is taken to be received:

- (a) if sent by the Company, on the working day it is sent or the next working day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication;

- (b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the Company may agree.

To avoid doubt, any document so sent may be in any widely used electronic form.

2. The Act and the Listing Rules

2.1 The 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 this Constitution.

2.2 Incorporation of Listing Rules

While the Company is Listed, those provisions of the Listing Rules which are required to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification.

2.3 Listing Rules prevail

While the Company is Listed, if there is any provision in this Constitution that is inconsistent with the Listing Rules relevant to the Company, the Listing Rules shall prevail.

2.4 Compliance with Listing Rules

Subject to:

- (a) the terms of any Ruling from time to time given by NZX; and
 - (b) the requirements of the Act and any other applicable legislative or regulatory requirement,
- the Company shall, for so long as it is Listed, comply with the Listing Rules.

2.5 NZX Rulings

If NZX has granted a Ruling in relation to the Company authorising any act or omission which in the absence of the Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission will be deemed to be authorised by the Listing Rules and this Constitution, unless a contrary intention appears in the Constitution.

2.6 Effect of failure to comply

Failure to comply with the Listing Rules, or failure to comply with a provision of the Constitution corresponding with a provision of the Listing Rules, shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules, or those provisions of the Constitution, shall not be entitled to enforce that transaction or contract. This provision does not affect the rights of any holder of Securities of the Company against the Company or the Directors arising from failure to comply with the Listing Rules, or those provisions of the Constitution.

2.7 Changes to Listing Rules

Whenever a change is made to the Listing Rules which requires a change to be made to this Constitution, the Company shall, at the first reasonable opportunity, cause this Constitution to be changed (as applicable). In the case of changes to those provisions in the Listing Rules which are contained in this Constitution, the Company shall, at the first reasonable opportunity, cause the Constitution to be amended (as applicable) and, in the case of changes to those provisions in the Listing Rules which are incorporated by reference into this Constitution, such amended Listing

Rules shall be deemed to be incorporated into this Constitution by reference on the date specified in the notice given pursuant to rule 1.3.1 of the Listing Rules.

3. Rights attaching to Shares

3.1 Existing ordinary Shares

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

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

3.2 New Shares

Subject to clause 4, further Shares in the Company (including different Classes of Equity Securities) may be issued which:

- (a) rank equally with, or in priority to, existing Shares in the Company; or
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or Distributions or otherwise; or
- (c) confer preferential rights to Distributions of capital or income; or
- (d) confer special, limited or conditional voting rights; or
- (e) do not confer voting rights; or
- (f) are redeemable in accordance with section 68 of the Act; or
- (g) are Convertible; or
- (h) have any one or more of the rights or limitations set out in paragraphs (a) to (g).

3.3 Alteration of Rights

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

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

4. Issue of new Equity Securities

4.1 Issue of new Equity Securities

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

4.2 Consolidation and subdivision of Shares

Subject to any applicable provisions of the Listing Rules, the Board may:

- (a) consolidate and divide 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

Subject to any applicable provisions of the Listing Rules, the Board may 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 paragraph (a)(i).

4.4 Treasury Stock

The transfer by the Company of Treasury Stock of the Company shall be deemed to constitute the issue of Equity Securities.

4.5 Entitlements to Third Party Securities

Entitlements conferred by the holding of Equity Securities of the Company, to Securities of a third party (whether or not that third party is an issuer), shall not be created or conferred other than in compliance with this clause 4, as if such Securities comprised an issue of Equity Securities of the Company.

5. Buybacks and redemptions of Shares and financial assistance

5.1 Powers

The Company may in accordance with the provisions, and subject to the restrictions, of the Act, this Constitution and, while the Company is Listed, the Listing Rules:

- (a) make an offer to one or more holders of Shares to acquire Shares in such numbers or proportions as it thinks fit;
- (b) purchase or otherwise acquire Shares issued by it from one or more Shareholders;
- (c) purchase or otherwise acquire other Equity Securities from one or more holders;
- (d) hold any Shares or other Equity Securities so purchased or acquired as Treasury Stock; and
- (e) redeem any redeemable Shares or other Equity Securities held by one or more holders, either:
 - (f) at its option; or
 - (g) at the option of the holder of the Shares or other Equity Securities if permitted by the terms of issue; or

- (h) on a date specified in this Constitution or the terms of issue of the Shares or other Equity Securities,

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company as provided in section 68 of the Act.

5.2 Permitted financial assistance

The Company may give financial assistance for the purpose of, or in connection with, the acquisition of any Shares or other Equity Securities issued, or to be issued, by the Company provided that the giving of that assistance is in accordance with the provisions of the Act and, while the Company is Listed, the Listing Rules.

6. Call on Securities

6.1 Ability to call

Subject to the terms of issue of any Security, the Board may resolve to require the holders of unpaid or partly paid Securities to pay all or part of the amount unpaid on the Securities. Notice of the call must be given to the holder at the time of the call or to a subsequent holder of the Securities. Failure to give notice to a holder will not invalidate a call but it will not be payable by that holder until the notice has been served on the holder. The notice must specify the day by which and the place at which the call must be paid. Notice of a call sent by post to a holder to the address recorded in the Register as the address of the holder, will be deemed to have been served on the holder the day after it was posted. Subject to clause 6.9, a call may be revoked or postponed at any time by the Board, or may be required to be paid by instalments.

6.2 Call deemed made

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

6.3 Joint holders' liability

The joint holders of a Security shall be jointly and severally liable to pay all calls and instalments due in respect of that Security.

6.4 Unpaid calls to accrue interest

If a sum called in respect of a Security is not paid in full on or before the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment to the time of actual payment) at such rate as the Board may determine either at the time of the call or subsequently. Subject to clause 6.9, the Board may at its discretion waive payments of any such interest either in whole or in part.

6.5 Payment on allotment

Any sum which by the terms of issue of a Security becomes payable on allotment or at any fixed date shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable and in case of non-payment all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

6.6 Proof of Holding

On the trial or hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that the name of the holder of the Security sued is entered in the Register as the holder or one of the holders of the Securities in respect of which such debt accrued, that the resolution making the call is duly recorded in the records of the Company and that notice of such call was duly given to the holder sued in pursuance of this Constitution; and it shall not be

necessary to prove the appointment or qualification of the Directors who made such call nor any other matter whatsoever; and the proof of the matters aforesaid shall be conclusive evidence of the debt.

6.7 Directors' discretion to differentiate

The Board may, on the issue of Securities, by agreement with the holders concerned, differentiate between the holders as to the amounts to be paid and the times of any calls or payment.

6.8 Payments in advance

The Board may if it thinks fit receive from any holder of Securities willing to advance the same all or any part of the money uncalled and unpaid upon any Securities held by that holder and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate as may be agreed upon between the Board and the holder of Securities paying the sum in advance; but no holder shall be entitled as of right to any interest on any money so paid in advance and the Board may decline to pay any interest. The Board may at any time repay the amount so advanced upon giving to the holder of Securities one months' notice in writing.

