

Constitution

of

NZ Healthcare Investments Limited

Date

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BELL GULLY

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND
TEL 64 9 916 8800 FAX 64 9 916 8801

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1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

Act means the Companies Act 1993;

Appointers means Appointer 1 and Appointer 2 and **Appointer** means any one of them;

Appointer 1 means 2767641 Ontario Ltd.;

Appointer 2 means Guardians of New Zealand Superannuation as manager and administrator of the New Zealand Superannuation Fund;

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

Business Day means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland, New Zealand;

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

Company means NZ Healthcare Investments Limited;

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

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

Interested has the meaning set out in section 139 of the Act (and **Interest** shall be interpreted accordingly);

Interest Group has the meaning set out in section 116 of the Act;

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

Representative means a person appointed as a proxy or representative under clause 19 or a Personal Representative;

Share means a share issued, or to be issued, by the Company;

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

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

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

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 **clauses or paragraphs** are to 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) the **singular** includes the plural and vice versa and one gender includes the other genders;
- (e) the words **written** and **writing** include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (f) a reference to a document (including an agreement or deed) includes that document as amended, assigned, novated or substituted from time to time;
- (g) the word **person** includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality; and
- (h) **words or expressions** defined in the Act have the same meaning in this Constitution.

2. Companies Act 1993

If there is any conflict between:

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

the provision, word or expression in this Constitution prevails.

3. Rights attaching to Shares

3.1 Shares on incorporation

The Shares at the date of certification of this Constitution will be issued to the persons named as Shareholders in the Application for Registration of the Company for for nil consideration.

3.2 Rights

Subject to clause 3.3, each Share confers on the holder the right to:

- (a) vote on a poll at a meeting of the Shareholders on any resolution, including any resolution to:

- (i) appoint or remove an auditor; or
- (ii) adopt a constitution; or
- (iii) alter the Company's constitution; or
- (iv) approve a major transaction; or
- (v) approve an amalgamation of the Company under section 221 of the Act; or
- (vi) put the Company into liquidation,

but excluding any resolution to elect, appoint, remove or replace a Director;

- (b) an equal share in dividends authorised by the Board on a per Share basis; and
- (c) an equal share in the distribution of the surplus assets of the Company on a per Share basis.

Each Shareholder has the right to receive notice of and attend every meeting of Shareholders.

3.3 No director appointment or removal rights

No Share will confer on its holder the right to elect, appoint, remove or replace (or vote for the election, appointment, removal or replacement of) any Director. The rights to elect, appoint, remove and replace Directors is governed solely by clause 21.

4. Issue, consolidation, subdivision and repurchase of Shares

4.1 Issue of new Shares

Subject to clause 5, the Board may, with the approval of the Shareholders by Special Resolution, issue further Shares in the Company (including different Classes of Shares) which:

- (a) rank equally with, or in priority to, existing Shares; or
- (b) have deferred, preferred or other special rights or restrictions, whether as distributions or otherwise; or
- (c) confer preferential rights to distributions of capital or income; or
- (d) do not confer voting rights; or
- (e) are redeemable in accordance with section 68 of the Act.

4.2 Consolidation and subdivision of Shares

The Board may, with the approval of the Shareholders by Special Resolution:

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

- (b) subdivide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class.

4.3 Bonus issues

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

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) if applicable, the holders of any other securities of the Company who are entitled by the terms of issue of those securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in clause 4.3(a)(i),

or partly in one way and partly in the other.

4.4 Shares in lieu of dividends

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

4.5 Share repurchases

The Company may, with the approval of the Shareholders by Special Resolution, purchase or otherwise acquire Shares issued by it from one or more Shareholders and hold its own Shares.

5. Pre-emptive rights on issue of new Shares

5.1 Pre-emptive rights

All Shares proposed to be issued or transferred by the Company must be offered for acquisition in the manner set out in this clause 5 to the existing Shareholders, except to the extent that the existing Shareholders resolve by unanimous resolution who the Shares are to be issued or transferred to.

