

# **Constitution**

of

**Martinborough Vineyard  
Estates Limited**

**G I B S O N S H E A T  
L A W Y E R S**

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# Constitution of Martinborough Vineyard Estates Limited

## 1. Definitions And Interpretation

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### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**Act** means the Companies Act 1993.

**Board** means:

- a. Directors who number not less than the required quorum, acting together as a Board of Directors; or
- b. If the Company has only one Director, that Director.

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

**Company** means Martinborough Vineyard Estates Limited.

**Constitution** means this Constitution, including any amendments thereto from time to time in force.

**Director** means a person appointed pursuant to this Constitution as a Director of the Company.

**Distribution** means:

- 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;

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.

**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 Shareholders in a Class and not otherwise, or a proposal expressly distinguishes between some Shareholders in a Class and other Shareholders of that Class, in which case Shareholders in that Class may fall into two or more Interest Groups.

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

**month** means calendar month.

**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.

**person** includes an individual, partnership, firm, Company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal or local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

**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 there under, and a donee of an enduring power of attorney complying with that Act.

**Records** means the documents required to be kept by the Company under section 189(1) of the Act.

**Representative** means:

- a. A person appointed as a proxy under clause 22;
- b. A Personal Representative; or
- c. A representative appointed by a corporation under clause 23.1.

**Securities** means any Shares, Securities that are convertible into or exchangeable for Shares, or options to acquire Shares that are redeemable on a specified date or at the option of the Company or the holder.

**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.

**Share Register** means the share register for the Company kept in accordance with the Act.

**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.

**Working Day** has the meaning set out in section 2 of the Act.

## 1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- a. The table of contents, headings and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution.
- b. The single includes the plural and vice versa.
- c. Reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
  - i. That legislation or provision as from time to time amended, re-enacted or substituted.

- ii. Any statutory instruments, regulations, rules and orders issued under that legislation or provision.
- d. "Written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form.
- e. Words and expressions defined or explained in the Act have the same meaning in this Constitution.
- f. Words and expressions cognate with words or expressions defined in this Constitution have meanings corresponding to those of the defined words and expressions.
- g. References to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise.

### 1.3 **Constitution to Prevail**

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 shall prevail.

## 2. **Issue and Securities**

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### 2.1 **Board May Issue Shares**

The Board may issue Securities ranking with, or in priority to existing Securities to any person and in any number it thinks fit. Any such issue will not be treated as an action affecting the rights, privileges, limitations or conditions attaching to existing Shares unless the terms of issue expressly provide otherwise.

2.2 Subject to this Constitution, Section 45 of the Act does not apply to the Company.

2.3 Notwithstanding the provisions of clause 2.1, no Securities shall be issued other than:

- a. With the prior approval by Ordinary Resolution of the Company; or
- b. Pursuant to an offer or an issue made to the existing members of the Company pro rata; or
- c. To holders of Securities on redemption or conversion of those Securities if the terms of issue provide that such Securities are to be satisfied by the issue of Shares in the Company –

if the total number of the Securities so issued would, when aggregated with all other Securities of the same Class issued other than as provided in paragraphs a. to c. above at any time during the preceding 12 month period exceed the aggregate of 20% of the total number of Securities of that Class at the commencement of such relevant period and 20% of the total number of Securities of that Class issued during that period.

2.4 For the purposes of clause 2.3 Securities which will, or may, convert to Shares or other equity Securities shall be deemed to be of the same Class as, and to correspond in number to the Shares or equity Securities into which they will, or may, convert.

## 2.5 Consolidation and Subdivision of Shares

The Board may:

- a. Consolidate and divide the Shares or any Class; and
- b. Subdivide the Shares or any Class;

in each case in proportion to those Shares or the Shares in that Class, as the case may be.

## 2.6 Bonus Issues

The Board may resolve to apply any amount which is available for Distribution 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 such Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, 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 sub clause a.i;

or partly in one way and partly in the other.

## 2.7 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.

## 2.8 Fractional Entitlements

The Board may, in exercising any powers pursuant to this section, deal with fractional entitlements to Shares or other Securities in such manner as the Board considers equitable and in the interests of the Company.

# 3. Rights Attaching To Shares

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## 3.1 Classes of Shares

Without prejudice to any special rights previously conferred on any Shareholders or any Class and without limiting the Classes which may be issued by the Company, any Share may be issued upon the basis that such Share:

- a. Confers preferential rights to Distributions of capital or income;
- b. Confers special, limited or conditional voting rights;
- c. Does not confer voting rights; or
- d. Is redeemable in accordance with terms of issue that are incorporated in this Constitution.