6.9 Cancellation of amount due

No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

7. Lien on Securities

7.1 Lien on unpaid and partly paid Securities

The Company shall have a first and paramount lien on every Security which is not a fully paid Security (and any dividends or other Distributions in respect of that Security) for:

- (a) all unpaid calls, instalments, premiums or other amounts, and any interest payable on those amounts, relating to that Security; and
- (b) any amounts as the Company may be called upon to pay under any legislation in respect of that Security.

7.2 Power of sale

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

- (a) the Company may sell the Security on such terms as the Board determines; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Security to, or at the direction of, the purchaser and may register the purchaser (or person directed by the purchaser) as the holder of the Security, discharged from all calls due prior to the purchase.

7.3 Absolute title of purchaser

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

7.4 Application of sale proceeds

The net proceeds of sale of any Security sold pursuant to clause 7.2, after deducting expenses of sale, shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts, and the balance (if any) shall be paid to the person entitled to

the Security at the date of sale. The remedy of any person aggrieved by such sale shall be in damages only and against the Company exclusively.

8. Forfeiture of Shares

8.1 Notice

If a call, instalment, or other amount owing on a Security is not paid when due, the Board may give 10 Business Days notice to the holder requiring payment of the call, instalment, or other amount owing together with interest on that amount. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Security will be liable to be forfeited by the holder.

8.2 Forfeiture

If the notice is not complied with the Security may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.

8.3 Sale of forfeited Securities

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

8.4 Application of sale proceeds

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

8.5 Absolute title of purchaser

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

8.6 Consequences of forfeiture

A person whose Securities have been forfeited shall cease to be a holder in respect of those Securities and shall surrender the Security certificate (if any) for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Securities together with interest thereon.

8.7 Evidence of forfeiture

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

8.8 Failure to submit evidence of title not forfeiture

Equity Securities shall not be liable to forfeiture for the failure of persons entitled thereto (by transmission or otherwise) to submit evidence of title within a specified time.

9. Transfer of Shares

9.1 Right to transfer

Subject to any restrictions contained in this Constitution (including those set out in Schedule 2, if applicable), a Shareholder or Personal Representative may transfer any Share:

- (a) by an instrument of transfer which complies with this Constitution; or
- (b) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company.

9.2 Securities Transfer Act

A Share which is disposed of in a transaction to which the provisions of the Securities Transfer Act 1991 apply may be transferred in accordance with the provisions of that Act. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of that Act if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the company's share registrar.

9.3 Other forms of transfer

An instrument of transfer of Shares to which the provisions of clause 9.2 are not applicable shall:

- (a) be in any common form or any other form approved by the Company;
- (b) be signed or executed by or on behalf of the transferor; and
- (c) if registration as holder of the Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.

9.4 Delivery to Company

An instrument transferring Shares must be delivered to the Company or to the company's share registrar, together with the Share certificate (if any) relating to those Shares, and the transferee shall provide such evidence as the Company or the company's share registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

9.5 Board may refuse to register

Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse or delay the registration of the transfer of any Share if:

- (a) the transfer is not permitted under the provisions of Schedule 2 to this Constitution;
- (b) the Company has a lien on the Share;
- (c) in the case of a transfer by an instrument in writing, it is not accompanied by the relevant Share certificate (if any);
- (d) the transferor fails to produce such evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share;
- (e) registration of the transfer (together with registration of any further transfer or transfers then held by the Company and awaiting registration) would result in the proposed transferee holding less than a Minimum Holding of Shares of the relevant Class; or
- (f) in the case of a transfer by an instrument in writing, if it has not been properly completed,

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

9.6 When transfer effective

A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

9.7 Company to retain transfer

If the Company registers an instrument of transfer it shall retain the instrument.

9.8 Multiple Registers

Subject to the Act and, in particular, the requirement that the principal Register must be kept in New Zealand, the Share Register may, by resolution of the Board, be divided into two or more

Registers, which may be kept in different places, and may be kept by one or more company share registrars.

9.9 Compulsory disposal when holding less than Minimum Holding

The Board may at any time give notice to a Shareholder holding less than a Minimum Holding of Shares of any Class requiring them to purchase additional Shares in the Company such that if at the expiration of three months after the date the notice is given the Shareholder still holds less than a Minimum Holding of Shares of that Class, the Board may exercise the power of sale of those Shares set out in this clause. If that power of sale becomes exercisable:

- (a) the Board may arrange for the sale of the relevant Shares on behalf of the Shareholder, through the NZX Main Board, or in some other manner approved by NZX;
- (b) the Shareholder shall be deemed to have authorised the Company to act on behalf of the Shareholder in relation to the sale of the relevant Shares, and to sign all necessary documents relating to such sale;
- (c) the Company shall account to the purchaser for the net proceeds of sale (after deduction of reasonable sale expenses and any other amounts owing) which shall be held on trust by the Company for, and paid (together with interest at such rate (if any) as the Board deems appropriate) to the Shareholder; and
- (d) the title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of the Company shall be a good discharge to the purchaser for the purchase price.

9.10 Where Shareholder cannot be located

If the Company reasonably determines that a Shareholder no longer resides at, or cannot be contacted by posting to, the address supplied by that Shareholder to the Company (including by failure of that Shareholder to respond within two months to two or more requests to reply to the Company, whether before or after the date of adoption of this provision) then the Company may thereafter treat that Shareholder as “**Gone No Address**” or “**GNA**” and the following provisions will apply to that Shareholder and the Shares then registered in that Shareholder’s name:

- (a) the Board may arrange for the transfer of the Shares registered in the name of the Shareholder to a wholly-owned subsidiary of the Company (“**TrustSub**”);
- (b) the GNA Shareholder shall be deemed to have authorised the Company to act on behalf of the GNA Shareholder in relation to the transfer of the relevant Shares, and to sign all necessary documents relating to such transfer;
- (c) TrustSub shall hold the relevant Shares on trust for the GNA Shareholder in accordance with the provision of this clause;
- (d) during the period that such Shares are held by TrustSub, the provisions of clause ~~29.9~~^{29.9} shall continue to apply to any dividend paid as if such Shares were registered in the name of the relevant GNA Shareholder but, except as provided by this clause, the GNA Shareholder will not be recognised otherwise as a Shareholder for the purposes of this Constitution;
- (e) at any time while the relevant Shares are held by TrustSub the GNA Shareholder may by notice to the Company establish his or her rights in relation to the Shares, notify the Company a current address for communications from the Company and request that the Shares are re-transferred to the GNA Shareholder. On receipt of such request, the Company will register a transfer of the Shares from TrustSub to the GNA Shareholder;

- (f) if Shares transferred from a GNA Shareholder have been held on trust by TrustSub for 3 years or more, TrustSub may, but is not obliged to, sell those Shares on NZX Main Board and thereafter the net proceeds of sale shall be held on the same trust for the GNA Shareholder (and be subject to the provisions of the Unclaimed Money Act 1971, as applicable); and
- (g) the title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of TrustSub shall be a good discharge to the purchaser for the purchase price.

