

CONSTITUTION
OF
DRAFT LIMITED

CONTENTS

- 1. DEFINITIONS & INTERPRETATION**
 - 1.1 Definitions
 - 1.2 Interpretation
 - 1.3 Constitution to prevail
- 2. ISSUE, CONSOLIDATION AND SUBDIVISION OF SHARES**
 - 2.1 Board may issue Shares
 - 2.2 Offer to Shareholders
 - 2.3 Consolidation and subdivision of Shares
 - 2.4 Bonus issues
 - 2.5 Shares in lieu of dividends
 - 2.6 Fractional entitlements
- 3. RIGHTS ATTACHING TO SHARES**
 - 3.1 Classes of Shares
- 4. ALTERATION OF SHAREHOLDER RIGHTS**
 - 4.1 Special Resolution required
 - 4.2 Meetings of Interest Groups
 - 4.3 Issue of further shares
- 5. ACQUISITION OF COMPANY'S OWN SHARES**
 - 5.1 Company may purchase Shares
- 6. SHARE CERTIFICATES**
 - 6.1 Issue of Share Certificates
 - 6.2 Replacement Share Certificates
- 7. EQUITABLE INTERESTS IN SHARES**
 - 7.1 No notice of trusts
 - 7.2 No recognition of equitable interests
- 8. CALLS ON SHARES**
 - 8.1 Board may make calls
 - 8.2 Time of call
 - 8.3 Fixed instalments deemed calls
 - 8.4 Notice of call
 - 8.5 Differential calls
 - 8.6 Manner of payment
 - 8.7 Joint Shareholders
 - 8.8 Default interest
 - 8.9 Proceedings for recovery of call
 - 8.10 Payment in advance of calls
- 9. FORFEITURE OF SHARES**
 - 9.1 Notice requiring payment of call
 - 9.2 Contents of notice
 - 9.3 Forfeiture for non-payment
 - 9.4 Notice of forfeiture
 - 9.5 Cancellation of forfeiture
 - 9.6 Effect of forfeiture
- 10. LIEN ON SHARES**
 - 10.1 Lien on Shares
 - 10.2 Waiver of lien
- 11. SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN**
 - 11.1 Company may sell Shares
 - 11.2 Proceeds of sale

- 11.3 Evidence
- 11.4 Sale procedure

- 12. TRANSFER OF SHARES**
 - 12.1 Power to transfer
 - 12.2 Form of transfer
 - 12.3 Delivery to Company
 - 12.4 Board may refuse to register
 - 12.5 When transfer effective
 - 12.6 Company to retain transfer
 - 12.7 Multiple registers

- 13. PRE-EMPTIVE RIGHTS**
 - 13.1 Definitions
 - 13.2 Transfer notice
 - 13.3 Company appointed agent for sale
 - 13.4 No obligation to sell part
 - 13.5 Offer to Shareholders
 - 13.6 Determination of Fair Value
 - 13.7 Revocation by transferor
 - 13.8 Revocation by transferee
 - 13.9 Obligation to transfer
 - 13.10 Company may effect transfer
 - 13.11 Transferor may sell to non-Shareholders
 - 13.12 Transfer with Shareholder approval

- 14. TRANSMISSION OF SHARES**
 - 14.1 Transmission on death of Shareholder
 - 14.2 Rights of Personal Representatives
 - 14.3 Transfer of Shares by Personal Representatives
 - 14.4 Joint Personal Representatives

- 15. EXERCISE OF POWERS OF SHAREHOLDERS**
 - 15.1 Alternative forms of meeting
 - 15.2 Exercise of power by meeting or written resolution
 - 15.3 Powers exercisable by Ordinary Resolution

- 16. MEETINGS OF SHAREHOLDERS**
 - 16.1 Annual meetings
 - 16.2 Time and place of annual meeting
 - 16.3 Resolution in lieu of annual meeting
 - 16.4 Special meetings
 - 16.5 Calling of special meetings