## **4. Alteration Of Shareholder Rights**

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### **4.1 Special Resolution Required**

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

### **4.2 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 two persons holding or representing the holders of not less than one third of the Shares of the relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

## **5. Acquisition Of Company's Own Shares**

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### **5.1 Company may Purchase Shares**

The Company may purchase or otherwise acquire Shares from one or more Shareholders in accordance with the provisions of the Act and may, subject to any requirements or restrictions imposed by law, hold any Shares so purchased or acquired.

## **6. Share Certificates**

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### **6.1 Issue of Share Certificates**

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

### **6.2 Replacement Share Certificates**

The Company:

- a. May issue a replacement certificate for any Share certificate that is worn out or defaced, and
- b. Shall issue a replacement Share certificate for one that has been lost or destroyed;

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

## **7. Equitable Interests In Shares**

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### **7.1 Notice of Trusts**

No notice of a trust, whether express, implied or constructive, may be entered on the Share Register.

### **7.2 No Recognition of Equitable Interests**

Except as required by law, no person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice) any equitable, contingent, future or partial interest in any Share, or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share.

## **8. Calls On Shares**

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### **8.1 Board may make Calls**

The Board may, from time to time, make such calls as it thinks fit upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.

### **8.2 Time of Call**

A call is deemed to be made at the time when the resolution of the Board making the call is passed.

### **8.3 Fixed Instalments Deemed Calls**

An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which the amount is payable.

### **8.4 Notice of Call**

At least 14 days notice of any call must be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.

### **8.5 Differential Calls**

The Board may, on the issue of Shares, differentiate between the Shareholders as to the amounts to be paid in respect of the Shares and the times of payment of such amounts.

### **8.6 Manner of Payment**

A Shareholder by whom a call is payable must pay the amount of the call to the Company at the time and place specified by the Board.

### **8.7 Joint Shareholders**

Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.

### **8.8 Default Interest**

If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable must pay interest on the call from the due date to the date of actual payment at such rate as the Board may reasonably determine, unless the Board waives payment of interest wholly or in part.

### **8.9 Proceedings for Recovery of Call**

In any proceedings for recovery of a call:

- a. It is sufficient to prove that:
  - i. The name of the relevant Shareholder is entered in the Share Register as the holder, or one of the holders, of the Shares to which the call relates; and
  - ii. Except in relation to any amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date, the resolution making the call is entered in the Records and notice of the call has been duly given;

and proof of the matters mentioned in this clause shall be conclusive evidence of the debt; and

- b. It is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.

## 8.10 **Payment in Advance of Calls**

The Company may receive from any Shareholder in advance any amount uncalled and unpaid upon any Shares held by that Shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the Board and the Shareholder agree.

## 9. **Forfeiture Of Shares**

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### 9.1 **Notice Requiring Payment of Call**

If a Shareholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.

### 9.2 **Contents of Notice**

The notice must specify a further date (not earlier than 14 days after the date of service of the notice) on or before which the payment is to be made, and must state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due, is liable to be forfeited.

### 9.3 **Forfeiture for Non-Payment**

If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited Share and not paid before the forfeiture.

### 9.4 **Notice of Forfeiture**

When a Share has been forfeited, the Company must give notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture, and must enter in the Share Register details of the forfeiture.

### 9.5 **Cancellation of Forfeiture**

A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.

### 9.6 **Effect of Forfeiture**

The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share, but remains liable to the Company for all money payable in respect of the forfeited Share.

## 10. **Lien On Shares**

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### 10.1 **Lien on Shares**

The Company shall have a first and paramount lien upon each Share, the proceeds of sale of the Share, and all Distributions made in respect of the Share, for:

- a. All unpaid calls owing in respect of the Share and interest thereon (if any);
- b. Any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived; and
- c. All liabilities and obligations of the Shareholder to the Company, whether solely or jointly with any other person, whether incurred or arising before or after notice to the

Company of any equitable interest in any person other than the Shareholder, and whether or not the date for payment, fulfilment or discharge thereof has arrived.

## 10.2 **Waiver of Lien**

Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share, except as provided in clause 12.4.