9.11 Securities other than Shares

The provisions of this clause 9 shall apply, with any necessary modifications, to Securities of the Company other than Shares except to the extent (if any) provided otherwise by the terms of issue of such Securities, by the Listing Rules or by law.

10. Transmission

10.1 Transmission on death of holder

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

10.2 Rights of Personal Representatives

A holder'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 Securities held by that holder; and
- (b) is entitled to be registered as holder of those Securities, 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 paragraph (b).

10.3 Joint Personal Representatives

Where a Security 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 Security.

10.4 Refusal of Transfer

Notwithstanding the provisions of clauses 10.1 to 10.3, the Board has the same right to refuse or delay registration of a transfer of Securities as it would have had in the case of a transfer of the Securities by that holder of Securities before the appointment of the Personal Representative.

11. Exercise of powers of Shareholders

11.1 Alternative forms of meeting

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;
- (b) by a number of Shareholders, who constitute a quorum, participating in the meeting by means of audio, audio and visual, or electronic communication; or

- (c) by a combination of both of the methods described in paragraphs (a) and (b).

11.2 Powers exercisable by Ordinary Resolution

Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by an Ordinary Resolution.

12. Meetings of Shareholders

12.1 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.

12.2 Time and place of annual meeting

Each annual meeting shall be held at such time and place as the Board appoints.

12.3 Special meetings

All meetings of Shareholders, other than annual meetings, shall be called special meetings.

12.4 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.

12.5 Equity Security holders entitled to attend

Equity Security holders of all Classes are entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to the holders of all Securities entitled to vote at meetings of Shareholders but are not entitled to vote at any such meeting unless otherwise provided by the terms of the relevant Equity Securities.

12.6 Meetings of Interest Groups

A meeting of the Shareholders constituting an Interest Group may be called by the Board at any time. All the provisions of this Constitution relating to meetings of Shareholders shall apply, with all necessary modifications, to meetings of Interest Groups, except that:

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

13. Notice of meetings of Shareholders

13.1 Written notice

Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director, and to the auditor of the Company, not less than 10 Business Days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.

13.2 Contents of notice

A notice of meeting shall:

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
- (b) state the text of any Special Resolution to be submitted to the meeting and, while the Company is Listed, the text of any resolution required by the Listing Rules;
- (c) contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice and, while the Company is Listed, comply with the requirements of the Listing Rules; and
- (d) state that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder.

13.3 Form of resolutions

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

13.4 Waiver of notice irregularity

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.

13.5 Notice of adjourned meeting

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. In any other case, notice of the adjourned meeting shall be given in accordance with clause 13.1.

14. Proceedings at meetings of Shareholders

14.1 Requirement for quorum

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

14.2 Quorum

Subject to clause 14.3, while the Company is Listed, a quorum for a meeting of Shareholders is five Shareholders having the right to vote at the meeting present in person or by Representative. If the Company is not Listed, a quorum for a meeting of Shareholders is present if Shareholders or their Representatives are present who between them are able to exercise 50% of the votes to be cast on the business to be transacted by the meeting.

14.3 Lack of quorum

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

- (a) in the case of a meeting called by the Board on the written request of Shareholders entitled to exercise that right, the meeting is dissolved;
- (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 Board may appoint and notifies to NZX 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 Representatives present are a quorum.

14.4 Regulation of procedure

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

14.5 Adjournment of meeting

The chairperson may (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.

14.6 Dissolution of disorderly meeting

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

14.7 Completion of unfinished business if meeting dissolved

If a meeting is dissolved by the chairperson pursuant to clause 14.6, the unfinished business of the meeting shall be deemed to have been dealt with as follows:

- (a) in respect of a resolution concerning the approval or authorisation of a Distribution; that the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution;
- (b) in respect of a resolution concerning the remuneration of the auditors; that the Board be authorised to fix the remuneration of the auditors;
- (c) in respect of any other item of business and the chairperson may, as part of the decision to dissolve the meeting under clause 14.6, direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll, in accordance with clause 18.4, without further discussion whereupon such poll shall be conducted immediately and the meeting deemed dissolved on conclusion of the taking of such poll.

15. Chairperson of meetings of Shareholders

15.1 Chairperson

If the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.

15.2 Directors may appoint 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 after the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.

15.3 Shareholders may appoint chairperson

If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

16. Voting at meeting of Shareholders

16.1 Voting at meeting in one place

In the case of a meeting of Shareholders held under clause 11.1(a), unless a poll is demanded in accordance with clause 18.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

16.2 Voting at audio/visual meeting

In the case of a meeting of Shareholders held under clause 11.1(b) or (c), unless a poll is demanded in accordance with clause 18.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

16.3 Voting by electronic means

To the extent permitted by the Act and the Listing Rules, the Company may allow Shareholders to vote by signifying their assent or dissent by electronic means (including, for the avoidance of doubt, voting on a personal computer, with such vote being transmitted to the meeting), instead of the Shareholder voting by any other method permitted by the Act or this Constitution.

16.4 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 postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.

16.5 Entitlement to vote

A Shareholder may exercise the right to vote either in person or by Representative.

16.6 Number of votes

Subject to clauses 17.1 and 17.2 and to any rights or restrictions for the time being attached to any Share:

- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
- (b) on a poll every Shareholder present in person or by Representative has:
 - (i) in respect of each fully paid Share held by that Shareholder, one vote; and
 - (ii) each Share which is not fully paid shall carry only a fraction of the vote or votes which would be exercisable if that Share were fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total

amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

16.7 Vote of overseas protected persons

A Shareholder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Shares held by that Shareholder, by his or her committee, manager, curator bonis, or other person of a similar nature appointed by that court, voting in person or by a Representative.

16.8 Declaration by chairperson

A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 18.1.

16.9 Chairperson not allowed casting vote

In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson of the meeting does not have a second or casting vote.

16.10 Joint Shareholders

Where two or more persons are registered as joint Shareholders, 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.

17. Restrictions on voting

17.1 No vote when amount owing on Share

A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

17.2 Voting restrictions

Notwithstanding anything to the contrary in this Constitution or the Listing Rules or the Act, a person is not entitled to cast a vote in favour of a resolution when that person is disqualified from doing so by virtue of the voting restrictions specified in the Listing Rules.

17.3 Exception

On a resolution for the issue of Equity Securities under clause ~~4.14.1~~, a person to whom it is proposed to issue the new Securities referred to in that resolution is not disqualified from voting if the new Securities are to be offered on the same basis to all holders of Securities of the same Class as the Securities held by that person.

