



Constitution of Contact Energy Limited 2010

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Part A: Introduction

Interpretation

1. Defined terms

In this constitution:

- 1.1.** The following expressions have the following meanings:
- Associated Person** has the meaning given in Rule 1.8 of the Rules;
- Average Market Capitalisation** means, in relation to any transaction, the volume weighted average market capitalisation of the Company's equity securities carrying votes calculated from trades on the NZSX over the 20 business days before the earlier of the day the transaction is entered into or is announced to the market;
- the Act** means the Companies Act 1993;
- the Board** means Directors who number not less than the required quorum acting together as the board of directors of the Company;
- the Company** means Contact Energy Limited;
- this constitution** means this constitution as it may be altered from time to time in accordance with the Act;
- Director** means a person appointed as a director of the Company in accordance with this constitution;
- Disqualifying Relationship** means any direct or indirect interest or relationship that could reasonably influence, in a material way, the Director's decisions in relation to the Company.
- Without limiting the definition, a Director shall be deemed to have a 'Disqualifying Relationship' in the following circumstances:
- (a) The Director is a Substantial Security Holder of the Company or an Associated Person of the Substantial Security Holder (other than solely as a consequence of being a Director); or

(b) where:

- (i) the Director has a relationship (other than in his or her capacity as a Director) with the Company or any Substantial Security Holder of the Company; or
- (ii) an Associated Person of the Director has a relationship with the Company or any Substantial Security Holder of the Company; and
- (iii) by virtue of the relationship in sub-paragraph (b)(i) or (b)(ii) of this definition that Director or any Associated Person of that Director is likely to derive, in the current financial year of the Company, a substantial portion of his, her or its annual revenue from the Company during such financial year. For the purpose of this sub-paragraph the annual revenue a Director or Associated Person of a Director derives from the Company does not include dividends and other distributions payable to all holders of a class of equity securities;

Independent Director means a Director who is not an executive officer of the Company and who has no Disqualifying Relationship;

Managing Director means the Director appointed as managing director of the Company in accordance with clause 105;

Material Transaction has the meaning given in Rule 9.2.2 of the Rules;

NZ Markets Disciplinary Tribunal has the meaning given to it in Rule 1.6.1 of the Rules;

NZSX means the main board equity security market operated by NZX;

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

ordinary resolution has the same meaning in relation to the Company as the expression 'Ordinary Resolution of the Issuer' under the Rules;

Related Party has the meaning given in Rule 9.2.3 of the Rules;

the Rules means the Listing Rules of NZSX as altered from time to time by NZX;

Share means a share in the Company;

special resolution means a resolution approved by a majority of 75 percent of votes of the holders of securities entitled to vote and voting;

Substantial Security Holder has the meaning given in section 2 of the Securities Markets Act 1988;

treasury stock means Shares acquired by the Company and held as treasury stock pursuant to the Act and includes Shares held by a subsidiary of the Company other than in accordance with section 82(6) of the Act; and

written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

1.2. Subject to clause 1.1, expressions:

- (a) which are defined in the Rules (whether generally or for the purposes of one or more particular provisions whether or not expressed with an initial capital letter) have the meanings given by the Rules; and
- (b) which are defined in the Act (whether generally or for the purposes of one or more particular provisions) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.

2. Construction

In this constitution:

- 2.1.** Headings appear as a matter of convenience and do not affect the interpretation of this constitution.
- 2.2.** The singular includes the plural and vice versa, and words importing one gender include the other genders.
- 2.3.** A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.
- 2.4.** or the purpose of calculating the total number of equity securities issued or acquired by the Company, or the amount of all financial assistance given by the Company, as the case may be, under any of clauses 24, 25, 48 and 53 during the period specified in those respective clauses, regard shall also be had to the equity securities issued or acquired by the Company, and the financial assistance given by the Company, as the case may be, during such period under the corresponding clauses of the previous constitution of the Company.
- 2.5.** The Schedules form part of this constitution.

The relationship between this constitution, the Act, and the Rules

3. Effect of the Act on this constitution

The Company, the Board, each Director, and each shareholder have the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution.

4. Company must comply with Rules while listed

For so long as the Company is listed on NZSX, subject to the terms of any ruling from time to time given by NZX, the Company must comply with the Rules. If any provision in this constitution is inconsistent with the Rules, the Rules prevail to the extent of the inconsistency.

5. NZX's rulings

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

6. Failure to comply with Rules has limited effect in some cases

Any failure to comply with:

- 6.1.** the Rules; or
- 6.2.** a clause of this constitution corresponding with a provision of the Rules, does not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Rules or those clauses of this constitution is not entitled to enforce that transaction or contract. This clause does not affect the rights of any holder of securities of the Company against the Company or the Directors arising from failure to comply with the Rules or those clauses of this constitution.

7. Shareholders may alter or revoke this constitution

The shareholders may alter or revoke this constitution by special resolution.

Part B:

Shares and shareholders

Shares

8. New Shares

Subject to **clauses 20 to 30**, further Shares in the Company (including different classes of Shares) may be issued which:

- 8.1.** rank equally with, or in priority to, existing Shares in the Company; or
- 8.2.** have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
- 8.3.** confer preferential rights to distributions of capital or income; or
- 8.4.** confer special, limited or conditional voting rights; or
- 8.5.** do not confer voting rights; or
- 8.6.** are redeemable in accordance with section 68 of the Act; or
- 8.7.** are convertible; or
- 8.8.** have any one or more of the rights or limitations set out in **clauses 8.1 to 8.7**.

Sections 45(1) and 45(2) of the Act shall not apply to the issue of Shares by the Company.

9. Share confers rights on shareholder

- 9.1.** Subject to the terms on which a Share is issued, a Share confers on the holder:
 - (a) subject to **clause 10**, the right to one vote (subject to **clause 9.2**), on a poll at a meeting of shareholders on any resolution, including any resolution to:
 - (i) appoint or remove a Director or an auditor in accordance with this constitution; or
 - (ii) adopt a constitution; or
 - (iii) alter this constitution; or
 - (iv) approve a major transaction; or
 - (v) approve an amalgamation under section 221 of the Act; or

(vi) put the Company into liquidation;

(b) the right to an equal share in dividends authorised by the Board; and

(c) the right to an equal share in the distribution of the Company's surplus assets.

- 9.2.** Each security which is not fully paid shall carry only a proportion of the vote which would be exercisable if the security were fully paid, equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (disregarding any amounts credited and any payment in advance of a call).
- 9.3.** Equity security holders of all classes shall be entitled to attend meetings of shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of securities carrying votes.

10. Voting restrictions under Rules

Notwithstanding anything to the contrary in the Rules or any other provision of this constitution (with the exception of **clause 5**), a person, or any Associated Person of that person, who is prohibited by Rule 9.3.1 of the Rules from casting a vote in favour of an applicable resolution must not cast such a vote on any securities held by that person. For the purposes of this clause:

- 10.1.** on a resolution under **clause 21**, a person to whom it is proposed to issue the new securities referred to in that resolution is not disqualified from voting if the new securities are to be offered on the same basis to all holders of securities of the same class as the securities held by that person; and
- 10.2.** this clause does not prevent a person disqualified from voting under this clause, who has been appointed as a proxy or voting representative by another person who is not disqualified from voting under this clause, from voting in respect of the securities held by that other person in accordance with the express instructions of that other person.

11. Board to ascertain disqualified holders

The Board must use reasonable endeavours to ascertain, no later than five business days before any meeting to consider a resolution on which the Rules prohibit certain persons from voting, the identity of holders of securities who are disqualified from voting on that resolution, and on request must supply a list of such holders to NZX and any holder of equity securities of the Company.

12. Deadline for challenge

A resolution of, or proceeding at, a meeting in breach of clause 10 must not be impugned on the basis of a breach of **clause 10**. However this does not prejudice any remedy (other than those which take legal effect against the Company) which any holder of securities may have against any disqualified person who casts a vote at a meeting in breach of **clause 10**. Any objection by a holder of securities to the accuracy or completeness of any list provided pursuant to **clause 11** must be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full business day before the time fixed for commencement of the meeting.

13. Statement of rights to be given to holders of securities

Where the Act or the Rules requires, the Company must issue a statement of rights complying with the Act and the Rules (if applicable) to any holder of securities who asks for one.

14. Company must obtain approval before altering quoted equity security holders' rights

The Company must not take any action that affects the rights attached to Shares or to quoted equity securities (other than Shares) unless that action has been approved by a special resolution of each interest group. For the purposes of this clause:

- 14.1.** class means a class of equity securities having attached to them identical rights, privileges, limitations and conditions;
- 14.2.** interest group, in relation to any action or proposal affecting rights attached to equity securities, means a group of holders of equity securities:
 - (a) whose affected rights are identical;
 - (b) whose rights are affected by the action or proposal in the same way; and
 - (c) subject to clause 14.3, who comprise the holders of one or more classes of equity securities in the Company;
- 14.3.** one or more interest groups may exist in relation to any action or proposal and if:
 - (a) action is taken in relation to some holders of equity securities in a class and not others; or

- (b) a proposal expressly distinguishes between some holders of equity securities in a class and other holders of equity securities of that class, then holders of equity securities in the same class may fall into two or more interest groups;

- 14.4.** the rights attached to an equity security include:
 - (a) the rights, privileges, limitations and conditions attached to the equity security by the Act, this constitution, or the document which governs the rights of that equity security, including voting rights and rights to distributions;
 - (b) the right to have the procedure set out in this clause observed by the Company;
 - (c) the right that a procedure required by this constitution or the document which governs the rights of that equity security for the amendment or alteration of rights not be amended or altered.