- 17. NOTICE OF MEETINGS OF SHAREHOLDERS**
 - 17.1 Written notice
 - 17.2 Contents of notice
 - 17.3 Waiver of notice irregularity
 - 17.4 Accidental omission of notice
 - 17.5 Notice of adjourned meeting

- 18. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**
 - 18.1 Requirement for quorum
 - 18.2 Quorum
 - 18.3 Lack of quorum
 - 18.4 Regulation of procedure
 - 18.5 Adjournment of meeting

- 19. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS**
 - 19.1 Chairperson
 - 19.2 Directors may appoint chairperson

- 19.3 Shareholders may appoint chairperson

- 20. VOTING AT MEETINGS OF SHAREHOLDERS**
 - 20.1 Voting at meeting
 - 20.2 Voting at audio/visual meeting
 - 20.3 Entitlement to vote
 - 20.4 Number of votes
 - 20.5 Declaration by chairperson
 - 20.6 Chairperson's casting vote
 - 20.7 Joint Shareholders

- 21. POLLS**
 - 21.1 Right to demand poll
 - 21.2 When poll may be demanded
 - 21.3 Poll procedure
 - 21.4 When poll taken
 - 21.5 Votes

- 22. PROXIES**
 - 22.1 Right to appoint
 - 22.2 Notice of appointment
 - 22.3 Production of notice
 - 22.4 Validity of proxy vote

- 23. CORPORATE REPRESENTATIVE**
 - 23.1 Appointment of representative

- 24. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW**
 - 24.1 Shareholder proposals
 - 24.2 Management review by Shareholders

- 25. APPOINTMENT AND REMOVAL OF DIRECTORS**
 - 25.1 Number of Directors
 - 25.2 Appointment
 - 25.3 Existing Directors to continue
 - 25.4 Removal
 - 25.5 Alternate Directors
 - 25.6 Notice of appointment and removal
 - 25.7 Appointment of managing director
 - 25.8 Vacation of office

- 26. REMUNERATION AND OTHER BENEFITS OF DIRECTORS**
 - 26.1 Power to authorise

- 27. INDEMNITY AND INSURANCE**
 - 27.1 Indemnity of Directors
 - 27.2 Other indemnities
 - 27.3 Exceptions
 - 27.4 Insurance
 - 27.5 Definitions

- 28. POWERS OF DIRECTORS**
 - 28.1 Management of Company
 - 28.2 Exercise of powers by Board
 - 28.3 Exercise of powers by Shareholders
 - 28.4 Delegation of powers
 - 28.5 Appointment of attorney
 - 28.6 Ratification by Shareholders
 - 28.7 Change of name of Company

- 29. INTERESTS OF DIRECTORS**

- 29.1 Disclosure of interests
- 29.2 Personal involvement of Directors
- 29.3 Interested Directors may vote, etc.
- 29.4 Wholly-owned subsidiary

30. PROCEEDINGS OF DIRECTORS

- 30.1 Third schedule of Act not to apply
- 30.2 Alternative forms of meeting
- 30.3 Procedure
- 30.4 Notice of meeting
- 30.5 Director may convene meeting
- 30.6 Waiver of notice irregularity
- 30.7 Quorum
- 30.8 Chairperson
- 30.9 Voting
- 30.10 Written resolution
- 30.11 Committees
- 30.12 Validity of actions
- 30.13 Minutes

31. METHOD OF CONTRACTING

- 31.1 Deeds
- 31.2 Other written contracts
- 31.3 Other obligations

32. DISTRIBUTIONS

- 32.1 Power to authorise
- 32.2 Form of Distribution
- 32.3 Entitlement to dividends
- 32.4 Deduction of money
- 32.5 Method of payment
- 32.6 No interest on Distributions

33. INSPECTION OF RECORDS

- 33.1 Inspection by Directors
- 33.2 Inspection by Shareholders

34. NOTICES

- 34.1 Reports, etc. to Shareholders
- 34.2 Accidental omissions
- 34.3 Joint Shareholders
- 34.4 Shareholder deceased or bankrupt
- 34.5 Waiver by Shareholders

35. LIQUIDATION

- 35.1 Distribution of assets

**CONSTITUTION
OF
DRAFT LIMITED**

1. DEFINITION AND INTERPRETATION

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

“**Act**” means the *Companies Act 1997*.