17.4 Disqualified person may act as proxy

Clause ~~17.2~~~~17.2~~ shall not prevent a person disqualified from voting under that clause, who has been appointed as a Representative by another person who is not disqualified from voting under that clause, from voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.

17.5 Discovery of disqualified persons

The Company shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in clause ~~17.2~~~~17.2~~, the identity of holders of Securities who are disqualified from voting on that resolution pursuant the Listing Rules, and on request shall supply a list of such holders to NZX and to any holder of Equity Securities of the Company.

17.6 Deadline for challenge

Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a vote at a meeting in breach of clause 17.2, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of clause 17.2. Any objection by a holder of Securities to the accuracy or completeness of any list of holders of Securities referred to in clause 17.5 shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.

18. Polls

18.1 Right to demand poll

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

- (a) the chairperson; or
- (b) not less than five Shareholders having the right to vote at the meeting; or
- (c) 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
- (d) a Shareholder or Shareholders holding Shares 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.

18.2 When poll may be demanded

A poll may be demanded either before or immediately after the declaration by the chairperson of the result of the vote in respect of a resolution. The demand for a poll may be withdrawn.

18.3 When poll taken

A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business of the meeting, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

18.4 Poll procedure

A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.

18.5 Votes

On a poll:

- (a) votes may be given either personally or by Representative;
- (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares;
- (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

18.6 Scrutineers

Except as may be required by NZX pursuant to the Listing Rules, the chairperson of the meeting shall appoint the scrutineers for the purpose of any poll.

18.7 Declaration of result

The chairperson is entitled to declare the result of a poll either at or after the meeting upon receipt of a certificate from the scrutineers setting out the maximum number of votes that could be cast at the meeting and stating that sufficient votes to determine the result of the resolution have been counted.

19. Proxies and corporate representatives

19.1 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.

19.2 Form of proxy

A proxy must be appointed by notice in writing signed by the Shareholder, or by appointing a proxy online as per the Company's instructions in the notice of meeting, and the notice must state whether the appointment is for a particular meeting or a specified term.

19.3 Lodging proxy

No proxy is effective in relation to a meeting unless the proxy form is received by or on behalf of the Company at any place specified for the purpose in the notice of meeting not later than 48 hours before the start of the meeting. If the written notice appointing a proxy is signed under power of attorney, a signed certificate of non-revocation of power of attorney must accompany that notice.

19.4 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.

19.5 Corporate representatives

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

19.6 Form of notice of proxy

A notice appointing a proxy shall be in such form as the Board may direct and must provide for four-way voting on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote, and must not be sent with any name or office (e.g. 'chairman of directors') filled in as proxy holder. So far as reasonably practicable, resolutions must be framed in a manner which facilitates four-way voting instructions for proxy holders.

20. Minutes of Shareholder meetings

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

21. Shareholder proposals and management review

21.1 Shareholder proposals

A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of Schedule 1 of the Act apply to any notice given pursuant to this clause.

21.2 Management review by Shareholders

The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but no such resolution is binding on the Board.

22. Directors

22.1 Directors' shareholding qualifications

There shall be no shareholding qualification for a Director.

22.2 Number of Directors

The minimum number of Directors is three and the maximum number of Directors is eight. At least two Directors must be persons who are ordinarily resident in New Zealand.

22.3 Independent Directors

Subject to clause 6, Part A of Schedule 1 to this Constitution, the minimum number of Independent Directors shall be two or, if there are eight or more directors, three or one-third (rounded down to the nearest whole number of directors) of the total number of directors, whichever is the greatest. The Board must, in accordance with clause 22.15, identify which Directors it has determined, in its view, to be Independent Directors.-

22.4 Appointment by Shareholders

Subject to clause 22.2, 22.3 and 22.5, a person may be appointed as a Director at any time by an Ordinary Resolution.

22.5 Appointment by the Bright Shareholder

From the time the Company is Listed, for so long as the Bright Shareholder continues to hold between the Initial Percentage and 50% (inclusive) of the ordinary Shares of the Company and is a Bright Group Company, it shall have the right to appoint Directors to the Board as set out in Part A of Schedule 1 to this Constitution, and the other provisions set out in Part A of Schedule 1 shall apply notwithstanding any other provision in the Constitution. In the event the Bright Shareholder holds less than the Initial Percentage or more than 50% of the ordinary Shares of the Company or ceases to be a Bright Group Company, the provisions set out in Part A of Schedule 1 to this Constitution shall cease to apply and shall be deemed to be deleted from this Constitution, and the provisions set out in Part B of Schedule 1 to this Constitution shall apply. For the purposes of calculating the percentage of ordinary Shares of the Company held by the Bright Shareholder, any ordinary Shares issued by the Company to (i) Employees pursuant to Listing Rule 7.3.6, and (ii) Directors pursuant to Listing Rule 7.3.7, shall in each case be excluded from the calculation. The Bright Shareholder's rights under this clause 22.5 are subject to the Initial Percentage being not less than 37% of the ordinary Shares of the Company at the time the Company is Listed.

22.6 Appointment by Board

Subject to clause ~~22.22-2~~ and 22.3, the Board may at any time appoint a person to be a Director. A Director so appointed holds office only until the next annual meeting of the Company but is eligible for re-election at that meeting. [For the avoidance of doubt this appointment right is in addition to the appointment right set out in Schedule 1, Part A, clause 13.](#)

22.7 Existing Directors to continue

The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.

22.8 Rotation of Directors

Subject to Schedule 1, Part A, clause 5 (if applicable), at the annual meeting of the Company in each year one third of the Directors, or if their number is not a multiple of three then the number nearest to one third, shall retire from office. Subject to Schedule 1, Part B, clause 1(ii) and clause 22.9(c), the Directors to retire shall be those who have been longest in office since they were last elected or deemed elected. If two or more of those Directors were last elected on the same day, the Directors to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Director is eligible for re-election.

22.9 Exceptions to rotation

The following Directors shall be exempt from the obligation to retire pursuant to clause 22.8:

- (a) Directors appointed by the Board, who are offered for re-election pursuant to clause 22.6;
- (b) Directors appointed in accordance with clause 22.5, for so long as the Bright Shareholder is a Bright Group Company and continues to hold between the Initial Percentage and 50% (inclusive) of the ordinary Shares of the Company; and
- (c) any Managing Director appointed under clause 24.1 [and any Board Appointed Director appointed under Schedule 1, Part A, clause 13.](#)

22.10 Calculation of number of Directors to rotate

The Directors referred to in clauses 22.9(b) and (c) shall be included in the number of Directors upon which the calculation in clause 22.8 is based. The Directors referred to in clause 22.9(a) shall be excluded from that number.

22.11 Re-election of retiring Director

A Director retiring by rotation at a meeting shall, if standing for re-election, be deemed to have been re-elected unless:

- (a) some other person is elected to fill the vacated office; or
- (b) it is resolved not to fill the vacated office; or
- (c) a resolution for the re-election of that Director is put to the meeting and lost.