The Company shall not be required to comply with this clause in respect of actions that affect the rights attached to equity securities which are not Shares if those equity securities were issued on terms which expressly permitted the action in question to be taken without the prior approval of holders of those equity securities, and those terms were clearly disclosed in the offering document (if any) pursuant to which those equity securities were offered.

15. Further issues of equity securities do not affect rights of existing holders

Subject to this constitution, the Board may issue equity securities that rank as to voting or distribution rights, or both, equally with or in priority to any existing equity securities in the Company. Any such issue will not be treated as an action affecting the rights attached to the existing equity securities unless the terms of issue of those equity securities expressly provide otherwise.

16. Actions taken not invalid

The taking of an action by the Company affecting the rights attached to equity securities is not invalid by reason only that the action was not approved in accordance with **clause 14**.

17. Cancellation of unpaid amounts subject to security holder approval

No obligation to pay any amount which is unpaid on any equity security shall be cancelled, reduced or deferred without the authority of an ordinary resolution.

18. Consolidation and subdivision

The Board may, subject to **clauses 20** to **30**:

- 18.1.** consolidate and divide Shares or any class of Shares in proportion to those Shares or the Shares in that class; or

18.2. subdivide Shares or any class of Shares in proportion to those Shares or the Shares in that class.

19. Bonus issues

Subject to **clauses 20 to 30**, the Board may resolve to apply any amount which is available for distribution to shareholders either:

- 19.1.** in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
- (a) the shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (b) 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
- 19.2.** in paying up any amount which is unpaid on any Shares held by the shareholders referred to in **clause 19.1(a)**, or partly in one way and partly in the other.

Issue of equity securities

20. Board to issue equity securities

The Board may issue equity securities in accordance with **clause 21** and with **clauses 23 to 27**.

21. Issues of new equity securities are restricted

The Board must not issue any equity securities (including issue on conversion of any other security) unless:

- 21.1.** the precise terms and conditions of the specific proposal to issue those equity securities have been approved (subject to clause 22) by separate resolutions (passed by a simple majority of votes) of holders of each class of quoted equity securities of the Company whose rights or entitlements could be affected by that issue, and that issue is completed in the case of an issue made solely to employees, within 36 months, and in all other circumstances, within 12 months, after the passing of those resolutions; or
- 21.2.** the issue is made in accordance with any of **clauses 23 to 27**.

22. Resolution not required if terms allow new issue

A resolution pursuant to clause 21.1 of the holders of a class of securities is not required if:

- 22.1.** the terms of issue of those securities expressly reserved the right to make the issue of new equity securities in question, and specified at least the maximum number, and class, of new equity securities which could be issued, and the time within which they could be issued; or
- 22.2.** those securities were issued on terms that the holders of those securities would vote together with the holders of another class or classes of equity securities on a resolution of the nature referred to in clause 21.1 and the issue is approved by a resolution (passed by a simple majority of votes) of holders of all the relevant classes voting together.

23. Pro rata and \$15,000 offers

The Board may issue equity securities if:

- 23.1.** those equity securities are offered to holders of existing equity securities of the Company on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of equity securities) to votes and to distribution rights, and that offer is renounceable; or
- 23.2.** those equity securities are issued to holders of existing equity securities of the Company as fully paid securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of equity securities) to votes and to distribution rights; or
- 23.3.** those equity securities are offered to all holders of existing equity securities of the Company carrying votes for consideration not exceeding \$15,000 per existing equity security holder (being the registered holder or, in the case of securities held through a custodian, the beneficial owners of the securities) and the number of equity securities to be issued is not greater than 30 percent of the number of fully paid equity securities carrying votes that are already on issue.

Notwithstanding **clauses 23.1, 23.2** and **23.3**, the Board is entitled:

- 23.4.** to issue any equity securities in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such equity securities are not materially more favourable to the persons to whom they are issued than the terms of the original offer and the issue is completed within three months after the close of the original offer; and

- 23.5.** to offer and issue equity securities to the holders of existing securities in accordance with specific rights attached to those existing securities to participate in issues of equity securities, notwithstanding that the effect may be that existing proportionate rights to votes and distribution rights are not maintained; and
- 23.6.** to authorise a disproportionate offer to the extent necessary to round up holdings of equity securities to a minimum holding, or to avoid the creation of holdings which are less than minimum holdings; and
- 23.7.** to not offer or issue equity securities to holders of existing equity securities the terms of which expressly exclude the right to participate in the relevant offer or issue; and
- 23.8.** to not offer or issue equity securities to holders of existing securities in a jurisdiction outside New Zealand if the legal requirements of that jurisdiction are such that it is unduly onerous for the Company to make the offer in that jurisdiction provided that in the case of renounceable rights, the Company shall arrange the sale of any renounceable rights to the relevant equity securities and to account to holders in that jurisdiction for the proceeds.

In this clause, distribution right means a right of the nature referred to in paragraph (a) or paragraph (b) of the definition in the Rules of 'Equity Security'.

24. Board may issue new equity securities within 20 percent limit

The Board may issue equity securities if:

- 24.1.** the total number of equity securities issued, and all other equity securities of the same class issued pursuant to this clause during the period of 12 months preceding the date of the issue, will not exceed the aggregate of:
 - (a) 20 percent of the total number of equity securities of that class on issue at the commencement of that period; and
 - (b) 20 percent of the number of the equity securities of that class issued during that period pursuant to clauses **21.1**, **23**, **25** and **27**; and
 - (c) any equity securities of that class issued pursuant to this **clause 24** during that period, the issue of which has been ratified by an ordinary resolution; less
 - (d) 20 percent of the number of equity securities of that class which have been acquired or redeemed by the Company during that period (other than equity securities held as treasury stock); and
- 24.2.** Directors, Associated Persons of a Director or employees may participate in an offer under this **clause 24** if:
 - (a) all Directors voting in favour of the resolution to issue the equity securities sign a certificate that the participation of the Directors and/or Associated Persons of a Director or employee, as the case may be, in the issue is in the best interests of the Company and fair to holders of equity securities who are not receiving, or associated with those parties receiving equity securities under the issue; and
 - (b) the terms of the issue to all persons in an offer under this **clause 24** are the same; and
 - (c) the level of participation of any Director, Associated Person of a Director or an employee is determined according to criteria applying to all persons participating in the offer, provided that for the purposes of this **clause 24**:
- 24.3.** securities which will, or may, convert to other equity securities are deemed to be of the same class as, and to correspond in number to, the equity securities into which they will, or may, convert; and
- 24.4.** where the conversion ratio is fixed by reference to the market price of the underlying equity securities, the market price, unless otherwise specified in the terms of the issue, shall be the volume weighted average market price over the 20 business days before the earlier of the day the issue is made or announced to the market.

25. Board may issue new equity securities to employees

The Board may issue equity securities if:

- 25.1.** the issue is made to employees of the Company; and
- 25.2.** the issue is of a class of securities already on issue; and
- 25.3.** the total number of securities issued, and all other equity securities of the same class issued to employees of the Company pursuant to this **clause 25** during the period of 12 months preceding the date of the issue, does not exceed three percent of the aggregate of:
 - (a) the total number of equity securities of that class on issue at the commencement of that period; and
 - (b) the total number of equity securities of that class issued during that period pursuant to **clauses 21.1**, **23**, **24** and **27**,

provided that for the purposes of this **clause 25**:

- 25.4.** securities which will, or may, convert to other equity securities are deemed to be of the same class as, and to correspond in number to, the equity securities into which they will, or may, convert; and

- 25.5.** where the conversion ratio is fixed by reference to the market price of the underlying equity securities, the market price, unless otherwise specified in the terms of the issue, shall be the volume weighted average market price over the 20 business days before the earlier of the day the issue is made or announced to the market; and
- 25.6.** employee in relation to the Company includes an employee or officer of the Company or any of its subsidiaries, a labour only contractor, consultant, or consultant company who or which contracts with the Company or with any of its subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of any pension, superannuation or like fund established for the benefit of any of the above employees or officers; and
- 25.7.** an issue to a Director, or an Associated Person of a Director, solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, is deemed not to be an issue to a Director or Associated Person of a Director, or an issue in which Directors or Associated Persons participate.

25A. Board may issue new equity securities to Directors

The Board may issue equity securities to a Director if:

- 25A.1.** the issue is made in accordance with a resolution passed under clause 98; and
- 25A.2.** the issue is a class of equity securities already on issue; and
- 25A.3.** the issue of equity securities is made after the end of the period (or half period) to which the remuneration relates; and
- 25A.4.** the issue price of the equity securities is equal to the volume weighted average price of the equity securities of that class over the 20 Business Days before the issue occurs.

26. Repricing

Except as provided in Rules 8.1.7 and 8.1.9 of the Rules, the Company may not reprice or amend the terms of any securities issued with the approval of an ordinary resolution to or for the benefit of employees (as defined in **clause 25.8**) or Directors, in their capacity as such, without either the approval of NZX or a further ordinary resolution approving the repricing or amendment.