5.2 Pro rata entitlements

Subject to clauses 5.2(a) and (b), all new Shares offered for acquisition pursuant to clause 5.1 (**New Shares**) must be offered to the existing Shareholders in proportion to the number of Shares held by them respectively in a manner and on terms that would if accepted maintain the existing voting or distribution rights, or both, except that:

- (a) any Shareholder may, by written notice to the Company, waive that Shareholder's entitlement to receive an offer to acquire New Shares. If a written notice is given, the

proportionate rights of the other Shareholders to receive an offer to acquire the New Shares will be adjusted accordingly; and

- (b) fractional entitlements to New Shares must be disregarded.

5.3 Offer notice

The offer must be made by written notice, specifying:

- (a) the number, Class and terms of the New Shares offered, including the number of New Shares to which the offeree is entitled;
- (b) the issue price and payment conditions;
- (c) the date (being not less than 14 days nor more than 28 days after the date of the written notice) by which the offeree must give an acceptance notice in writing to the Company containing the details set out in clause 5.4.

5.4 Acceptance Notices

Each Acceptance Notice must state whether or not the offeree wishes to purchase:

- (a) the offeree's entitlement or some lesser number of New Shares; and
- (b) any New Shares offered to, but declined by, other offerees (**Declined New Shares**) and if so what number.

5.5 Contingent entitlements

If, and to the extent that, offerees do not, within the period referred to in clause 5.3, accept the offer, their entitlements to Declined New Shares will vest in and be offered to those offerees who, under clause 5.4 have notified their agreement to purchase Declined New Shares, and if more than one, pro rata according to their respective entitlements under clause 5.2.

5.6 Declined Shares

Any Declined New Shares not accepted pursuant to clauses 5.4 and 5.5 may be offered by the Board to any person whom the Board is prepared to register as a Shareholder provided that the consideration and terms of issue are no more advantageous to that person than those offered to the Shareholders.

5.7 Treasury Stock

The provisions of this clause 5 also apply to the transfer of Treasury Stock held by the Company as if the transfer was an issue of new Shares by the Company.

6. Alteration of Shareholders' rights

6.1 Special Resolution required

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

6.2 Meetings of Interest Groups

The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, except that the necessary quorum shall be a Shareholder or Shareholders or their Representatives holding or representing the holders of not less than one half of the Shares of the relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

6.3 Issue of further Shares

The issue of further Shares ranking equally with, or in priority to, existing Shares whether as to voting rights, distribution or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares of that Class provided the issue is made in accordance with clause 5.

7. Share certificates

7.1 Issue of share certificates

The Company may issue share certificates in respect of all or any Shares and must, within 20 Business Days after receiving an application by a Shareholder, send to that Shareholder a share certificate, in accordance with section 95 of the Act.

7.2 Replacement share certificates

The Company:

- (a) may issue a replacement certificate for any share certificate that is worn out or defaced; and
- (b) shall issue a replacement share certificate for one that has been lost or destroyed,

subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

8. Calls on Shares

8.1 Board's power

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

8.2 Liability to pay

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

8.3 Differential calls

The Board may, at the time of issue of any Shares, differentiate between the holders as to the amount of calls to be paid and the time of payment.

8.4 Instalments

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

8.5 Time call is made

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

8.6 Interest on overdue amounts

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

8.7 Unpaid instalments

Any amount payable on issue of a Share or on any fixed date or as an instalment of a call shall be deemed to be a call and, if not paid, the provisions of this clause 8 and clauses 9 and 10 shall apply as if that sum had become payable by the making of a call.

8.8 Calls in advance

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

8.9 Evidence

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

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

will be conclusive evidence of the indebtedness of the Shareholder to the Company in respect of the call.