22.12 Nomination of Directors

No person may be elected as a Director at a meeting (other than a Director retiring at the meeting) unless, not more than four months nor less than two months before the meeting, that person has been nominated by a Security holder entitled to attend and vote at the meeting by written notice to the Company accompanied by the consent in writing of that person to the nomination. Notice of every valid nomination of a Director received by the Company before the closing date for nominations shall be sent by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of meeting.

22.13 Restriction on appointment of several Directors by single resolution

A single resolution for the appointment of two or more persons as Directors shall not be moved unless a separate resolution that it be so moved has first been passed by the meeting without any vote being cast against it but nothing in this clause prevents the election of two or more Directors by ballot or poll.

22.14 Vacation of office

A Director ceases to be a Director if he or she:

- (a) is removed from office by an Ordinary Resolution (other than a Director appointed under clause 22.5, for so long as the Bright Shareholder continues to hold between the Initial Percentage and 50% (inclusive) of the ordinary shares of the Company and is a Bright Group Company); or
- ~~(b)~~ being a Director appointed under clause 22.5, is removed from office by the Bright Shareholder; or
- ~~(b)~~~~(c)~~ being a Director appointed under Schedule 1, Part A, clause 13, is removed from office by resolution of the Board; or
- ~~(e)~~~~(d)~~ dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- ~~(d)~~~~(e)~~ resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- ~~(e)~~~~(f)~~ becomes disqualified from being a Director pursuant to the Act; or
- ~~(f)~~~~(g)~~ becomes bankrupt or makes an arrangement or composition with his or her creditors generally;
- ~~(g)~~~~(h)~~ has for more than six months been absent without approval of the Board from all meetings of the Board held during that period; or
- ~~(h)~~~~(i)~~ is a Managing Director and:
 - (i) his or her appointment as a Managing Director is revoked by resolution of the Board under clause 24.1;
 - (ii) his or her appointment as a Managing Director expires and is not renewed under clause 24.1;
 - (iii) he or she resigns as Managing Director;
 - (iv) he or she otherwise ceases to be Managing Director; or
 - (v) he or she otherwise ceases to be an executive or employee of the Company.

22.15 Determination of Independent Directors

While the Company is Listed, the Board must identify which Directors it has determined, in its view, to be Independent Directors:

- (a) no later than 10 Business Days following the Company's annual meeting and immediately after making such determination, the Company shall release to the market the names of those Directors determined by the Board to be Independent Directors; and
- (b) no later than 10 Business Days following the appointment by the Board in respect of any Director appointed by the Board and immediately after making such determination, the

Company shall release to the market whether the Board has determined that such Director is an Independent Director; and

- (c) prior to publication of the Company's annual report.

It is the responsibility of the Company to make the necessary arrangements to require the Directors to provide sufficient information to the Board in order for the Board to make a determination under this clause 22.15.

23. Alternate Directors

23.1 Power to appoint

Subject to clause 7, Part A of Schedule 1 to this Constitution but without limiting clause 153, Part A of Schedule 1 to this Constitution, a Director may from time to time by written notice to the Company appoint any person, who is not already a Director or an Alternate Director and who is approved by a majority of the other Directors, to be that Director's alternate. No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this clause 23.

23.2 Rights of Alternate Director

Unless otherwise specified by the terms of his or her appointment, an Alternate Director:

- (a) is entitled, in the absence or unavailability of the Director who appointed him or her (the "**Appointor**"), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
- (b) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor;
- (c) is not entitled to be given notice of a meeting of the Directors unless the Appointor has given written notice to the Company requesting that notice be given to the Alternate Director.

23.3 Remuneration and expenses

An Alternate Director is not entitled to any remuneration from the Company in his or her capacity as an Alternate Director but is entitled to be reimbursed by the Company for all expenses incurred in attending meetings of the Directors and in the discharge of his or her duties, to the same extent as if he or she were a Director.

23.4 Cessation of appointment

An Alternate Director ceases to be an Alternate Director:

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

24. Managing Director

24.1 Appointment

The Board may from time to time appoint one Director to the office of Managing Director for such period not exceeding five years and on such terms as the Board thinks fit and may at any

time revoke such appointment. The Managing Director may be reappointed upon the expiry of a term of appointment.

24.2 Resignation

Subject to clause 22.9(c), a Managing Director is subject to the same provisions as regards resignation, removal, and disqualification as the other Directors and, if a Managing Director ceases to hold the office of Director from any cause, he or she automatically ceases to be a Managing Director, but shall otherwise continue as an officer, employee, or otherwise as provided by any agreement in any particular case.

24.3 Remuneration

A Managing Director is entitled to receive such remuneration for his or her services as an employee (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Board may determine.

25. Proceedings of the Board

25.1 Third schedule of Act not to apply

The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

25.2 Alternative forms of meeting

A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by a conference between Directors some or all of whom are in different places, provided that each Director who participates is able:
 - (i) to hear each of the other participating Directors addressing the meeting; and
 - (ii) if he or she so wishes, to address each of the other participating Directors simultaneously, whether directly, by conference telephone or by another form of communications equipment (whether in use when this Constitution is adopted or developed subsequently) or by a combination of such methods.

Where two or more Directors participate from New Zealand in a meeting held in this way, the meeting shall be deemed to take place in New Zealand at the place agreed between such Directors. Where one Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place from where that Director participates. Where no Director participates from New Zealand in a meeting held in this way, the meeting shall be deemed to take place at the place where the chairman of the meeting participates. Any Director may, by prior notice to a senior officer of the Company, indicate that he or she wishes to participate in the meeting in the abovementioned manner in which event the Director shall procure that an appropriate conference facility is arranged. A Director participating in this way is deemed to be present in person at the meeting and shall be counted in the quorum and entitled to vote to the extent otherwise allowed by this Constitution.

25.3 Procedure

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

25.4 Notice of meeting

The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings or as provided in clause 25.5):

- (a) Not less than two Business Days' notice of a meeting of the Board shall be sent to each Director in all circumstances, unless:
 - (i) the Director waives that right; or
 - (ii) a shorter period of notice is required to enable the Board to comply with its obligations under the Listing Rules; or
 - (iii) the issue which is to be the subject of the meeting is, in the reasonable opinion of a majority of the Directors, a matter of urgency, in which event such notice as is practicable in the circumstances shall be still sought to be given to each such Director.
- (b) Notice to a Director of a meeting of the Board may be:
 - (i) given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by email to the email address given by the Director to the Company for such purpose;
 - (v) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (vi) sent by another form of communications equipment in accordance with any request made by the Director from time to time for such purpose.
- (c) A notice of meeting shall specify:
 - (i) the date, time and place of the meeting;
 - (ii) the nature of the business to be transacted at the meeting in sufficient detail to enable a Director to give due consideration to it; and
 - (iii) in the case of a meeting by means of conference telephone or by another form of communications equipment, the manner in which each Director may participate in the proceedings of the meeting.
- (d) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
 - (i) in the case of oral communication, at the time of notification;
 - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (iii) in the case of posting, at the time of receipt (which in the absence of proof to the contrary shall be considered to be three days after it is posted);
 - (iv) in the case of email, at the time of receipt as set out in clause 1.4(a);
 - (v) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;

- (vi) in the case of another form of communications equipment, at the time of transmission.