27. Board may issue new equity securities in other cases

The Board may issue equity securities if:

- 27.1.** the issue is made as consideration in an offer made by the Company in accordance with:
- (a) any takeovers code approved under the Takeovers Act 1993; or
 - (b) the provisions of the constitution or trust deed of another issuer which comply with section 4 of the Rules where that other issuer is not a code company; or
 - (c) any takeover law regime of a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of NZX is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in (a) or (b) above; and that offer is made to all holders (other than the Company and its related companies) of equity securities in any company or other entity listed on NZSX or on a recognised stock exchange, which is not a company or other entity that is an Associated Person of the Company or of any Director; or
- 27.2.** the issue is made upon conversion of:
- (a) an equity security; or
 - (b) any other security, which on issue was approved in the manner set out in **clause 21.1**, as if **clause 21.1** applied to that security, from time to time issued by the Company if the terms of issue of those securities provided for conversion to the kind of equity security issued; or
- 27.3.** the issue is made to an existing holder of equity securities of the Company in order to bring that holder's holding up to a minimum holding; or
- 27.4.** the issue is made pursuant to an amalgamation proposal effected pursuant to Part XIII of the Act, or an arrangement, amalgamation or compromise effected pursuant to Part XV of the Act; or
- 27.5.** the issue is made pursuant to a plan for the issue of securities in lieu of dividends or as part of a dividend reinvestment plan that entitles an existing security holder to subscribe for securities by applying all or any specified part of any dividend declared by the Company and payable to that holder, and which issue or dividend reinvestment plan would, except to the extent that the plan excludes existing holders in a jurisdiction outside New Zealand if the legal requirements of that jurisdiction are such that it is unduly onerous for the Company to extend the plan to that jurisdiction, maintain the existing proportionate voting and distribution rights of each existing holder relative to other holders of equity securities, if the offer were accepted by all such holders.

28. Sale of treasury stock treated as issue of securities

For the purposes of **clause 21** and **clauses 23 to 27**, the transfer by the Company of treasury stock is deemed to constitute the issue of equity securities.

29. Entitlements to third party securities treated as issue of securities

Entitlements conferred by the holding of equity securities of the Company, to securities of a third party (whether or not that third party is an issuer), must not be created or conferred other than in compliance with **clauses 21 to 27**, as if such securities comprised an issue of equity securities of the Company.

30. Ordinary resolution required for issue affecting control

Notwithstanding the provisions of **clauses 21 to 27**, the Company must not issue securities if:

- 30.1.** there is a significant likelihood that the issue will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and
- 30.2.** that person or group of Associated Persons is entitled before the issue to exercise, or direct the exercise of, not less than one percent of the total votes attaching to securities of the Company,

unless the precise terms and conditions of the issue have been approved by an ordinary resolution.

Share register

31. Company to maintain registers of equity securities

The Company must maintain a share register in the manner required by the Act and the Securities Act 1978. The Company must maintain a register for any other equity securities issued by the Company in the manner required by the Securities Act 1978.

32. Share register may be divided

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

33. Status of registered shareholder

The Company may treat the registered shareholder as the only person entitled to:

- 33.1.** exercise any right to vote attaching to the Share; and
- 33.2.** receive notices; and
- 33.3.** receive any distribution in respect of the Share; and
- 33.4.** exercise any other rights and powers attaching to the Share.

This clause does not limit the right of the registered shareholder to appoint a proxy or corporate representative.

34. Registration of separate parcels

A holder of securities of the Company or a transferee may request the Company to register the securities held by that person in two or more separately identifiable parcels. Where the Company agrees to such a request, the Company may, so far as it considers convenient, communicate with the holder of the securities, pay dividends and otherwise act in respect of such parcel, as if the separately identifiable parcels belonged to different persons.

35. Trusts not to be entered on registers

The Company must not enter any notice of a trust on the share register, or any other register of equity securities, whether that trust is express, implied or constructive.

Transfer of shares

36. Right to transfer

Subject to any restrictions contained in this constitution, Shares may be transferred:

- 36.1.** under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company;
- 36.2.** under any other share transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which Shares are listed and which is applicable to the Company; or by an instrument of transfer which complies with this constitution.

37. Method of transfer

A Share which is disposed of in a transaction which complies with the requirements of a system of transfer referred to in **clauses 36.1** or **36.2** may be transferred in accordance with the requirements of that system. Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the Company's share register.

38. Other forms of transfer

An instrument of transfer of shares to which the provisions of **clause 37** are not applicable shall comply with the following provisions:

- 38.1.** the form of the instrument of transfer shall be any usual or common form or any other form which the Board or the Company's share registrar may approve;
- 38.2.** the instrument of transfer must be signed or executed by or on behalf of the transferor; and
- 38.3.** 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.

39. Registration

- 39.1.** Every instrument of transfer shall be delivered to the Company's share registrar, together with such evidence as the Board or the Company's share registrar may reasonably require to show the right of the transferor to make the transfer. The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the share register.
- 39.2.** The Board may decline to register any transfer of Shares where:
 - (a) the Company has a lien on any of the Shares; or
 - (b) the transfer is not accompanied by such evidence as the Board or the Company's share registrar may reasonably require to show the right of the transferor to make the transfer; or
 - (c) registration, together with the registration of any further transfer then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than a minimum holding,

provided that the Board resolves to exercise its powers under this **clause 39.2** 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.

40. Participation in share transfer systems

The Company may participate in any share transfer system approved under the Securities Transfer Act 1991 and implemented by NZX or in any share transfer system which operates in relation to trading in securities on any other stock exchange on which the Company's Shares are traded and, in so participating, it shall comply with the requirements of NZSX or of the relevant share transfer system. The Board may register any transfer of securities presented for registration in accordance with the requirements of any such system and will not be obliged to enquire as to the due execution of any transfer effected by reason of such system.

41. Transfer of securities other than Shares

Clauses 36 to **40** shall apply to transfers of securities of the Company other than Shares with any necessary modifications.

Minimum holdings

42. Compulsory sale of minimum holdings

The Company may sell securities of less than a minimum holding in accordance with the procedures set out in the First Schedule.

Calls, forfeiture and lien

43. Board may make calls on Shares

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

44. Forfeiture of Shares where calls or other amounts unpaid

The Board may exercise the rights set out in the Second Schedule for forfeiture of any Shares if the holder of those Shares fails to pay:

- 44.1.** a call, or an instalment of a call, on those Shares; or
- 44.2.** any amount that is payable under this constitution or the terms of issue of those Shares or any contract for the issue of the Shares.

45. Company's lien

The Company has a lien on Shares, proceeds of sale of Shares, and dividends in respect of such Shares on the terms set out in the Second Schedule.

Acquisition of own shares, redemptions and financial assistance

46. Company may acquire and hold its own equity securities

Subject to this constitution, the Company may purchase or otherwise acquire equity securities issued by the Company and may hold those equity securities as treasury stock in accordance with the Act, this constitution, and the Rules.

47. Company may acquire equity securities on a non-proportional basis

Subject to this constitution, the Board may make an offer to one or more holders of equity securities to acquire equity securities issued by the Company in such number or proportions as it thinks fit, in accordance with the Act, this constitution, and the Rules.

48. Acquisitions and redemptions of own equity securities are restricted

The Company must not acquire or redeem equity securities of the Company other than by way of:

- 48.1.** an acquisition effected by offers made by the Company through NZX's order matching market, or through the order matching market of a recognised stock exchange; or
- 48.2.** an acquisition effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Act; or
- 48.3.** an acquisition of the nature referred to in section 61(7) of the Act; or
- 48.4.** an acquisition or redemption approved in accordance with clause 54; or
- 48.5.** an acquisition required by a shareholder of the Company pursuant to sections 110 or 118 of the Act; or
- 48.6.** an acquisition effected in compliance with section 60(1)(b)(ii) (read together with section 61) of the Act and:
 - (a) is made only from any person who is not a Director (or an Associated Person of a Director) of the Company; and

(b) the total number of equity securities of the same class acquired together with all other equity securities of the same class as those equity securities that are to be acquired, pursuant to this clause 48.6 during the period of 12 months preceding the date of the acquisition, will not exceed 15 percent of the total number of equity securities of that class on issue at the commencement of that period; or

- 48.7.** a redemption from a holder who holds less than a minimum holding; or
- 48.8.** a redemption of equity securities issued in compliance with **clauses 21.1** or **23**, where the Company is bound or entitled to redeem those equity securities pursuant to their terms of issue; or
- 48.9.** a redemption in compliance with section 69(1)(a) of the Act; or
- 48.10.** a redemption of equity securities that are debt securities which may be converted into Shares, and, before that conversion they are redeemed in cash, provided that for the purposes of **clause 48.6**:
- 48.11.** securities which will, or may, convert to other equity securities shall be deemed to be of the same class as, and to correspond in number to, securities into which they will, or may, convert; and
- 48.12.** where the conversion ratio is fixed by reference to the market price of the underlying securities, the market price for the purposes of **clause 48.6** shall be the volume weighted average market price over the 20 business days before the earlier of the day the acquisition is entered into or announced to the market.

49. Company must give prior notice

Before the Company acquires equity securities of the Company, other than an acquisition from a holder who holds less than a minimum holding, the Company must give at least three business days' notice to NZX. The notice must:

- 49.1.** specify a period of time not exceeding 12 months from the date of the notice within which the Company will acquire equity securities; and
- 49.2.** specify the class and maximum number of equity securities to be acquired in that period.

The Company may at any time by three business days' notice to NZX vary any notice so given and may cancel such notice at any time.

50. Company may redeem equity securities

Subject to clause 48, the Company may:

- 50.1.** 50.1 redeem equity securities:
- (a) at the option of the Company if permitted by their terms of issue; or
 - (b) at the option of the holder of the equity securities if permitted by their terms of issue; or
 - (c) on a date for redemption specified as such in the terms of issue of such equity securities, for a consideration that is specified, calculated by reference to a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company, in accordance with the Act, this constitution, and the Rules; and
- 50.2.** exercise an option to redeem equity securities issued by the Company in relation to one or more holders of equity securities, in accordance with the Act, this constitution, and the Rules.