## 11. **Sale Of Shares Subject To Forfeiture Or Lien**

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### 11.1 **Company May Sell Shares**

The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but the Company must not sell any Shares:

- a. Unless the amount in respect of which a lien exists is due and payable;
- b. Until the expiry of 14 days after written notice demanding payment of the amount has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Shares.

### 11.2 **Proceeds of sale**

The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale or, if applicable in either case, to the Personal Representative of the holder.

### 11.3 **Evidence**

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

### 11.4 **Sale procedure**

For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale shall be in damages only and solely against the Company.

## 12. **Transfer Of Shares**

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### 12.1 **Power to transfer**

Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share by an instrument of transfer complying with this Constitution.

### 12.2 **Form of transfer**

Any Share disposed of by an "authorised transaction" within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with that Act. Every other instrument of transfer shall:

- a. Be in any usual or common form or any other form which the Board may approve;

- b. Be executed by or on behalf of the transferor; and
- c. If registration as holder of the Share imposes a liability to the Company on the transferee, be signed by the transferee.

### 12.3 **Delivery to Company**

An instrument of transfer, together with the Share certificate (if any) relating to the Shares to be transferred, shall be delivered to the Company or to the agent of the Company who maintains the Share Register and the transferee shall provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

### 12.4 **Board may refuse to register**

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

- a. The Company has a lien on the Share;
- b. The Share is not fully paid up;
- c. The instrument of transfer is not accompanied by the relevant Share certificate (if any) and such other evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share;
- d. The Board has notice of any agreement by the Shareholder to transfer only to some specified person or subject to some specified condition;
- e. The Board, in its absolute discretion, believes that registration of the transfer would not be in the best interests of the Company; or

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

### 12.5 **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.

### 12.6 **Company to retain transfer**

If the Company registers a transfer it must retain the instrument of transfer.

### 12.7 **Multiple registers**

The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places.

## 13. **No Pre-Emptive Rights**

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- 13.1 No pre-emptive rights apply in respect of the transfer of any Shares issued by the Company.

## 14. **Transmission Of Shares**

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### 14.1 **Transmission on death of Shareholder**

If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder but nothing in this clause shall release

the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.

#### **14.2 Rights of Personal Representatives**

A Personal Representative of a Shareholder:

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

#### **14.3 Joint Personal Representatives**

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

### **15. Exercise Of Powers Of Shareholders**

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#### **15.1 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, or
- b. By means of audio, or audio and visual communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.
- c. By means of electronic communication between Shareholders where the Shareholders accept that the communications constitute a meeting.

#### **15.2 Exercise of power by meeting or written resolution**

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

- a. At a meeting of Shareholders; or
- b. By a resolution in writing signed in accordance with section 122 of the Act.

#### **15.3 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 Ordinary Resolution.

### **16. Meetings Of Shareholders**

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#### **16.1 Annual meetings**

Subject to clause 16.3, the Company must 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.

The Company need not hold its first annual meeting in the calendar year of its registration, but must hold that meeting within 18 months of its registration.

#### **16.2 Time and place of annual meeting**

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

#### **16.3 Resolution in lieu of Annual Meeting**

It is not necessary for the Company to hold an annual meeting in any calendar year 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.

#### **16.4 Special Meetings**

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

#### **16.5 Calling of Special Meetings**

A special meeting:

- a. May be called by the Board at any time.
- b. Must 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.

### **17. Notice Of Meetings Of Shareholders**

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#### **17.1 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 to the auditor (if any) of the Company, not less than 10 Working 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.

#### **17.2 Contents of Notice**

A notice of meeting 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.

#### **17.3 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.

#### **17.4 Accidental Omission of Notice**

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

#### **17.5 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 must be given in accordance with clause 17.1.

## 17.6 **Adjournment of Meeting**

The chairperson may, with the consent of any meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the relevant meeting.

## 18. **Quorum For Meetings Of Shareholders**

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### 18.1 **Requirement for Quorum**

Subject to clause 18.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

### 18.2 **Quorum**

Subject to clause 18.3, a quorum for a meeting of Shareholders is a Shareholder or Shareholders present in person or by Representative and holding or representing the holder or holders of a majority of the Shares in the Company.

### 18.3 **Lack of Quorum**

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

- a. In the case of a meeting called by the Board on the written request of 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, 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.

## 19. **Chairperson Of Meetings Of Shareholders**

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### 19.1 **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 must 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.