9. Lien on Shares

9.1 Lien on unpaid and partly paid Shares

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

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

9.2 Power of sale

If any amount due in respect of a Share on which the Company has a lien is unpaid for more than 14 days after notice in writing demanding payment has been given to the Shareholder or the person entitled to receive notices in respect of that Share:

- (a) the Company may sell the Share in the manner set out in clause 5 as if it constituted an issue of new Shares; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Share to, or at the direction of, the purchaser.

9.3 Absolute title of purchaser

The title of a purchaser of any Shares sold pursuant to clause 9.2 shall not be affected by any irregularity or invalidity in any sale.

9.4 Application of sale proceeds

The net proceeds of sale of any Share sold pursuant to clause 9.2, after deducting expenses of sale, shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the Share at the date of sale.

10. Forfeiture of Shares

10.1 Notice

If a call on a Share is not paid when due, the Board may give 14 days notice to the Shareholder requiring payment of the call, together with interest on the amount of the call. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Share will be liable to be forfeited.

10.2 Forfeiture

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

10.3 Sale of forfeited Shares

A forfeited Share may be sold or otherwise disposed of in the manner set out in clause 5 as if it constituted an issue of New Shares. To give effect to any sale or disposal, the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

10.4 Application of sale proceeds

The net proceeds of sale of any forfeited Share shall be applied in the same manner as set out in clause 9.4.

10.5 **Absolute title of purchaser**

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

10.6 **Consequences of forfeiture**

A person whose Shares have been forfeited shall cease to be a Shareholder in respect of those Shares and shall surrender the Share certificate for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon.

10.7 **Evidence of forfeiture**

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

11. **Transfer of Shares**

11.1 **Transferor to remain holder until registration**

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

11.2 **Form of transfer**

Every instrument of transfer of Shares shall comply with the following provisions:

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

11.3 **Power to refuse to register**

The Board may decline (and must decline in the case of clauses 11.3(d) and (e)) to register any transfer of Shares where:

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

provided that the Board resolves to exercise its powers under this clause 11.3 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.

11.4 Registration of transfers

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

11.5 Power to divide Share register

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

11.6 Transfer of securities other than Shares

This clause 11 shall also apply to transfers of securities of the Company other than Shares with any necessary modifications.

12. Pre-emptive rights on transfers of Shares

12.1 Transfer Notices

Every Shareholder who desires to sell or transfer any legal or beneficial interest in Shares in the Company (other than pursuant to clause 5.7) (**Intending Seller**) must give notice in writing (**Transfer Notice**) to the Board that the Intending Seller desires to sell or transfer those Shares. For the purposes of this clause, the word **Shareholder** includes a manager, protection attorney, assignee in bankruptcy or Personal Representative of any Shareholder.

12.2 Contents of Transfer Notice

The Transfer Notice must specify:

- (a) the number of Shares the Intending Seller intends to sell or transfer (Specified Shares); and
- (b) the sum which the Intending Seller proposes as the sale price of the Specified Shares (**Proposed Sale Price**).

12.3 Board appointed agent

A Transfer Notice constitutes the Board as the agent of the Intending Seller for the sale of the Shares in accordance with the provisions of this clause 12. A Transfer Notice is not revocable by the Intending Seller except as provided in clause 12.7.

12.4 Offer to Shareholders

Immediately upon receipt of a Transfer Notice, the Board must send to each Shareholder (other than the Intending Seller and other than holders of Shares which by terms of their issue are not entitled to receive an offer) a notice which states:

- (a) the number of Specified Shares to which the offeree is entitled;

- (b) the Proposed Sale Price; and
- (c) the date (being not less than 21 days nor more than 28 days after the receipt by the Company of the Transfer Notice) by which the offeree must give notice in writing to the Company (Acceptance Notice) containing the details set out in clause 12.5.

12.5 Acceptance Notices

Each Acceptance Notice must state whether or not the offeree:

- (a) wishes to purchase the offeree's entitlement or some lesser number of Specified Shares, in each case at the Proposed Sale Price; and
- (b) wishes to purchase any Specified Shares offered to, but declined by, other offerees (**Declined Shares**) and if so what number.