51. Financial assistance is restricted

The Company must not give financial assistance for the purpose of, or in connection with, the acquisition of any Shares or other equity securities issued or to be issued by the Company unless the giving of that assistance:

- 51.1.** complies with **clause 52**; or
- 51.2.** is approved in accordance with **clause 53**.

52. Ability to give financial assistance is restricted

The Company may give financial assistance of the nature referred to in clause 51 if:

- 52.1.** the financial assistance is not given in whole or in part to any Director, Associated Person of a Director or employee (as defined in clause 25.8) of the Company, and the amount of the financial assistance, together with the amount of all other financial assistance given under this clause 52.1 by the Company during the period of 12 months preceding the date of giving of the financial assistance, does not exceed ten percent of the Average Market Capitalisation; or
- 52.2.** the financial assistance is given to employees (as defined in clause 25.8) of the Company and:
 - (a) the amount of the financial assistance, together with the amount of all other financial assistance given under this clause 52.2 by the Company during the period of 12 months preceding the date of giving of the financial assistance, does not exceed five percent of the Average Market Capitalisation; and
 - (b) the amount of the financial assistance, together with the amount of all other financial assistance given under clause 52.2(a) during the period of five

years preceding the date of giving of the financial assistance, does not exceed ten percent of the Average Market Capitalisation; and

- (c) the financial assistance is not given to any Director or Associated Person of a Director; or

- 52.3.** the financial assistance is offered or given so that all holders of equity securities of the Company are treated, or given the opportunity to be treated, on the same basis.

For the purposes of clause 52.2(c) financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, is deemed not to be financial assistance given to a Director or Associated Person of a Director.

53. Approval of certain acquisitions, redemptions, or financial assistance

The Company may acquire or redeem equity securities under clause 48.4, or give financial assistance of the nature

referred to in clause 51.2, if the precise terms and conditions of the specific proposal to acquire or redeem those equity

securities, or the giving of that financial assistance, have been approved by a separate resolution (passed by a simple

majority of votes) of members of each separate group of each class of quoted equity securities of the Company whose rights or entitlements are materially affected in a similar way by the proposal.

54. Time limit

A proposal authorised by resolutions passed pursuant to clause 53 shall be completed:

- 54.1.** if that proposal is transacted solely with employees (as defined in clause 25.8) within 36 months after the passing of those resolutions; or
- 54.2.** in all other circumstances, within twelve months after the passing of those resolutions.

55. Ordinary resolutions required for acquisitions or redemptions affecting control

Notwithstanding the provisions of clauses 46 to 54, the Company must not acquire or redeem securities if:

- 55.1.** there is a significant likelihood that the acquisition, or redemption will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and

55.2. that person or group of Associated Persons is entitled before the acquisition, or redemption to exercise, or direct the exercise of, not less than one percent of the total votes attaching to securities of the Company, unless the precise terms and conditions of the acquisition or redemption have been approved by an ordinary resolution.

56. Acquisition of Equity Securities other than shares

Equity securities which are not shares of the Company may be acquired or redeemed under clauses 48.2, 48.3, 48.6 and 48.9 if the Company complies with the sections of the Act referred to in the relevant clause, on the basis that references in those sections of the Act to:

- 56.1.** 'shares' shall be deemed to be references to all equity securities of the class of equity securities which is the subject of the acquisition or redemption and references to 'shareholders' shall be read accordingly; and
- 56.2.** 'constitution' shall be deemed to be references to the document which governs the rights of those equity securities.

Distributions

57. Board may authorise distributions

The Board may authorise a distribution by the Company in accordance with the Act.

58. Person to whom distribution payable

A distribution shall be payable to the person who is, on the record date, the registered holder of the Share in respect of which the distribution is made.

59. Board's power to authorise dividend is restricted

The Board must not authorise a dividend:

- 59.1.** in respect of some but not all the Shares in a class; or
- 59.2.** 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 or under a contract for the issue of the Share. Nothing in this clause prevents the Board issuing Shares wholly or partly in lieu of a dividend in accordance with the Act.

60. Shareholder may waive dividend

Notwithstanding clause 59, a shareholder may waive his, her or its entitlement to receive a dividend by giving a written notice to the Company signed by or on behalf of the shareholder.

61. Board deductions from distribution amounts owed to Company or as required by law

The Board may, at its discretion, deduct from any dividend or other distribution payable to a shareholder any amount owed by the shareholder to the Company in respect of which the Company has a lien over the specific Shares on which the dividend or other distribution is payable. The Board must deduct from any dividend or other distribution payable to any shareholder any amount it is required by law to deduct, including withholding and other taxes.

62. Distributions do not bear interest

No dividend or other distribution shall bear interest against the Company unless the applicable terms of issue of an equity security expressly provide otherwise.

63. Unclaimed distributions

All dividends and other distributions unclaimed for one year after the due date for payment may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, shall pay the distribution to the person producing evidence of entitlement.

Meetings of shareholders

64. Company must hold annual meeting of shareholders

- 64.1.** The Board must call an annual meeting of shareholders to be held:
- (a) not later than 15 months after the date of the previous annual meeting of shareholders; and
 - (b) not later than six months (or such longer period as may be permitted by the Act) after the balance date of the Company.
- 64.2.** The Company must hold the meeting on the date on which it is called by the Board to be held.

65. Company may hold special meetings of shareholders

A special meeting of shareholders entitled to vote on an issue:

- 65.1.** may be called at any time by the Board; and
- 65.2.** must be called by the Board on the written request of shareholders holding Shares carrying together not less than five percent of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

66. Proceedings at meetings of shareholders and interest groups

The Third Schedule governs the proceedings at meetings of shareholders. The Third Schedule also governs the proceedings of meetings of any interest group required to be held by the Act, the Rules, or this constitution, with all necessary consequential modifications, except that the quorum shall be the members of the interest group holding five percent or more of the total number of securities held by all members of that group having the right to vote at the meeting.

Part C: Directors

Appointment and removal

67. Number and residence of Directors is restricted

The minimum number of Directors (other than alternate Directors) is three. The maximum number of Directors is eight.

At least two Directors must be ordinarily resident in New Zealand. Security holders may change the minimum (to not less than three) and/or the maximum number of Directors by ordinary resolution.

68. Independent Directors

68.1. The minimum number of Independent Directors of the Company shall be two or, if there are eight or more Directors, three or one-third (rounded down to the nearest whole number of Directors) of the total number of Directors, whichever is the greater.

68.2. The Board must identify which Directors it has determined, in its view, to be Independent Directors.

68.3. The Board must make a determination under clause 68.2:

- (a) no later than ten business days following the annual meeting of the Company and immediately after making such determination, the Company must release to the market the names of those Directors determined by the Board to be Independent Directors; and
- (b) no later than ten business days following appointment by the Board in respect of any Director appointed by the Board and immediately after making such determination, the Company must release to the market whether the Board has determined that such a Director is an Independent Director; and
- (c) prior to publication of its annual report to enable it to comply with Rule 10.5.3(j) of the Rules.

68.4. It is the responsibility of the Company to make the necessary arrangements to require its Directors to provide sufficient information to the Board to make a determination under clause 68.2.

69. Fewer than minimum number of Directors may act for limited purposes

The Board may act notwithstanding any vacancy in their body, but, if and for so long as the number of Directors is reduced below the minimum number, the continuing Directors may act for the purpose of increasing the number of Directors to the minimum number (by the Board making an appointment to fill the vacancy, in accordance with this constitution), or of summoning a meeting of security holders, but for no other purpose.

70.70 Appointment of Directors

70.1. Any natural person who is not disqualified under the Act may be appointed as a Director by an ordinary resolution of security holders.

70.2. The Board may appoint any person who is not disqualified under the Act to be a Director to fill a casual vacancy or as an addition to the existing Directors, but subject to the maximum number of Directors under **clause 67**. Any Director appointed under this clause (including any person who subsequent to his or her appointment as a Director becomes the Managing Director) may hold office only until the next annual meeting, and is then eligible for election at that meeting, but must not be taken into account in determining the Directors who are to retire by rotation at that meeting.

70.3. The persons holding offices as directors of the Company on the date of the adoption of this constitution continue in office and are deemed to have been appointed as Directors pursuant to this constitution. Similarly the chairperson of the Board continues in office and is deemed to have been appointed as chairperson pursuant to this constitution.

71.71 Nominations to follow procedures

Nominations for Directors must comply with the following procedures:

71.1. A person (other than a Director retiring at the meeting) must not be elected as a Director at an annual meeting of security holders of the Company unless that person has been nominated by a security holder entitled to attend and vote at the meeting;

- 71.2.** Apart from the restrictions in the Act, there is no restriction on the persons who may be nominated as Directors, nor is there any precondition to the nomination of a Director other than compliance with the time limits in accordance with this **clause 71**;
- 71.3.** The closing date for nominations of Directors must not be more than two months before the date of the annual meeting at which the election is to take place. The Company must make an announcement to the market of the closing date for Director nominations and contact details for making nominations no less than ten business days prior to the closing date for Director nominations;
- 71.4.** Notice of every nomination received by the Company before the closing date for nominations must be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting and the Company must specify in such notice the Board's view on whether or not the nominee would qualify as an Independent Director; and
- 71.5.** Failure to give a notice of every nomination received by the Company does not invalidate a nomination, but the meeting, as far as the election of Directors is concerned, must be adjourned until such notice is given. Any accidental omission to give such a notice to any person entitled to that notice, or if any person entitled to such notice fails to receive that notice, shall not invalidate the election of a Director at that meeting.

72. Appointment of Directors to be voted on individually

A resolution to appoint or elect a Director (including a resolution to re-elect any Director retiring under clause 70.2) must not be put to holders of securities unless:

- 72.1.** the resolution is for the appointment of one Director; or
- 72.2.** 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 approved without a vote being cast against it.