### 19.2 **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.

### 19.3 **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.

## **20. Voting At Meetings Of Shareholders**

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### **20.1 Voting at meeting**

In the case of a meeting of Shareholders held under clause 15.1a, unless a poll is demanded in accordance with clause 21.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

### **20.2 Voting at audio/visual meeting**

In the case of a meeting of Shareholders held under clause 15.1b, unless a poll is demanded in accordance with clause 21.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

### **20.3 Postal Votes**

The provisions of clause 7 of the first schedule to the Act (relating to postal votes) do not apply to the Company.

### **20.4 Entitlement to Vote**

Subject to clause 20.8 and to any rights or restrictions for the time being attached to any Class:

- 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 one vote in respect of each Share held by that Shareholder.

### **20.5 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 21.1.

### **20.6 Chairperson's Casting Vote**

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

### **20.7 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.

### **20.8 Voting Restriction**

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.

## **21. Polls**

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### **21.1 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.

#### **21.2 When Poll may be Demanded**

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

#### **21.3 Count of Votes**

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

#### **21.4 Poll Procedure**

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

#### **21.5 When Poll Taken**

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

#### **21.6 Vote by Representative**

On a poll, votes may be given either personally or by Representative.

### **22. Proxies**

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#### **22.1 Vote by Proxy**

A Shareholder may exercise the right to vote either by being present in person or by proxy.

#### **22.2 Proxy may Attend Meeting and may Demand Poll**

A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders, and to demand or join in demanding a poll, as if the proxy were the Shareholder.

#### **22.3 Notice of Appointment**

A proxy must be appointed by written notice signed by the appointing Shareholder and the notice must state whether the appointment is for a particular meeting or for a specified term not exceeding 12 months. The notice must be in any common form or any other form which the Company may approve.

#### **22.4 Production of Notice**

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

#### **22.5 Validity of Proxy Vote**

A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

## **23. Corporation May Act By Representative**

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### **23.1 Corporation may Appoint Representative**

A corporation which is a Shareholder may appoint a person to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

## **24. Shareholder Proposals And Management Review**

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### **24.1 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.

### **24.2 Management Review by Shareholders**

The chairperson of a meeting of Shareholders must 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 the resolution will not be binding on the Board.

## **25. Appointment, Rotation And Removal Of Directors**

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### **25.1 First Directors**

A person named as a Director in the application for registration of the Company holds office as a Director from the date of registration until the person ceases to hold the office in accordance with the Act or this Constitution.

### **25.2 Number and Residence**

The minimum number of Directors (other than alternate Directors) shall be three. The maximum of Directors (other than alternate Directors) shall be seven. At least two Directors shall be ordinarily resident in New Zealand.

### **25.3 Nominations as Directors**

No person (other than a Director retiring at the meeting) shall be elected as a Director at a meeting of Shareholders unless that person has been nominated by a Shareholder entitled to attend and vote at the meeting.

### **25.4 No Restriction**

There shall be no restriction on the persons who may be nominated as Directors (other than the holding of qualification shares if required by this Constitution); nor shall there be any pre-condition to the nomination of a Director other than that the nomination complies with the time limits set forth in clause 25.5.

### **25.5 Time Limits**

The opening date for nominations in any year shall be not later than 1 April, and the closing date for nominations shall be not later than 30 June (in that year), prior to the date of the meeting at which the election is to take place. Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.

### **25.6 Individual Voting**

No resolution to appoint or elect a Director shall be put to the holders of Shares of the Company unless:

- a. The resolution is for the appointment of one Director; or

- b. The resolution is a single resolution for the appointment of two or more Directors and a separate resolution that it be so voted on has first been passed without a vote being cast against it;

but nothing in this clause 25.6 shall prevent the election of two or more Directors by ballot or poll.

#### **25.7 Vacancies and Reduction of Numbers**

Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the number fixed by clause 25.2 as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting but for no other purpose.

#### **25.8 Consent Required**

A person must not be appointed as a Director of the Company unless he or she has consented in writing to be a Director and certified that he or she is not disqualified from being appointed or holding office as a Director of the Company.

#### **25.9 Removal of Directors**

A Director of the Company may be removed by Ordinary Resolution passed at a meeting called for the purpose or for purposes that include the removal of a Director or Directors. The notice of meeting must state that the purpose or purposes of the meeting include the removal of a Director or Directors.

#### **25.10 Board May Appoint Directors**

The Board may from time to time appoint any person to be an additional Director, either to fill a casual vacancy or additional to the existing Directors, who shall hold office only until the next annual meeting.