12.6 Notice to Intending Seller

After receipt of Acceptance Notices from all offerees or the expiry of the date specified in clause 12.4(c) (whichever is the earlier) the Board must within seven days either send to the Intending Seller copies of all Acceptance Notices received or notify the Intending Seller that no Acceptance Notices have been received.

12.7 Intending Seller's right to withdraw

If Acceptance Notices are received which do not contain acceptances for all of the Specified Shares the Intending Seller may within seven days of being given notice under clause 12.6, revoke the Transfer Notice by giving a notice in writing to the Board (**Withdrawal Notice**). If the Intending Seller gives a Withdrawal Notice under this clause 12.7 the Transfer Notice will be revoked and the Intending Seller may, within three months after the Withdrawal Notice is given, sell or transfer all of the Specified Shares (but not part only) at a price which is not less than the Proposed Sale Price and otherwise on terms no more favourable to a Purchaser than the terms offered to the existing Shareholders.

12.8 Sale and purchase

The Intending Seller will become bound to sell, at the Proposed Sale Price, the Specified Shares in respect of which Acceptance Notices have been received when:

- (a) Acceptance Notices are given under clause 12.5 which relate to all of the Specified Shares in a Transfer Notice; or
- (b) Acceptance Notices are given under clause 12.5 which relate only to some of the Shares specified in a Transfer Notice and the Intending Seller does not give a Withdrawal Notice under clause 12.7.

12.9 Purchasers

The purchasers of the Specified Shares will be determined as follows:

- (a) if all offerees have accepted their entitlements then each offeree will become bound to purchase that number of Specified Shares equivalent to that offeree's entitlement; and
- (b) in any other case:
 - (i) each offeree will become bound to purchase that number of Shares equal to the lesser of the number of Specified Shares that offeree agreed to accept in the

offeree's Acceptance Notice and the number of Specified Shares equivalent to the offeree's entitlement; and

- (ii) each offeree who has agreed to accept Declined Shares and, if more than one, pro rata according to their respective entitlements, will become bound to purchase that number of Declined Shares.

12.10 Settlement

Settlement of the sale and purchase of the Shares must take place within 14 days after the Intending Seller becomes bound to sell the Specified Shares pursuant to clause 12.8.

12.11 Payment

On settlement:

- (a) the offeree must pay the price for the Shares to the Intending Seller in cleared funds; and
- (b) in return, the Intending Seller must deliver to the offeree the signed Share transfer and relevant Share certificate (if any).

12.12 Execution by Company

If the Intending Seller does not transfer the Shares in accordance with clause 12.11(b), the Company shall execute transfers of the Shares on behalf of the Intending Seller and receive the price for the Shares.

12.13 Actions by Company

Upon receipt of the price for the Shares, the Company must cause the name of the offeree to be entered in the Share register as the holder of those Shares and hold the amount paid in trust for the Intending Seller.

12.14 Validity

The Board's receipt is a good discharge to the offeree for the purchase price. No question may be raised as to the title of the offeree to the Shares.

12.15 Seller's rights if no Acceptance Notices received

If an Intending Seller has given a Transfer Notice and no Acceptance Notices are received during the Acceptance Period, the Intending Seller may, within three months after the expiry of the Acceptance Period, sell or transfer all of the Specified Shares (but not part only) at a price which is not less than the Proposed Sale Price and otherwise on terms no more favourable to a purchaser than the terms offered to the other Shareholders.

12.16 Approved transfer

Any Share may be transferred by a Shareholder to any person if the transfer is approved in writing by the holders of all of the Shares in the Company and the restrictions in the preceding provisions of this clause 12 shall not apply to any transfer authorised by this clause 12.16.