Nothing in this clause prevents the election of two or more Directors by ballot or poll.

73. Removal of Directors

- 73.1.** Any Director may be removed from office by an ordinary resolution passed at a meeting called for the purpose of, or for purposes that include, removal of the Director.

74. Rotation of Directors

- 74.1.** At the annual meeting in each year 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, but shall be eligible for re-election at that meeting. The following Directors are exempt from this particular obligation to retire:

- (a) Directors appointed by the Board pursuant to **clause 70.2** (who are subject to retirement and seek election at the next annual meeting); and
- (b) one executive Director (provided that this executive Director will be the Managing Director, if a Managing Director holds office in accordance with clause 105).

The Director referred to in paragraph (b) shall be included in the number of Directors upon which the calculation for the purposes of this clause 74.1 is based. The Directors referred to in paragraph (a) shall be excluded from that number.

- 74.2.** The Directors to retire at an annual meeting will be those Directors who have been longest in office since their last election or deemed election. Persons who became Directors on the same day must retire in the order determined by lot, unless the Board resolves otherwise.

- 74.3.** A retiring Director continues to hold office:

- (a) until he or she is re-elected; or
- (b) if he or she is not re-elected, until the meeting of security holders at which he or she retires (or any adjournment of that meeting) elects someone in his or her place; or
- (c) if the meeting of security holders does not elect someone in his or her place, until the end of the meeting or any adjournment of the meeting.

- 74.4.** The security holders may by ordinary resolution fill the office vacated by a Director who is retiring in accordance with this clause 74 by electing a person who is not disqualified under the Act to that office at the annual meeting at which the outgoing Director retires. If no new Director is elected and if the retiring Director (not being disqualified under the Act) is offering himself or herself for re-election, the retiring Director shall be deemed to be re-elected unless it is expressly resolved by ordinary resolution not to fill the vacated office or a resolution for the re-election of that Director is put to the meeting and lost.

75. No shareholding qualification for Directors

There is no shareholding qualification for Directors.

Chairperson

76.76 Election of chairperson of the Board and term of office

- 76.1.** 76.1 The Directors may elect one of their number (other than any Managing Director) as chairperson, and if they so determine a deputy chairperson, of the Board. The Managing Director shall not vote on the election of any chairperson or deputy chairperson.
- 76.2.** 76.2 The chairperson of the Board and, if one has been elected, the deputy chairperson of the Board holds that office until he or she vacates that office or the Directors elect a chairperson or deputy chairperson (as the case may be) in his or her place.

Vacation of office

77.77 Office of Director vacated in certain cases

The office of Director is vacated if the person holding that office:

- 77.1.** dies; or
- 77.2.** becomes disqualified from being a director pursuant to the Act; or
- 77.3.** retires from office under clause 74 and is not re-elected or deemed to have been re-elected under that clause; or
- 77.4.** resigns that office in accordance with this constitution; or
- 77.5.** is removed from office in accordance with this constitution.

78. Directors' resignation procedure

A Director may resign office:

- 78.1.** by signing a written notice of resignation and delivering it to the address for service of the Company, the notice being effective when it is received at that address or at any later time specified in the notice; or
- 78.2.** in any other manner permitted by the Act.

Management of the Company

79. Board to manage Company

The Company's business and affairs must be managed by, or under the direction or supervision of, the Board except to the extent that the Act or this constitution provides otherwise.

80. Board has powers necessary to manage Company

The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs, except to the extent that the Act or this constitution provides otherwise.

81. Special resolutions required for major transactions

The Company must not enter into a major transaction unless the transaction is:

- 81.1.** approved by a special resolution of shareholders; or
- 81.2.** contingent on approval by a special resolution of shareholders.

82. Ordinary resolutions required for certain asset acquisitions or dispositions

The Company must not (subject to **clause 83**) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Company or assets to be held by the Company:

- 82.1.** which would change the essential nature of the business of the Company; or
- 82.2.** in respect of which the gross value is in excess of 50 percent of the Average Market Capitalisation of the Company, except with the prior approval of an ordinary resolution or a special resolution, if the Company must obtain approval of the transaction or transactions by special resolution under section 129 of the Act. The notice of meeting containing the resolution to approve any such intended transaction must contain or be accompanied by such information, reports, valuations, and other material as are necessary to enable the holders of securities to appraise the implications of the transactions.

83. Exceptions for certain acquisitions and dispositions

Clause 82 does not apply to:

- 83.1.** a takeover offer made by the Company:
- (a) in respect of a code company in accordance with any takeovers code approved under the Takeovers Act 1993; or
 - (b) in respect of an issuer that is not a code company but to whom section 4 of the Rules applies in accordance with the constitution or trust deed of that other issuer which complies with section 4 of the Rules where that other issuer is not a code company; or
 - (c) in relation to any other person, in accordance with any takeover law regime of a jurisdiction other than New Zealand which is applicable to that person and provides for prior notice, publicity and disclosure which in the opinion of NZX is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in **clauses 83.1(a)** or **83.1(b)**; and
- 83.2.** 83.2 any transaction entered into by the Company with a bank as principal, on arm's length terms and in the ordinary course of its banking business.

84. Ordinary resolutions necessary for Material Transactions with Related Parties

The Company must not (subject to **clause 85**) enter into a Material Transaction if a Related Party is, or is likely to become:

- 84.1.** a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- 84.2.** in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition in the Rules of a Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction; unless that Material Transaction is approved by an ordinary resolution of the Company.

85. Exceptions for certain Material Transactions

Clause 84 does not apply to:

- 85.1.** any transaction entered into by the Company with a bank which is a Related Party of the Company as principal, on arm's length terms and in the normal course of its banking business; or
- 85.2.** the issue, acquisition or redemption by the Company of securities of the Company, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of securities, or the payment of a distribution to holders of securities, if all holders of securities of the class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in

respect of each security held by that holder except to the extent that an issue excludes holders outside New Zealand in accordance with clause 23.8. For the purposes of this clause 85.2, a transfer, by the Company, of Shares held by itself, is deemed to constitute an issue of securities; or

- 85.3.** the issue of equity securities by the Company under **clauses 23.3** or **27.5**; or
- 85.4.** an employment contract or contract for personal services with the Company which is a Material Transaction under Rule 9.2.2(e) of the Rules, where:
- (a) the terms of the contract are set on an arm's length, commercial basis and have been approved by the Independent Directors of the Company; and
 - (b) the Independent Directors approving the contract sign and deliver to NZX a certificate stating Rule 9.2.4(c)(i) of the Rules has been complied with; and
 - (c) material particulars of the contract (including the Company's use of the exception contained in this **clause 85.4**) are disclosed in the next annual report of the Company; or
- 85.5.** any transaction indemnifying any Director or employee (as defined in **clause 25.8**) of the Company or a related company which would be a Material Transaction under Rule 9.2.2(d) of the Rules, where such Director or employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or employee under the proposed indemnity; or
- 85.6.** arrangements, amalgamations or compromises pursuant to Part XV of the Act; or
- 85.7.** a Material Transaction with a total value that (or, in the case of a Material Transaction referred to in Rule 9.2.2(e) of the Rules, the actual gross cost to the Company in any financial year that), does not exceed \$250,000; or
- 85.8.** a Material Transaction that is an employment agreement with a natural person who is not a director within the meaning of section 126 of the Act of the Company or any of its subsidiaries.

Proceedings of the Board

86. Meetings of the Board

The Fourth Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Act does not apply to proceedings of the Board.

87. Written resolutions of Board permitted

A written resolution signed or assented to by all of the Directors then entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

88. Written resolutions may be in counterparts

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

Delegation of powers

89. Restriction on Board's right to delegate its powers

Subject to the restrictions on delegation in the Act, the Board may delegate any one or more of its powers to a committee of Directors, a Director, an employee of the Company or any other person.

90. Board delegates to comply with regulations

In exercising the Board's delegated powers, any committee of Directors, Director, employee of the Company, or any other person must comply with any regulations that the Board may impose.

91. Audit Committee

Without limiting clause 89, the Board shall establish an audit committee comprised solely of Directors of the Company.

The minimum number of Directors on the audit committee shall be three. A majority of the Directors on the audit committee shall be Independent Directors. At least one member shall have an accounting or finance background.

The responsibilities of the audit committee shall include as a minimum:

- 91.1. ensuring that processes are in place and monitoring those processes so that the Board is properly and regularly informed and updated on corporate financial matters;
- 91.2. recommending the appointment and removal of the independent auditor;
- 91.3. meeting regularly to monitor and review the independent and internal auditing practices;
- 91.4. ensuring that the Company maintains accurate financial and accounting records;
- 91.5. having direct communication with and unrestricted access to the independent and any internal auditors or accountants;
- 91.6. reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations; and
- 91.7. ensuring that the external auditor or lead audit partner is changed at least every five years.

Except to the extent inconsistent with the matters specified above, the Board may from time to time impose such other regulations on the audit committee as it sees fit.

92. Committee proceedings

The provisions of this constitution relating to meetings and proceedings of the Board also apply to meetings and proceedings of any committee of Directors, except to the extent the Board determines otherwise.

Interested Directors

93. Directors must disclose their interests

As soon as a Director becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, then unless the Act provides otherwise, that Director must disclose that interest in accordance with the Act.

94. Failure to disclose does not affect validity of transaction

Any failure by a Director to comply with clause 93 does not affect the validity of a transaction entered into by the Company or the Director. However, the transaction may be avoided under **clause 95**.