#### **25.11 Board Appointee to Retire**

Any person who is appointed a Director by the Board shall retire from office at the next annual meeting of the Company, but shall be eligible for re-election at that next meeting.

#### **25.12 Vacation of Office**

The office of Director of the Company is vacated by the person holding the office if:

- a. The person resigns by notification to the Board in writing of the resignation, either directly at a meeting of the Board or by delivery to the address for service for the Company (in which event such notice takes effect when received at the address for service or such other time as is specified in the notice);
- b. The person is removed from office in accordance with the Act or clause 25.9 or 25.13.c;
- c. The person becomes disqualified from being a Director pursuant to s 151 of the Act; or
- d. The person dies; or
- e. Acts in a manner which is contrary to any statutory provision or obligation, or contrary to any policy of the Board, and the Board resolves that the office be vacated; or
- f. Is absent for more than three consecutive meetings of the Board, without the Board's permission and the Board resolves that the office be vacated.

#### **25.13 Rotation**

Subject to clause 25.15, at least 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 at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those

who have been longest in office. As between persons who became Directors on the same day, those to retire shall unless agreed otherwise, be determined by lot.

#### **25.14 Exceptions to Rotation**

The following Directors shall be exempt from the obligation to retire pursuant to clause 25.14:

- a. Directors appointed by the Board who are subject to re-election pursuant to clause 25.11; and
- b. One executive Director.

The Director referred to in 25.15.a shall be excluded from the number of Directors upon which the calculation for the purposes of clause 25.17 is based. Any Director referred to in 25.15.b shall be included in that number.

#### **25.15 Alternate Directors**

A Director may from time to time appoint any person (except an existing Director) who is not disqualified under the Act from holding office as a Director to be his or her alternate Director. An alternate Director's appointment may be cancelled at any time by the Director who made the appointment.

#### **25.16 Alternates act in absence of appointer**

An alternate Director may only attend meetings, vote and sign documents relating to the position of Director in the absence of the Director who appointed him or her.

### **26. Remuneration And Other Benefits Of Directors**

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#### **26.1 Power to Authorise**

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

### **27. Indemnity And Insurance For Directors**

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#### **27.1 Power to Indemnify and Effect Insurance**

The Company may exercise the powers conferred by section 162 of the Act to indemnify, and to effect insurance for, a Director or employee, or former Director or employee, of the Company or a related company.

### **28. Powers Of Directors**

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#### **28.1 Management of Company**

Except as provided in clause 28.3 the business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.

#### **28.2 Exercise of Powers by Board**

Subject to the provisions of clause 28.3 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.

#### **28.3 Exercise of Powers by Shareholders**

The Shareholders may at any time by Special Resolution exercise any of the powers which would otherwise fall to be exercised by the Board but the exercise of any such power shall not invalidate any prior act of the Board which would have been valid if the power had not been exercised by the Shareholders.

#### **28.4 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.

#### **28.5 Appointment of Attorney**

The Company may exercise the power conferred by section 161 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.

#### **28.6 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.

#### **28.7 Change of Name of Company**

The Board must not authorise a change of name of the Company without the prior approval of Shareholders by Ordinary Resolution.

### **29. Interests Of Directors**

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#### **29.1 Disclosure of interests**

A Director must comply with the provisions of section 140 of the Act (relating to disclosure of interest of Directors) but failure to comply with that section shall not affect the operation of clause 29.2.

#### **29.2 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.

### 29.3 **Interested Directors may Vote etc.**

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

- a. Vote on any matter relating to the transaction;
- b. Attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- c. Sign a document relating to the transaction on behalf of the Company; and
- d. Do any other thing in his or her capacity as a Director in relation to the transaction;

as if the Director were not Interested in the transaction.

### 29.4 **Wholly-owned subsidiary**

If the Company is a wholly-owned subsidiary of another company, any Director may, when exercising powers or performing duties as a Director, act in a manner which he or she believes is in the best interests of the Company's holding company, even though it may not be in the best interests of the Company.

### 29.5 **Subsidiary not Wholly Owned**

If the Company is a subsidiary (but not a wholly-owned subsidiary) of another company, a Director may, when exercising powers or performing duties as a Director, and with the prior agreement of the Shareholders (other than the holding company), act in a manner which he or she believes is in the best interests of the holding company, even though it may not be in the best interests of the Company.