13. Exercise of powers of Shareholders

13.1 Methods of holding meetings

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

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

13.2 Exercise of power by meeting or written resolution

A power reserved to the Shareholders by the Act or this Constitution may be exercised either:

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

13.3 Powers of Shareholders

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

14. Meetings of Shareholders

14.1 Annual meetings

Subject to clause 14.3, the Company shall hold an annual meeting not later than:

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

14.2 Time and place of annual meeting

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

14.3 Resolution in lieu of annual meeting

It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.

14.4 Special meetings

All meetings other than annual meetings shall be called special meetings.

15. Notice of meetings of Shareholders

15.1 Written notice

Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and the auditor of the Company (if any) not less than 10 Business Days before the meeting.

15.2 Contents of notice

The notice must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any Special Resolution to be submitted to the meeting.

15.3 Irregularity in notice

An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.

15.4 Adjourned meetings

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

16. Chairperson of meetings of Shareholders

16.1 Chairperson of the Board to act

If the Board has elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, that Director must chair the meeting.

16.2 Other chairperson

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

16.3 Adjourned meetings

The chairperson may, and if directed by the meeting must, adjourn the meeting to a new time and place. No business can be transacted at any adjourned meeting other than unfinished business at the original meeting.

16.4 Regulation of procedure

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

17. Quorum for meetings of Shareholders

17.1 Quorum required

Subject to clause 17.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

17.2 Size of quorum

A quorum for a meeting of Shareholders is present if all Shareholders are present in person or by Representative or if Shareholders or their Representatives are present who are between them able to exercise a majority of votes to be cast on the business to be transacted by the meeting.

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

18. Voting at meetings of Shareholders

18.1 Meetings in one place

In the case of a meeting of Shareholders held under clause 13.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:

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

18.2 Audio-visual meetings

In the case of a meeting of Shareholders held under clause 13.1(b) or 13.1(c), unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson of that meeting.

18.3 Postal votes

Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that Shareholders may exercise

the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the First Schedule to the Act together with any other procedures determined by the Board.

18.4 Number of votes

Subject to any rights or restrictions attached to any Share:

- (a) where voting is by voice, a show of hands or other method permitted by the chairperson, every Shareholder present in person or by Representative has one vote; and
- (b) on a poll every Shareholder present in person or by Representative has:
 - (i) one vote in respect of every fully paid Share held by that Shareholder; and
 - (ii) in respect of each Share held by that Shareholder which is not fully paid, a proportion of the vote or votes which would be exercisable if that Share was fully paid equivalent to the proportion of the total issue price of that Share which has been paid (disregarding any payment in advance).

18.5 Declaration of chairperson conclusive

A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 18.6.

18.6 Right to demand poll

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

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

For the purposes of this clause 18.6, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

18.7 Time of demand for poll

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

18.8 Timing of poll

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

18.9 Counting of votes on poll

- (a) If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting.
- (b) For the avoidance of doubt, the chairperson is not entitled to a casting vote.

18.10 Votes of joint holders

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

18.11 Validity of votes

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

18.12 No vote

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

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) A proxy must be appointed by notice in writing signed by, or in the case of an electronic notice, sent by, the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.
- (b) A Shareholder may appoint more than one proxy for a particular meeting, providing that more than one proxy is not appointed to exercise the rights attached to a particular Share held by the Shareholder.

19.3 Lodging proxy

No proxy is effective in relation to a meeting unless the proxy form is produced before the start of the meeting.

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 corporate Representative shall have the same rights and powers as if the Representative were a proxy.

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 as correct by the chairperson are prima facie evidence of the proceedings.

21. Appointment and removal of Directors

21.1 Number

The number of Directors must not at any time be more than seven.

21.2 Appointment and removal

Notwithstanding anything to the contrary contained in this Constitution, the rights to elect, appoint, remove and replace the Directors will be exclusively vested in Appointer 1 and Appointer 2 as more fully set forth in this clause 21.2. For the avoidance of doubt, the Shareholders do not have the right to appoint or remove a Director by way of resolution under section 153(2), section 155(1) or section 156 of the Act respectively.