95. Company may avoid transaction if Director interested

Where the Company enters into a transaction in which a Director is interested, the Company may avoid that transaction in accordance with the Act.

96. Interested Director must not vote

A Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company must not:

- 96.1. vote on a Board resolution on a matter relating to that transaction; or
- 96.2. be counted in the quorum for the purposes of consideration of that matter, except that a Director may vote in respect of, and be counted in the quorum for the Board for the purposes of, a matter relating to that transaction in which that Director is interested if the matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

A Director who is interested in a transaction may:

- (a) attend a meeting of Directors at which a matter relating to the transaction arises; or
- (b) sign a document relating to the transaction on behalf of the Company; or
- (c) do anything else as a Director in relation to the transaction as if he or she were not interested in the transaction.

Remuneration

97. Board's power to authorise remuneration is limited

No remuneration shall be paid to a Director in his or her capacity as a director of the Company or any subsidiary of the Company, other than a subsidiary which is listed on NZSX (including any remuneration paid to that Director by a subsidiary of the Company, other than a subsidiary which is also listed on NZSX) unless that remuneration has been authorised by an ordinary resolution in accordance with **clause 98**. This clause does not apply to the payment of remuneration or the provision of other benefits to an executive Director in his or her capacity as an executive, subject to **clause 84** (if applicable).

98. Fixing Directors' remuneration

Each ordinary resolution approving Directors' remuneration must express the remuneration as either:

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

Such a resolution may expressly provide that the remuneration may be payable either in part or in whole by way of issue of equity securities, provided that issue occurs in compliance with **clause 25A**.

If remuneration is expressed in accordance with **clause 98.1**, then in the event of an increase in the total number of

Directors holding office, the Directors may, without the authorisation of an ordinary resolution, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the Directors, other than any executive Director (and the chairperson). An ordinary resolution which increases the amount of remuneration fixed pursuant to a previous resolution must not be approved at a meeting of shareholders unless notice of the amount of increase has been given in the notice of meeting.

99. Expenses and special remuneration

99.1. A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director of the Company, without requiring the prior authorisation of shareholders.

99.2. Subject to any applicable restrictions in the Rules, the Board may authorise the payment of special remuneration to a Director for work not in his or her capacity as a director of the Company or a subsidiary of the Company, without requiring the prior authorisation of shareholders if the Board is satisfied that it is fair to the Company.

100. No payments upon cessation of office

The Company may not make a payment to a Director or former Director, or his or her dependants, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director.

Nothing in this clause affects any amount paid to an executive Director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any related normal subsidy) made by a Director to a superannuation scheme.

Alternate Directors

101. Directors may appoint and remove alternate Directors

Every Director may:

- 101.1.** appoint any person who is not a Director and is not disqualified by the Act or this constitution from being a Director, and whose appointment has been approved in writing by a majority of the other Directors, to act as an alternate Director in his or her place either for a specified period, or generally during the absence or inability to act from time to time of such Director; and
- 101.2.** remove his or her alternate Director from that office, by giving written notice to that effect to the Company. A majority of the other Directors may similarly remove an alternate of a Director from that office.

102. Alternate Director has powers of appointor

While acting in the place of the Director who appointed him or her, an alternate Director:

- 102.1.** has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, and participate in a meeting, of the Board, and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director);
- 102.2.** is also subject to the same terms and conditions of appointment as that Director, except that he or she is not entitled to receive remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointor as the appointor may direct by notice in writing to the Company.

103. Termination of appointment of alternate Director

The appointment of an alternate Director terminates automatically if the Director who appointed him or her ceases to be a Director or if an event occurs which would cause him or her to vacate office if he or she were a Director. A Director retiring by rotation and being re-elected is not to be treated as having ceased to be a Director for the purposes of this clause.

104. Director may not appoint deputy or agent except as alternate

No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate in accordance with **clause 101**.

Managing Director

105. Board may appoint Managing Director

The Board may appoint one of the Directors to the office of Managing Director for a term not exceeding five years and on such other terms as the Board thinks fit. A Managing Director may be re-appointed at any time within three months before expiry of a term of appointment for a further period not exceeding five years, and may be re-appointed for a further term of five years in the same manner. Subject to the terms of any agreement entered into between the Board and the Director concerned, the Board may revoke the appointment. The appointment of a Managing Director shall terminate automatically if he or she ceases to be a Director and the Managing Director shall be deemed to have resigned as a Director under clause 78 if he or she ceases to be an executive of the Company.

106. Remuneration of Managing Director

A Managing Director will receive in addition to remuneration for services as a Director such remuneration and benefits as the Board may determine.

107. Powers conferred on Managing Director

Subject to the restrictions on delegation in the Act, the Board may:

- 107.1.** confer on a Managing Director any of the powers exercisable by the Board; and
- 107.2.** without affecting the powers of a Managing Director to act as a member of the Board, impose such terms and conditions and such restrictions as the Board thinks fit; and
- 107.3.** alter or revoke any of the powers it confers under this clause.

108. Managing Director has no power to appoint alternate Managing Director

The power to appoint an alternate Director conferred on Directors by this constitution does not confer on any Managing Director the power to appoint an alternate Managing Director.

Part D: General

Change of company name

109. A Director may apply to change Company name

A Director may apply to the Registrar of Companies to change the name of the Company if:

- 109.1.** the Board has approved the Director doing so; and
- 109.2.** shareholders have approved the change of name by an ordinary resolution.

Indemnity and insurance for directors and employees

110. Company may indemnify directors and employees for certain liabilities

The Company may indemnify a director or employee of the Company or a related 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. The Board may determine the terms and conditions of such an indemnity.

111. Company may effect insurance for directors and employees

The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs referred to in section 162(5) of the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

Execution of contracts

112. Manner of execution

A contract or other enforceable obligation may be entered into by the Company as follows:

- 112.1.** an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
 - (a) two or more Directors; or
 - (b) one Director whose signature must be witnessed; or
 - (c) any other person authorised by the Board whose signature must be witnessed; or
 - (d) one or more attorneys appointed by the Company in accordance with this constitution;
- 112.2.** an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- 112.3.** an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

113. Company may appoint attorneys

The Company may, by an instrument in writing executed in accordance with **clause 112.1**, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with the instrument binds the Company.

Liquidation

114. Distribution of assets in kind

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

- 114.1.** divide among the shareholders in kind the whole or any part of the assets of the Company and for that purpose the liquidator may:
- (a) fix such values for assets as the liquidator considers to be appropriate, and
 - (b) determine how the division will be carried out as between shareholders or different classes of shareholder; and
- 114.2.** vest the whole or any part of any such assets in trustees upon such trusts for the benefit of such of those shareholders as the liquidator thinks fit,

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

Removal of Company from register

115. Directors may remove Company from New Zealand register

If the Company:

- 115.1.** has ceased to carry on business, discharged in full its liabilities to all known creditors, and distributed its surplus assets in accordance with the Act; or
- 115.2.** has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the Company into liquidation,

the Board may request the Registrar to remove the Company from the New Zealand register.

First schedule: Sale of less than minimum holdings

Interpretation

1.1 Construction

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

Notice

2. Notice to holder with less than a minimum holding

Where securities registered in the name of a holder are less than a minimum holding, the Board may at any time give written notice of that fact and of the provisions of **clause 3** to that holder.

3. Company may sell less than minimum holdings

The Company may at any time not less than three months after a notice has been given under clause 2, if securities then registered in the name of a holder are less than a minimum holding, sell those securities through NZSX or in some other manner approved by NZX.

4. Sale procedures

The Board may authorise the transfer of the securities sold to a purchaser of the securities through NZSX or in some other manner approved by NZX. The purchaser is not bound to see to the application of the purchase money, nor shall the title to the securities be affected by any irregularity or invalidity in the procedures under this constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.

Where the certificate for those securities, if any, is not delivered to the Company, the Board may issue a new certificate in such manner as it thinks fit and the certificate not delivered is deemed to be cancelled.

5. Application of proceeds

The proceeds of the sale of any securities sold under **clauses 3** and **4** must be applied as follows:

- 5.1.** first, in payment of any reasonable sale expenses.
- 5.2.** second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the securities.
- 5.3.** the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.

6. Evidence of sale

A certificate, signed by a Director which records that a power of sale under this Schedule has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

Second schedule: Calls, forfeiture and liens

Interpretation

1.1 Construction

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

Calls on shares

2.2 Shareholders must pay calls

Every shareholder on receiving at least ten working days' notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any Shares that shareholder holds.

The Board may revoke or postpone a call, or require a call to be paid by instalments.

3. Call made when Board resolution passed

A call is regarded as having been made at the time when the Board resolution authorising the call was passed.

4. Joint holders are jointly and severally liable

The joint holders of a Share are jointly and severally liable to pay all calls for that Share.

5. Unpaid calls will accrue interest

If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. Subject to the Rules, the Board may waive some or all of the payment of that interest.

6. Amounts payable under terms of issue treated as calls

Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of Shares or under a contract for the issue of Shares, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this constitution will apply as if the amount had become payable by virtue of a call made in accordance with this constitution.

7. Board may differentiate between shareholders as to calls

On the issue of Shares, the Board may differentiate between shareholders as to the amount of calls to be paid and the times of payment.

8.8 Board may accept payment in advance for calls

- 8.1.** Where a shareholder is willing to advance some or all of the money unpaid and uncalled on any Share of that shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and that shareholder for the period between the date that the amount is accepted and the date that the amount becomes payable pursuant to a call or the date specified for its payment.
- 8.2.** The Board may at any time repay to any shareholder the whole or any portion of any money so advanced upon giving that holder at least ten working days' notice in writing and as from the date of such repayment interest (if any) shall cease to accrue on the money so repaid.
- 8.3.** A shareholder is not entitled as of right to any payment of interest on any amount so paid in advance and the Board may decline to pay any interest. Any amount so paid in advance must not be taken into account in ascertaining the amount of any dividend or other distribution payable upon the Shares concerned.