25.5 Director may convene meeting

Without limiting the provisions of clauses 25.3 or 25.4, a Director has the right at any time to convene a meeting of the Board, or to require a senior officer of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than seven days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.

25.6 Waiver of notice irregularity

A Director may at any time (including at the meeting to which a notice of meeting relates) protest as to any irregularity in a notice of meeting (including if the business transacted at the meeting was not specified, or was not specified in sufficient detail, in the notice for that meeting). An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during, or after the meeting) to the waiver.

25.7 Quorum

Subject to clause 26.3, a quorum for a meeting of the Board may be fixed by the Directors acting unanimously from time to time, and unless so fixed shall be a majority of Directors and comprise at least two Independent Directors, except that where, in respect of any matter, there is such a number of Directors who are Interested therein that there is not present a majority of the Directors who are not Interested and able to form a quorum, then the quorum shall be the number of Directors present who are not Interested in that matter, but the quorum shall not in any event be less than three. No business may be transacted at a meeting of Directors if a quorum is not present.

25.8 Insufficient number of Directors

The Directors may act notwithstanding any vacancy in their body but, if and so long as the number of Directors holding office is less than the minimum number fixed by clause 22.2, the continuing Directors may act only for the purpose of increasing the number of Directors to that number or summoning a meeting of the Shareholders but for no other purpose.

25.9 Election of chairperson

The Directors must from time to time elect a chairperson and (if they think fit) a deputy chairperson, of their meetings, and determine the period for which they respectively are to hold office. The chairperson, or failing the chairperson the deputy chairperson (if any), shall preside at all meetings of the Directors but if no such chairperson or deputy chairperson is elected, or if at any meeting the chairperson or deputy 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.

25.10 Voting

Subject to clauses 26.3 and 26.4, every Director has one vote. Subject to clause 9, Part A of Schedule 1, in the case of an equality of votes, the Chairperson shall not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of the resolution. 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 he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.

25.11 Written resolution

A resolution in writing, signed or assented to by all of the Directors (other than a Director who has been granted a leave of absence) entitled to vote is as valid and effective as if passed at a meeting of the Board provided that the Directors signing or assenting to the resolution would constitute a quorum and would have power to pass the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered in the records of the Company. The Company shall, within seven days after any resolution is passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.

25.12 Committees

A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board and, while the Company is listed, the Listing Rules. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

25.13 Validity of actions

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

25.14 Minutes

The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board and its committees. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

26. Interests of Directors

26.1 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 26.2.

26.2 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 corporation 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.

26.3 Interested Directors may not vote

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

- (a) may attend a meeting of the Board at which any matter relating to the transaction arises but while the Company is Listed, shall not be included among the Directors present at the meeting for the purposes of a quorum and may not vote on any matter relating to the transaction except as provided in clause 26.4; and
- (b) may sign a document relating to the transaction on behalf of the Company, and may 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.

26.4 Exception to voting prohibition

Subject to clauses [12](#) and [14](#), Part A of Schedule 1 but notwithstanding the provisions of clause 26.3(a), a Director may be included among the Directors present at the meeting for the purposes of a quorum and vote in respect of a matter in which he or she is Interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

27. Directors' remuneration

27.1 Fixing remuneration

No remuneration shall be paid to a Director in his or her capacity as a Director of the Company or any Subsidiary, other than a Subsidiary which is Listed (including any remuneration paid to that Director by a Subsidiary, other than a Subsidiary which is also Listed) unless that remuneration has been authorised by an Ordinary Resolution. Each such resolution shall express Directors' remuneration as a monetary sum per annum payable to either:

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

27.2 Increase in number of Directors

If remuneration is expressed in accordance with clause 27.1(a), then in the event of an increase in the total number of Directors holding office, the Directors may, without the authorisation of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).

27.3 Notice of increase

No resolution which increases the amount fixed pursuant to a previous resolution shall be approved at a meeting of the Company unless notice of the amount of increase has been given in the notice of meeting.

27.4 Board's discretion

If remuneration is expressed in accordance with clause 27.1(a), the remuneration may be distributed among the Directors in such manner as the Board from time to time determines.

27.5 Executive Directors

Executive Directors (including, for the avoidance of doubt, the Managing Director) are not entitled to receive any remuneration for services as Directors. Nothing in clauses 27.1(a) to 27.3 and this clause, shall affect the remuneration of executive Directors (including, for the avoidance of doubt, the Managing Director) in their capacity as executives.

27.6 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.

27.7 Special remuneration

Notwithstanding clause 27.1, but subject to the Listing Rules applicable to transactions with related parties of the Company, the Board may authorise special remuneration to any Director who is or has been engaged by the Company or a Subsidiary to carry out any work or perform any services which is not in the capacity of a Director of the Company or a Subsidiary.

27.8 Director may hold another office or place of profit

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

28. Indemnity and insurance

28.1 Indemnity of Directors

Subject to clause 28.3, every Director shall be indemnified by the Company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or a director of a Subsidiary and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in his or her capacity as a Director or a director of a Subsidiary, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability,

but shall be subject to any limitations contained in any deed or agreement from time to time in force between the Company and the Director relating to indemnities.

28.2 Other indemnities

Subject to clause 28.3, the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or a related company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

28.3 Exceptions

An indemnity conferred by clause 28.1(b) or given pursuant to clause 28.2(b), shall not apply in respect of:

- (a) any criminal liability; or
- (b) in the case of an employee of the Company or a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (c) in the case of a Director or a director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Act; or
- (d) any liability in respect of which an indemnity is prohibited by any legislation.

28.4 Insurance

The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company, or a director or employee of a related company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by that Director or employee in defending any criminal proceedings:
 - (i) that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a director or employee; and
 - (ii) in which he or she is acquitted.

28.5 Definitions

In this clause 28:

- (a) "Director" includes a former Director and "director" includes a former director; and
- (b) other words given extended meanings in section 162(9) of the Act have those extended meanings.

29. Distributions

29.1 Power to authorise

The Board may, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test and, subject to the Act and this Constitution (including without limitation clauses 5.1 and 5.2), authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

29.2 Form of Distribution

Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit but, except as provided in clause 29.3, the Board shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.

29.3 Currency of payment

The Board, if it thinks fit, may differentiate between Shareholders as to the currency in which any Distribution is to be paid. In exercising its discretion, the Board may have regard to the registered address of a Shareholder, the Register on which a Shareholder's Shares are Registered and such other matters (if any) as the Board considers appropriate. If the Board determines to pay a Distribution in a currency other than New Zealand currency, the amount payable shall be converted from New Zealand currency in such manner, at such time, and at such exchange rate, as the Board thinks fit.