“**Board**” means:

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

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

“**Company**” means *DRAFT Limited*.

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

“**Director**” means a person appointed as a Director of the Company in accordance with this Constitution.

“**Distribution**” means:

- (a) the direct or indirect transfer of money or property, other than the company’s own Shares, to or for the benefit of a Shareholder; or
 - (b) the incurring of a debt to or for the benefit of a Shareholder,
- in relation to Shares held by that Shareholder, and whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness or by some other means.

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

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

“**Interested**” in relation to a Director, has the meaning set out in section 117 of the Act.

“**month**” means calendar month.

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

“**Personal Representative**” in relation to a person means the executor, administrator, or trustee of the estate of that person.

÷

—

~~(a) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1998, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act.~~

“**Records**” means the documents required to be kept by the Company under section 164(1) of the Act.

“**Representative**” means:

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

“**Share**” means a share issued, or to be issued, by the Company, as the case may require.

“**Shareholder**” means:

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

“**Share Register**” means the share register for the Company kept in accordance with sections 67 and 68 of the Act.

“**Special Resolution**” means a resolution approved by a majority of 75 per cent or more of the votes of those Shareholders entitled to vote and voting on the question.

“**Working Day**” means a day of the week other than Saturday, Sunday or a declared public holiday. has the meaning set out in section 2 of the Act.

1.2 **Interpretation:** In this constitution, unless the context otherwise requires:

- (a) the table of contents, headings and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes,
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (d) “written” and “in writing” includes s any means of reproducing words, figures and symbols in a tangible and visible form;
- (e) words and expressions defined or explained in the Act have the same meaning in this Constitution;
- (f) words and expressions cognate with words or expressions defined in this constitution have meanings corresponding to those of the defined words and expressions;
- (g) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise.

1.3 **Constitution to prevail:** If there is any conflict between:

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

2. **ISSUE, CONSOLIDATION AND SUBDIVISION OF SHARES**

2.1 **Board may issue Shares and other securities:** Subject to clause 2.2, the Board may with the approval of Shareholders by Special Resolution issue Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares, to any person and in any number it thinks fit.