Forfeiture of shares

9. Board may by notice require forfeiture of Shares if calls unpaid

The Board may during the time that a call, instalment, or other amount remains unpaid on a Share, serve a notice on the holder of that Share requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest and any expenses incurred by the Company by reason of non-payment.

10. Notice of forfeiture must satisfy certain requirements

The notice served on a shareholder under clause 9 must specify a date not earlier than ten working days after the date the notice is served by which the payment is to be made. The notice must also state that in the event of non-payment by the appointed time, the equity securities to which the call, instalment, or other amount relates, will be liable to be forfeited by the shareholder.

11. Failure to comply with notice may lead to forfeiture

Where a valid notice under clause 9 is served on a shareholder and the shareholder fails to comply with the notice, then the Board:

- 11.1. may resolve that any Share for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited; and
- 11.2. may cancel any certificate relating to any Share which has been forfeited pursuant to any such resolutions.

12. Board may deal with forfeited Share

A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. However, the Board may cancel the forfeiture at any time before the sale or other disposition on such terms as the Board thinks fit if the call, instalment or other amount which remains unpaid on the Share is paid.

13. Shareholder whose Shares are forfeited loses rights

A person whose Shares have been forfeited immediately ceases to be a shareholder in respect of those Shares notwithstanding any other provision of this constitution, and remains liable to pay the unpaid amount that the shareholder owes the Company, but that liability shall cease if the Company receives payment in full of all money owing for those Shares.

14. Evidence of forfeiture

A certificate signed by a Director that a Share has been duly forfeited on a stated date is conclusive evidence of the facts stated in that certificate.

15. Company may sell forfeited Share

The Company may receive consideration, if any, given for a forfeited Share following a sale or disposition, and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of, and register that person as the holder of the Share. That person is not bound to see to the application of the purchase money, if any, nor is the title to the Share affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or disposal of that Share. Where the certificate, if any, for the forfeited Share is not delivered to the Company, the Board may issue a new certificate distinguishing it as it thinks fit from the certificate not delivered, which is deemed to be cancelled. Any residue after satisfaction of unpaid calls, instalments, premiums or other amounts and interest, and expenses, shall be paid to the previous owner, or to his or her executors, administrators or assigns.

Lien on shares

16. Company's lien

The Company has a lien, ranking in priority over all other equities, on:

- 16.1. all Shares registered in the name of a shareholder; and
- 16.2. all dividends or other distributions authorised in respect of such Shares; and
- 16.3. the proceeds of sale of such Shares, for:
- 16.4. unpaid calls and instalments payable in respect of any such Shares; and
- 16.5. interest on any such calls or instalments; and
- 16.6. sale expenses owing to the Company in respect of any such Shares; and
- 16.7. any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other legislation in respect of the Shares of that shareholder, whether the period for payment has arrived or not.

17. Waiver of lien

Registration of a transfer of Shares on which the Company has any lien will operate as a waiver of the lien, unless the Company gives notice to the contrary to the transferee prior to registration.

18. Company may sell Share on which it has a lien

The Company may sell a Share on which it has a lien in such manner as the Board thinks fit, where:

- 18.1.** the lien on the Share is for a sum which is presently payable; and
- 18.2.** the registered holder of the Share, or the person entitled to it on his or her death or bankruptcy, has failed to pay that sum within ten working days after the Company has served that registered holder written notice demanding payment of that sum.

19. Company may transfer Share and apply proceeds

- 19.1.** The Company may receive consideration given for a Share sold under clause 18, and may execute a transfer of a Share in favour of the person to whom the Share is sold, and register that person as the holder of the Share discharged from all calls due prior to the purchase.
- 19.2.** The purchaser is not bound to see to the application of the purchase money, and the purchaser's title to the Share is not affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.
- 19.3.** If the certificate, if any, for the Share is not delivered to the Company, the Board may issue a new certificate distinguishing it as it thinks fit from the certificate not delivered, which shall be deemed to have been cancelled.
- 19.4.** The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, shall (subject to a like lien for sums not presently payable that existed upon the Share before the sale) be paid to the person who held the Share immediately before the date of sale or to his or her executors, administrators or assigns.

Third schedule: Proceedings at meetings of shareholders

Interpretation

1.1 Construction

- 1.1. Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.2. A reference in this Schedule to a shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a shareholder, a representative of a corporate shareholder, an attorney of a shareholder, and any person who may lawfully act on behalf of a shareholder.

Notice

2. Written notice must be given to shareholders, Directors and auditors

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 any auditor of the Company not less than ten working days before the meeting.

3. Service of notices outside New Zealand

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

4. Notice must state nature of business

The notice must:

- 4.1. state the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and

- 4.2. state the text of any special resolution to be submitted to the meeting; and
- 4.3. contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice; and
- 4.4. comply with the requirements of the Rules.

5. Proxy form must be sent with notice

A proxy form must be sent with each notice of meeting.

6. Irregularities in notice may be waived

Any 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.

7. Company's accidental failure to send notice does not invalidate meeting

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

8. Notice of an adjournment

- 8.1. If a meeting is adjourned for less than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place.
- 8.2. If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

Meeting and quorum

9.9 Methods of holding meetings

A meeting of shareholders may be held either:

- 9.1. by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 9.2. by means of an audio, or audio and visual, communication by which all shareholders participating and constituting a quorum can simultaneously hear each other throughout the meeting. The Company is not required to hold meetings of shareholders in the manner specified in this **clause 9.2**. Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so.

10. Business to be transacted only if a quorum is present

Subject to clauses 12 and 13, business may be transacted at a meeting of shareholders only if a quorum is present at the time when the meeting proceeds to business.

11. Quorum for shareholders' meeting

A quorum for a meeting of shareholders is present if five or more shareholders are present holding Shares together carrying at least five percent of the voting rights entitled to be exercised.

12. Meeting convened at shareholders' request dissolved if no quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting convened on the written request of shareholders holding Shares carrying together not less than five percent of the voting rights entitled to be exercised, the meeting will be dissolved automatically.

13. Other meetings to be adjourned if no quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting (other than a meeting convened under clause 65.2 of this constitution), the meeting will be adjourned to the same day in the following week at the same time and place, or to such other day, time, and place as the Directors may appoint. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present will constitute a quorum.

Chairperson

14.14 Chairperson of Board to be chairperson of meeting

The chairperson of the Board, if one has been elected by the Directors and is present at a meeting of shareholders, will chair the meeting.

15.15 Directors may elect chairperson if chairperson of Board not available

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 is unwilling to act, the deputy chairperson of the Board (if any) shall be the chairperson, or failing him or her, the Directors present may elect one of their number to be chairperson of the meeting.

16.16 As a last resort shareholders may elect chairperson

If at any meeting of shareholders, no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may elect one of their number to be chairperson of the meeting.

17. Chairperson's power to adjourn meeting

The chairperson of a meeting at which a quorum is present:

- 17.1. may adjourn the meeting with the consent of the shareholders present who are entitled to attend and vote at that meeting; and
- 17.2. must adjourn the meeting if directed by the meeting to do so.

The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

18. Chairperson may dissolve or adjourn unruly meetings

The chairperson may adjourn or dissolve the meeting if in his or her opinion the meeting has become so unruly, disorderly or inordinately protracted, that the business of the meeting cannot be conducted in a proper and orderly manner. The chairperson may exercise this power without the consent of the meeting and without giving reasons.

19. Dissolved meetings – unfinished business

If the chairperson proposes to dissolve a meeting pursuant to clause 18, and there is any item of unfinished business of the meeting which in his or her opinion requires to be voted upon, then that item shall be dealt with by the chairperson directing it to be put to the vote by a poll without further discussion.

Voting

20. Voting by show of hands or voice vote at meeting

In the case of a meeting of shareholders held under **clause 9.1**, unless a poll is demanded, voting at the meeting will be by a show of hands or by voice vote, as the chairperson may determine.

21. Voting by voice if audio-conference meeting

In the case of a meeting of shareholders held under clause 9.2, unless a poll is demanded, voting at the meeting will be by the shareholders signifying individually their assent or dissent by voice or by such other manner as the chairperson may decide.

22. Votes of joint holders

Where two or more persons are registered as the holders 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.

23. Shareholder loses certain voting rights if calls unpaid

If a sum due to the Company in respect of any Share registered in a shareholder's name has not been paid then that Share may be voted at a meeting of an interest group but not at any other meeting of shareholders.

24. Chairperson not allowed casting vote

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

25. Chairperson's declaration of result

Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote or by such other manner as the chairperson may have decided under clause 21 is carried by the requisite majority or lost, shall be conclusive evidence of that fact.

25A. A Electronic voting

The Board may permit, in relation to a particular meeting or generally:

- 25A.1.** the appointment of proxies or representatives to be made by electronic means; and
- 25A.2.** postal votes to be cast by electronic means; and
- 25A.3.** to the extent permitted by law, votes cast on resolutions at meetings of shareholders (or other groups) by electronic means.

The procedures in relation to such electronic appointment or electronic voting shall be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic appointment in accordance with this clause, such electronic appointments may be made or electronic votes cast notwithstanding any other provision of this constitution.