29.4 Entitlement to dividends

The Board shall not authorise a dividend:

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

unless the amount of the dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under this Constitution or under the terms of issue of the Share, but a Shareholder may waive that Shareholder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of the Shareholder.

29.5 Deduction of money

The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.

29.6 Method of payment

A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.

29.7 No interest on Distributions

The Company is not liable to pay interest in respect of any Distribution.

29.8 Payment of small dividend amounts

Where the net amount of a dividend payable to a Shareholder is less than such minimum amount as may be determined from time to time by the Board for the purposes of this clause, the Company may, with the prior approval of that Shareholder, defer payment of the dividend to that Shareholder until the earlier of:

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

29.9 Unclaimed Distributions

Dividends or other monetary Distributions unclaimed for more than 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 more than five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board shall nevertheless, at any time after such forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement.

30. Notices

30.1 Method of service

All notices, reports, accounts and other documents required to be sent:

- (a) to a Shareholder, shall be sent in the manner provided in section 391 of the Act;

- (b) to a holder of any other Equity Security, shall be sent in the same manner, as though that holder were a Shareholder.

30.2 Service of notices overseas

If the holder of a Share or other Quoted Security has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that holder at such international address by airmail or by courier and shall be deemed to have been received by that holder 24 hours after the time of posting.

30.3 Accidental omissions

The failure to send an annual report, notice, or other document to a Shareholder or other Equity Security holder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.

30.4 Joint Shareholders

A notice may be given by the Company to the joint holders of an Equity Security by giving the notice to the joint holder named first in the Register in respect of that Equity Security.

30.5 Shareholder deceased or bankrupt

If the holder of an Equity Security dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Act to the Personal Representative of the holder at the address supplied to the Company for that purpose.

30.6 Waiver by Shareholders

Subject to the Act, a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

31. Inspection records

31.1 Inspection by Directors

Subject to the Act, all accounting and other records of the Company shall be open to inspection by any Director.

31.2 Inspection by Shareholders

No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders (who are not also Directors).

32. Method of contracting

32.1 Deeds and material contracts

A deed or material contract 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) any Director, together with any other person authorised by the Board whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with the Act.

33. Liquidation

33.1 Distribution of assets

If the Company is liquidated the liquidator may, with the approval of Shareholders and any other sanction required by the Act:

- (a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled 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.

Schedule 1 to Constitution

Part A – Director Appointment Rights of the Bright Shareholder while it continues to hold between the Initial Percentage and 50% (inclusive) of the ordinary Shares of the Company

From the time the Company is Listed, for so long as the Bright Shareholder continues to hold between the Initial Percentage and 50% of the ordinary Shares of the Company and is a Bright Group Company, subject to the Initial Percentage being not less than 37% of the ordinary Shares of the Company at the time the Company is Listed, the following provisions of this Part A of Schedule 1 shall apply:

1. The Bright Shareholder has the right to appoint four (4) Directors to the Board (the **Bright Directors**), and to remove such Directors from time to time by notice in writing to the Company.
2. As at the date of adoption of this Constitution, the Bright Directors are Ke Li, Zongbo Dong, Sihang Yang and Ruth Richardson and they are deemed to have been appointed on the date of adoption of this Constitution in accordance with clause 22.5.
3. At all times, at least one of the Bright Directors must be a director who is ordinarily resident in New Zealand and of such standing and with such commercial and governance experience in New Zealand, as is appropriate for a director of a Listed company.
4. All Bright Directors must have appropriate skills and experience to ensure that the Company has a suitable mix of skills and experience on the Board.
5. Notwithstanding clause 22.8, one third of the Independent Directors of the Company or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting of the Company in each year. The Independent Director to retire shall be the Independent Director who has been longest in office since they were last elected or deemed elected. If two or more Independent Directors were last elected on the same day, the Independent Director to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Independent Director is eligible for re-election. For the avoidance of doubt the Bright Directors are exempt from the requirement to retire by rotation, in accordance with clause 22.9.
6. Notwithstanding clause 22.3, the minimum number of Independent Directors shall be three (3). If at any time the number of Independent Directors holding office is less than three (3), the Independent Directors then holding office must, as soon as is practical, appoint an additional Independent Director. An Independent Director so appointed holds office only until the next annual meeting of the Company but is eligible for election at that meeting. If any meeting of the Board is held while the number of Independent Directors holding office is less than three (3) then at that meeting one Bright Director shall abstain from voting on all resolutions put to the vote at that meeting.
7. Notwithstanding clause 23, no Director may appoint an alternate director, a deputy or an agent to act in the absence or unavailability of the Director. This clause shall apply notwithstanding anything in the Listing Rules.
8. An Independent Director must be the chairperson of the Board and an Independent Director must be the chairperson of the Audit Committee established by the Company under the Listing Rules.
9. The chairperson of the Board shall have a casting vote except where two Directors form a quorum at a meeting of the Board in which case the chairperson shall not have a casting vote.

10. Without prejudice to clause 22.5, the Bright Shareholder and each of its Associated Persons is disqualified from voting on an Ordinary Resolution to appoint any Director under clause 22.4, or on any resolution to re-elect a Director retiring by rotation under clause 22.8, or on any resolution to remove a Director under clause 22.14(a). This clause shall apply notwithstanding anything in the Listing Rules.
11. The Board ~~must~~ may appoint a Managing Director under clause ~~23~~ 24.1 if there is no Board Appointed Director and the Managing Director must not be a Bright Director. ~~If there are more than three directors appointed otherwise than under paragraph 1, and one of them is not a Managing Director, those Directors must procure one of their number (as determined by a majority vote of those Directors unless otherwise agreed among those Directors) to resign so that a Managing Director can be appointed.~~
12. ~~The~~ A Managing Director holding office shall, for the purposes of clause 26.3, be deemed to be Interested in any matter relating to the removal of the Managing Director from office, any matter relating to the Managing Director's remuneration, and any matter relating to the appointment of a new Managing Director or Board Appointed Director (and, notwithstanding clause 26.4, shall not be included among the Directors present at the meeting for the purposes of a quorum and shall not be entitled to vote on any such matter). In any matter relating to the appointment of a director as Managing Director, the director to be appointed shall, for the purposes of clause 26.3, be deemed to be Interested in such matter (and, notwithstanding clause 26.4, shall not be included among the Directors present at the meeting for the purposes of a quorum and shall not be entitled to vote on any such matter). This clause shall apply notwithstanding anything in the Listing Rules.
13. ~~If the Board does not appoint a Managing Director, then the Board must appoint one (1) Director to the Board for a period not exceeding five years and on such terms as the Board thinks fit to be the eighth Director on the Board (Board Appointed Director) and may at any time remove such Director. The Board Appointed Director may be reappointed upon the expiry of a term of appointment. Subject to clause 22.9(c) and in addition to the right of the Board to remove a Board Appointed Director, a Board Appointed Director is subject to the same provisions as regards resignation, removal and disqualification as the other Directors. The Board Appointed Director is subject to the same provisions as regards remuneration as the other Directors.~~
- ~~12.~~ 14. A Board Appointed Director shall, for the purposes of clause 26.3, be deemed to be Interested in any matter relating to the removal of the Board Appointed Director from office, and any matter relating to the appointment of a new Board Appointed Director or Managing Director (and, notwithstanding clause 26.4, shall not be included among the Directors present at the meeting for the purposes of a quorum and shall not be entitled to vote on any such matter). In any matter relating to the appointment of a director as Board Appointed Director, the director to be appointed shall, for the purposes of clause 26.3, be deemed to be Interested in such matter (and, notwithstanding clause 26.4, shall not be included among the Directors present at the meeting for the purposes of a quorum and shall not be entitled to vote on any such matter). This clause shall apply notwithstanding anything in the Listing Rules.
- ~~13.~~ 15. If a Bright Director is unable to attend a meeting of the Board then that Bright Director may by notice in writing to the chairperson (to be received by the chairperson no later than 24 hours prior to the time scheduled for the meeting to commence), appoint another Bright Director to exercise that Bright Director's vote at that meeting. For the avoidance of doubt, the Bright Director that is entitled to exercise another Bright Director's vote shall not be deemed to be that other Bright Director's alternate, deputy or agent and that other Bright Director shall be deemed not to be present at the meeting for the purpose of determining whether a quorum is present. Any such appointment shall