### 29.6 **Joint Venture Company**

If the Company is carrying out a joint venture between the Shareholders, a Director may, when exercising powers or performing duties as a Director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a Shareholder or Shareholders, even though it may not be in the best interests of the Company.

## 30. **Proceedings Of Directors**

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### 30.1 **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.

### 30.2 **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 means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

### 30.3 **Procedure**

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

#### 30.4 **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 30.5):

- a. Not less than two days' notice of a meeting of the Board must be sent to every Director.
- b. Notice to a Director of a meeting of the Board may be:
  - i. Delivered to the Director;
  - ii. Posted to the address given by the Director to the Company for the purpose of receiving notices of meetings of the Board by post;
  - iii. Sent by facsimile transmission to the telephone number given by the Director to the Company for the purpose of receiving notices of meetings of the Board by facsimile transmission.
- c. It is not necessary to give notice of a meeting to an alternate Director, unless the Director who appointed that person has given written notice to that effect to the Company.
- d. A notice of meeting must specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual, communication, the manner in which each Director may participate in the proceedings of the meeting.
- e. A notice given to a Director pursuant to this clause is deemed to be given:
  - i. In the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
  - ii. In the case of posting, three days after it is posted;
  - iii. 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 telephone number given by the Director.

#### 30.5 **Director May Convene Meeting**

Without limiting the provisions of clauses 30.3 or 30.4, a Director has the right at any time to convene a meeting of the Board, or to require an employee 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.

#### 30.6 **Waiver of notice irregularity**

An irregularity in a notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees to the waiver.

#### 30.7 **Quorum**

A quorum for a meeting of the Board is 2 Directors. No business may be transacted at a meeting of Directors if a quorum is not present.

### 30.8 **Chairperson**

The Directors may elect one of their number as chairperson of the Board and determine the period for which he or she is to hold office. If no chairperson is elected or if, at a meeting of the Board, the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

### 30.9 **Voting**

Every Director has one vote. The chairperson does 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 the resolution at the meeting.

### 30.10 **Written Resolution**

A resolution in writing, signed or assented to by all the Directors 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 must be entered in the Records.

### 30.11 **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. 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.

### 30.12 **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.

### 30.13 **Minutes**

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

## 31. **Method Of Contracting**

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### 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.

### 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.

## 32. **Distributions**

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### 32.1 **Power to Authorise**

The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test may, subject to the Act and this Constitution, 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.

### 32.2 **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 must not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.

### 32.3 **Entitlement to Dividends**

Subject to section 107 of the Act (relating to unanimous consent to certain actions), the Board must 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 that Shareholder.

### 32.4 **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.

### 32.5 **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.

### 32.6 **No Interest on Distributions**

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

## 33. **Accounting Records And Audit**

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### 33.1 **Maintain Accounting Records**

The Board shall cause proper accounting Records to be kept in accordance with the provisions of the Act.

### **33.2 Appointment of Auditors**

Subject to section 196(2) of the Act (permitting waiver of appointment of an auditor by unanimous resolution) an auditor shall be appointed and the auditor's duties regulated in accordance with the provisions of the Act.

### **33.3 Annual Report**

Subject to the provisions of sections 209(2) and 212 of the Act (relating to the right of Shareholders to waive receipt of certain documents), the Board shall from time to time cause to be prepared and sent to Shareholders an annual report and financial statements in accordance with the provisions of sections 198 to 211 of the Act.

## **34. Inspection Of Records**

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### **34.1 Inspection by Directors**

Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other Records of the Company shall be open to the inspection of any Director.

### **34.2 Inspection by Shareholders**

No Shareholder who is not also a Director shall be 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 shall be open to the inspection of Shareholders (who are not also Directors).

## **35. Notices**

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### **35.1 Reports etc. to Shareholders**

Annual reports, notices and other documents required to be sent to a Shareholder shall be sent in the manner provided in section 391 of the Act.

### **35.2 Accidental Omissions**

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

### **35.3 Joint Shareholders**

A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share.

### **35.4 Shareholder Deceased or Bankrupt**

If a Shareholder 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 Shareholder at the address supplied to the Company for that purpose.

### **35.5 Waiver by Shareholders**

Subject to section 210 of the Act (which requires financial statements to be sent to Shareholders who elect not to receive annual reports), 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.

## **36. Liquidation**

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### **36.1 Distribution of Assets**

If the Company is liquidated the liquidator may, with the approval of Shareholders by Special Resolution 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.