Polls

26. Poll may be demanded by chairperson or shareholder

At a meeting of shareholders, a poll may be demanded, either before or after a vote by show of hands or voice vote, by:

- 26.1.** the chairperson, at his or her absolute discretion; or
- 26.2.** at least five shareholders having the right to vote at the meeting; or
- 26.3.** a shareholder or shareholders having the right to exercise at least ten percent of the total votes entitled to be exercised on the business to be transacted at the meeting; or
- 26.4.** a shareholder or shareholders holding Shares that confer a right to vote at the meeting and on which the total amount paid up is at least ten percent of the total amount paid up on all the Shares that confer that right.

27. Time at which polls to be taken

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

28. Counting votes cast in a poll

If a poll is taken, votes must be counted according to the votes attached to the Shares of each shareholder present and voting.

29. Result of a poll to be treated as resolution of the meeting

The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

30. Proxy allowed to demand a poll

The instrument appointing a proxy to vote at a meeting 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.

31. Auditor of Company to be scrutineer

The auditor of the Company (including employees and agents of the auditor) for the time being, or if the auditor of the Company is unable or unwilling to act, then such person as the chairperson nominates, shall act as scrutineer for the purposes of a poll.

Shareholder proposals

32. Shareholder proposals by written notice

A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.

33. Board to give notice of proposal at Company's expense

If the Board receives the notice at least 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

34. Board to give notice of proposal at shareholder's expense

If the Board receives the notice at least five working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

35. Board must give notice of proposal on short notice

If the notice is received by the Board less than five working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

36. Proposing shareholder may include statement

If the Directors intend that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

37. Board may exclude statement in some cases

The Board is not required to include in or with the notice given by the Board:

- 37.1.** any part of a statement prepared by a shareholder which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or
- 37.2.** any part of a proposal or resolution prepared by a shareholder that the Directors consider to be defamatory (within the meaning of the Defamation Act 1992).

38. Shareholder to give security for costs for proposal with short notice

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

Proxies

39. Proxies permitted

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

40. Proxy to be treated as shareholder

A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

41. Appointment of proxy must be in writing and specify restrictions

A proxy must be appointed by a notice in writing that is signed by the shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a shareholder of the Company.

42. Notice of proxy to be produced at least 48 hours before meeting

No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

43. Form of notice of proxy

- 43.1.** A notice appointing a proxy shall be in the form set out in the Fifth Schedule or in a form as near to it as circumstances allow, or in such other form as the Board may direct.
- 43.2.** Such proxy form must, as a minimum, provide for two-way voting (for and against) on all resolutions, enabling the shareholder to instruct the proxy as to the casting of the vote, and must not be sent with any name or office (e.g. chairperson of directors) filled in as proxy holder.
- 43.3.** So far as reasonably practicable, resolutions must be framed in a manner which facilitates two way voting instructions for proxy holders.

44. Vote by proxy valid where Company not notified before meeting of disqualified proxy

Where:

- 44.1.** 44.1 the shareholder has died or become incapacitated; or
- 44.2.** 44.2 the proxy, or the authority under which the proxy was executed, has been revoked; or
- 44.3.** 44.3 the Share in respect of which the notice of proxy is given has been transferred, before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

Postal votes

45. Postal votes

The Board may permit, in relation to a particular meeting or generally, that shareholders may exercise the right to vote at a meeting by casting a postal vote.

Corporate representatives

46. Corporations may act by representative

A body corporate which is a shareholder may appoint a representative to attend any meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy and the provisions of **clauses 39 to 44** (inclusive) shall apply to such appointment as if references to proxy were references to representative. The representative shall be entitled to attend and be heard at a meeting of shareholders as if the representative were the shareholder.

Minutes

47. Board must keep minutes of proceedings

The Board must ensure that minutes are kept of all proceedings at meetings of shareholders and that a record is kept of all written resolutions of shareholders. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

Other proceedings

48. Meeting may regulate other proceedings

Except as provided in this Schedule, a meeting of shareholders may regulate its own procedure through the chairperson.

Fourth schedule: Proceedings of the board

Notice of meeting

1. Director's power to convene meetings

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

2. Notice to be sent to Director's address

The notice of meeting must be a written notice sent to the address or facsimile number, or an electronic mail message sent to the electronic mail address, which the Director provides to the Company for that purpose, or if an address or facsimile number, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or facsimile number known to the Company.

3. Notice to contain certain details

The notice of meeting must include the date, time and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters.

4. Period of notice required to be given to Directors

At least seven days' notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least 24 hour's notice is given.

5. Absent Directors

If a Director, who is for the time being absent from New Zealand, supplies the Company with a facsimile number or address or electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that Director. Otherwise notice need not be given to any Director for the time being absent from New Zealand. However, if he or she has an alternate Director who is in New Zealand, then notice must be given to that person.

6. Directors may waive irregularities in notice

Any irregularity in the notice of a meeting, or failure to comply with **clauses 1 to 5** of this Schedule is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

Meeting and quorum

7. Methods of holding meetings

A meeting of the Board may be held either:

- 7.1.** By a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 7.2.** By means of audio, or audio and visual, communication by which all Directors participating can simultaneously hear each other throughout the meeting.

8. Quorum for Board meeting

The quorum necessary for the transaction of business at a meeting of the Board is a majority of the Directors. The shareholders may change the number of Directors required for a quorum by ordinary resolution. No business may be transacted at a meeting of the Board unless a quorum is present.

9. Meeting adjourned if no quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the chairperson will adjourn the meeting to a specified day, time and place, the day being within the next two days. If no such adjournment is made the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

Chairperson

10. Chairperson to chair meetings

The chairperson or, in the absence of the chairperson, the deputy chairperson of the Board will chair all meetings of the Board. If no chairperson or deputy chairperson is elected, or if at a meeting of the Board the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, then the Directors present may elect one of their number to be chairperson of the meeting.

Voting

11. Voting on resolutions

Each Director has one 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 it. A Director must not vote where that voting by that Director is restricted by the Rules or this constitution. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

12. Chairperson does not have a casting vote

The Chairperson of the Board does not have a casting vote.

Minutes

13. Board must keep minutes of proceedings

The Board must ensure that minutes are kept of all proceedings of meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

Other proceedings

14. Board may regulate other proceedings

Except as set out in this Schedule, the Board may regulate its own procedure.

Fifth schedule: Proxy and representative form

Contact Energy Limited Proxy/representative form

A. Admission card and instructions

B. Appointment of proxy/corporate representative

Complete this part 'B' if you do not plan to attend the Meeting but you want to appoint a proxy, or if you are a body corporate and want to appoint a corporate representative. If you appoint a proxy or corporate representative, you must also complete part 'C' below by ticking one box for each resolution.

The Chairman of the Meeting, or any other director, is willing to act as proxy for any shareholder who wishes to appoint him or her for that purpose. To do this, enter 'the Chairman' or the name of the director in the space allocated for the proxy's name. The Chairman and all of the other directors intend to vote [in favour/against] resolutions [detail resolutions] where these resolutions are marked as 'proxy discretion'.

I/We, being a shareholder/shareholders of Contact Energy Limited, appoint:

Name:

of:

Or failing him/her:

Name:

of:

as my/our proxy/corporate representative to exercise my/our vote, in accordance with the direction in part 'C' below, at the [annual/special] meeting of shareholders of the Company to be held on [date], and at any adjournment of that meeting.

C. VOTING¹

Complete this part 'C':

- (i) at the meeting in order to cast your votes if a poll is called; or
- (ii) if you have appointed a proxy or corporate representative under part 'B' above.

You MUST tick one box for each resolution. If no box is ticked in relation to a resolution, the vote on that resolution will be treated as 'abstain'.

(Tick the box that applies)

Business	For	Against	Abstain ²	Proxy discretion ²
1.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

1. The resolutions are stated in brief. Refer to the Notice of Meeting for the full text of the resolutions and explanatory notes.
2. If you mark the abstain box for a particular resolution, you are directing your proxy/corporate representative NOT to vote on that resolution and your vote will not be counted when calculating the total number of votes cast and the majority for that resolution.
3. If you mark the proxy discretion box for a particular resolution, you are directing your proxy/corporate representative to decide how to vote on that resolution.

D. Signature

Shareholder name:

All shareholders completing this form MUST sign and date it where indicated below. If there are more than two joint shareholders, please add additional signatures/dates as required.

Shareholder number:

Signature

Date

Signature

Date

Contact name

Daytime phone number

Notes

1. As a shareholder you may attend the meeting and vote, or you may appoint a proxy to attend the Meeting. If you are a body corporate, you may appoint a corporate representative to attend the Meeting. A proxy/corporate representative need not be a shareholder of Contact.
2. If you are joint holders of shares each of you must sign this form. If you are a company this proxy form must be signed on behalf of the company by a person acting under the company's express or implied authority.
3. If shares are held jointly, the appointment in part '**B**' (Appointment of Proxy/Corporate Representative) and voting instructions in part '**C**' (Voting) are given on behalf of each joint holder.
4. For the appointment in part '**B**' (Appointment of Proxy/Corporate Representative) to be valid, you must complete and produce this form to Contact, so that it is received at least 48 hours before the time for holding the Meeting (i.e. by [time] on [date]). You can produce this form to Contact by delivering, posting or faxing it to Contact, at:

Post: [Insert postal address]

Fax: [Insert fax number]

Or deliver: [Insert physical address].
5. If the Appointment of Proxy/Corporate Representative has been signed under a power of attorney a copy of the power of attorney (unless already deposited with Contact) and a signed certificate of non-revocation of the power of attorney must be produced to Contact with this form.
6. If the address to which this form was sent is incorrect, please contact [share registrar]. You can do this either by delivering, posting or faxing your new address to [share registrar] at the contact details set out in note 4 above or by emailing [share registrar] at [email address].