(a) Appointer 1

- (i) Appointer 1 will be entitled to, at any time by notice in writing to the Company, appoint up to three Directors.
- (ii) Appointer 1 will further be entitled to, from time to time by notice in writing to the Company, remove and/or replace any Director (including, without limitation, replace any removed Director) appointed by Appointer 1 under clause 21.2(a)(i).

(b) Appointer 2

- (i) Appointer 2 will be entitled to, at any time by notice in writing to the Company, appoint up to three Directors.
- (ii) Appointer 2 will further be entitled to, from time to time by notice in writing to the Company, remove and/or replace any Director (including, without limitation, replace any removed Director) appointed by Appointer 2 under clause 21.2(b)(i).

(c) Chairperson

- (i) Appointer 1 and Appointer 2 will be entitled to, at any time by notice in writing to the Company, jointly appoint a person to be the Chair of the Board.
- (ii) Appointer 1 and the Appointer 2 may, from time to time by notice in writing to the Company, jointly remove and/or replace any person jointly appointed by them under clause 21.2(c)(i) to be the Chair of the Board.

21.3 **Vacation of office**

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

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

22. **Powers of Directors**

22.1 **Management of Company**

The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

22.2 **Exercise of powers by Board**

The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

22.3 **Delegation of powers**

The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act.

22.4 **Appointment of attorney**

The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

22.5 **Ratification by Shareholders**

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

23. Proceedings of the Board

23.1 Methods of holding meetings

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

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

23.2 Notice of meeting

A Director may convene a meeting of the Board. Notice of a meeting of Directors must be given to every Director.

23.3 Waiver of irregularity

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

23.4 Quorum

A quorum for a meeting of the Board may be fixed by all of the Directors, and unless so fixed, is a majority of the Directors.

23.5 Chairperson

- (a) The Directors may elect one of their number as chairperson of the Board and determine the period for which the chairperson is to hold office.
- (b) In the absence of the Chairperson from any Board meeting, the Directors present at the meeting must appoint one of their number to preside at that meeting.

23.6 Votes

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

23.7 Resolutions in writing

A resolution in writing, signed or assented to by all Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings.

23.8 Validity of acts

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

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

23.9 Other procedures

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

24. Directors' Interests

24.1 Disclosure of Interests

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

24.2 Personal involvement of Directors

Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 36(4) of the Financial Reporting Act 2013 (prohibiting a director from acting as auditor of a company), a Director may:

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

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

24.3 Interested Directors may vote

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

- (a) vote on any matter relating to the transaction;

- (b) attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- (c) sign a document relating to the transaction on behalf of the Company; and
- (d) do any other thing in his or her capacity as a Director in relation to the transaction, as if the Director were not Interested in the transaction.

25. Directors' remuneration and other benefits

25.1 Remuneration and benefits

The Board may exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section.

25.2 Expenses

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

26. Indemnity and insurance for Directors and employees

26.1 Indemnity for Directors

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

26.2 Indemnities and insurance

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

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

26.3 Interpretation

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

27. Dividends

27.1 Power to authorise

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

27.2 Method of payment

Any dividend or other money payable to a Shareholder may be paid in any manner determined by the Board and directed by the person entitled to the payment. In the case of joint Shareholders, payment may be made to the person first named on the share register.

27.3 Currency of payment

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

27.4 Deductions

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

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

27.5 Entitlement date

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

27.6 Unclaimed dividends

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

28. Notices

28.1 Method of Service

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

28.2 Joint holders

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

29. Inspection of records

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

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

30. Liquidation

30.1 Distribution of surplus

Subject to the rights of any Shareholders and to clauses 30.2 and 30.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Shareholders in proportion to their shareholding. If any Shareholder's Shares are not fully paid up, the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.

30.2 Distribution in kind

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

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

30.3 Trusts

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

31. Method of contracting

31.1 Deeds

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

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

31.2 Other written contracts

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

31.3 Other obligations

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