only apply in respect of the particular meeting to which it relates. This clause shall apply notwithstanding anything in the Listing Rules

Part B – Provisions to apply when the Bright Shareholder holds less than the Initial Percentage

1. As soon as the Bright Shareholder holds less than the Initial Percentage of the ordinary Shares of the Company or ceases to be a Bright Group Company:
 - (i) the Bright Shareholder must procure the resignation or removal of that number of Bright Directors so that the proportion which the number of remaining Bright Directors bears to the total number of Directors that will hold office immediately after such removal or resignation does not exceed the proportion of the total Shares of the Company held by the Bright Shareholder; and
 - (ii) any Bright Director whose resignation or removal is not effected under Part B, clause 1(i) above must retire by rotation (irrespective of whether they have been the longest in office) at the next annual meeting of the Company and any such Bright Director or Bright Directors shall comprise part of the one third of the Directors who are required to retire by rotation under clause 22.8.

Schedule 2 to Constitution

This Schedule applies to Shares received by Shareholders as a result of the distribution in specie made by Synlait Limited on or about the date of the IPO.

In this Schedule:

- (a) **Associated Person** has the meaning given to that term from time to time in the Listing Rules.
 - (b) **Embargo Period** means the period commencing on the date of the IPO and ending 8am on the first day after the date on which the Company releases to NZX its preliminary announcement of the Company's financial results in respect of the financial year ended 31 July 2014.
 - (c) **Embargoed Shares** means those Shares that were distributed by Synlait Limited to a Holder, less any Shares that a Holder sells to SML New Zealand Limited as part of, and in accordance with, the IPO.
 - (d) **Holders** means the Shareholders who hold Shares as a result of the distribution in specie made by Synlait Limited.
 - (e) **IPO** means the initial public offering of shares in the Company under a combined prospectus and investment stated dated on or about 24 June 2013.
 - (f) **Permitted Number** means that number of Shares which is equal to \$300,000 divided by the price at which Shares were offered under the IPO (rounded up to the nearest whole number).
 - (g) **Non-Interested Directors** means, in relation to any decision, Directors that are not "interested" for the purposes of the Companies Act 1993.
 - (h) **Takeovers Code** means the Takeovers Code set out in the schedule to the Takeovers Code Approval Order 2000, as amended or replaced from time to time.
1. Subject to clauses 2 to 4 (inclusive) of this Schedule 2, each Holder must retain the legal and beneficial ownership of its Embargoed Shares for the Embargo Period and must not:
- (a) sell, grant an option over, assign, transfer by way of security or otherwise dispose of, or offer for sale or agree to sell, grant an option over, assign, transfer by way of security or otherwise dispose of, directly or indirectly; or
 - (b) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of, the rights, title and interest (legal or beneficial) in all or any of its Embargoed Shares. If at any time during the Embargo Period the Shares are sub-divided or consolidated, then the provisions of this Schedule 2 shall continue to apply in respect of the Embargoed Shares as sub-divided or consolidated (and all references to "Embargoed Shares" shall be read accordingly).
2. A Holder is entitled to transfer Embargoed Shares during the Embargo Period only in the following circumstances:
- (a) if the number of Embargoed Shares sought to be transferred by the Holder (together in aggregate with any other Embargoed Shares transferred by the Holder during the Embargo

Period) does not exceed the Permitted Number, with the effect that all Holders may freely transfer Embargoed Shares up to that limit;

- (b) if the transfer is required to comply with the Takeovers Code, with the effect that all Holders may sell, or agree or offer to sell, all or any part of their Embargoed Shares to the extent required to comply with the Takeovers Code;
- (c) if a partial or full offer is made under the Takeovers Code for the Shares during the Embargo Period, or in relation to an amalgamation or scheme of arrangement with respect to the Shares, in which case each of the Holders (other than any Holder that is an Associated Person of the offeror) may sell, or agree or offer to sell, any or all of their Embargoed Shares to the offeror under that takeover offer or dispose of its Embargoed Shares in the context of the amalgamation or scheme of arrangement; or
- (d) if the transfer is of all the Embargoed Shares held by a Holder to an Associated Person of that Holder with the prior written approval of the Non-Interested Directors (to be given in their sole discretion), on the basis that the Associated Person will become a “Holder” for the purposes of this Schedule 2 and the Embargoed Shares transferred will remain subject to the restrictions on transfer for the Embargo Period notwithstanding that transfer.

3. For the avoidance of doubt:

- (a) any transfers referred to in clause 2(a),(b),(c) and (d) above are permitted transfers and must be registered by the Board, subject to clause 9.5;
- (b) any transfers by Holders other than those referred to in clause 2(a),(b),(c) and (d) above are not permitted and the Board must refuse to register any such transfer.

4. Notwithstanding clause 1 of this Schedule 2, each Holder may create, or agree to create, a mortgage, charge or other form of security interest over or in respect of all or any of its Embargoed Shares in favour of a recognised bank or other similar recognised lending institution provided that the lender provides a written acknowledgement to the Company in relation to the relevant Embargoed Shares that, in the event of any enforcement of the security interest, the lender as the Holder and the relevant Embargoed Shares will remain subject to the restrictions set out in this Schedule 2 for the remainder of the Embargo Period.