- 2.2 **Offer to Shareholders:** Subject to the provisions of the resolution of Shareholders authorising the issue of Shares, new Shares must be offered to all Shareholder in proportion to the number of existing Shares held by them. The offer must be made by written notice to each Shareholder stating:
- (a) the number of Shares to which that Shareholder is entitled;
 - (b) the consideration for which the Shares will be issued and the terms on which they will be issued;
 - (c) the time (not being less than 14 days nor more than 28 days) within which the offer, if not accepted, will be deemed to be declined;
 - (d) that any shareholder who wishes to acquire Shares in excess of that Shareholder's entitlement must, when accepting the offer, state the number of excess Shares which that Shareholder wishes to acquire;
 - (e) that any unclaimed Shares will be used for satisfying the request for excess shares, upon the basis that the unclaimed Shares will be allocated to the Shareholders requesting excess Shares in proportion to their existing shareholdings in the company, but no share holder will be allocated more excess Shares than the number which that Shareholder has requested; and
 - (f) that if, thereafter, any Shares remain unallocated, the Board may offer them to any person whom the Board is prepared to register as a Shareholder provided that the consideration and terms of issue are no more advantageous to that person than those offered to the Shareholders.
- In this clause, references to "Shares" include securities that are convertible into or exchangeable for Shares and options to acquire Shares, and references to "Shareholder" or "Shareholders" include the holder or holders of any other securities of the company who are entitled by the terms of issue of such securities to participate in the issue of Shares.
- 2.3 **Consolidation and subdivision of Shares:** The Board may with the approval of Shareholders by Special Resolution:
- (a) consolidate and divide the Shares or any Class; and
 - (b) subdivide the Shares or any Class, in each case in proportion to those Shares or the Shares in that class, as the case may be.
- 2.4 **Bonus issues:** The Board may with the approval of Shareholders by Special Resolution resolve to apply any amount which is available for Distribution either:
- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) if applicable, the holders of any other securities of that Company who are entitled by the terms of issue of such securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or
 - (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in subclause (a)(i):
- or partly in one way and partly in the other.
- 2.5 **Shares in lieu of dividends:** The Board may with the approval of Shareholders by Special Resolution exercise the right conferred by section 52-54 of the Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.
- 2.6 **Fractional entitlements:** The Board may, in exercising any powers pursuant to this section, deal with fractional entitlements to Shares or other securities in such manner as the Board considers equitable and in the interests of the Company.
- 3. RIGHTS ATTACHING TO SHARES**
- 3.1 **Classes of Shares:** Without prejudice any special rights previously conferred on any Shareholders or any Class and without limiting the Classes which may be issued by the Company, any Share may be issued upon the basis that such Share:
- (a) confers preferential rights to distributions of capital or income;
 - (b) confers special, limited or conditional voting rights;
 - (c) does not confer voting rights; or
 - (d) is redeemable in accordance with terms of issue that are incorporated in this Constitution.

4. ALTERATION OF SHAREHOLDER RIGHTS

- 4.1 **Special Resolution required:** Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution or the Act must be approved by Special Resolution of each Interest Group.
- 4.2 **Meetings of Interest Groups:** The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group except that the necessary quorum shall be two persons holding or representing the holders of not less than one third of the Shares of the relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.
- 4.3 **Issue of further Shares:** The issue of further Shares ranking equally with existing Shares, whether as to voting rights, Distributions or otherwise, is deemed not to be an action affecting the right attaching to the existing Shares of that Class.

5. ACQUISITION OF COMPANY'S OWN SHARES

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

6. SHARE CERTIFICATES

- 6.1 **Issue of Share certificates:** The Company may issue Share certificates in respect of all or any Shares and must, within ~~one month after the issue or registration of a transfer of shares~~^{20 Working Days after receiving an application by a Shareholder}, send to that Shareholder a Share certificate, in accordance with section 75 of the Act.
- 6.2 **Replacement Share certificates:** The Company:
- (a) may issue a ~~duplicate replacement~~ certificate for any Share certificate that is worn out or defaced; and
 - (b) shall issue a ~~duplicate replacement~~ Share certificate for one that has been lost or destroyed, subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, and appropriate indemnity being given to the Company in accordance with section 76 of the Act.

7. EQUITABLE INTEREST IN SHARES

- 7.1 **No notice of trusts:** No notice of trust, whether express, implied, or constructive, may be entered on the Share Register.
- 7.2 **No recognition of equitable interests:** Except as required by law, no person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Share, or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share.

8. CALLS ON SHARES

- 8.1 **Board may make calls:** The Board may, from time to time, make such calls as it thinks fit upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.
- 8.2 **Time of call:** A call is deemed to be made at the time when the resolution of the Board making the call is passed.

- 8.3 **Fixed instalments deemed calls:** An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.
- 8.4 **Notice of call:** At least 14-days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.
- 8.5 **Differential calls:** The Board may, on the issue of Shares, differentiate between the Shareholders as to the amounts to be paid in respect of the Shares and the times of payment of such amounts.
- 8.6 **Manner of payment:** A Shareholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.
- 8.7 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.
- 8.8 **Default interest:** If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board may reasonably determine, unless the Board waives payment of interest wholly or in part.
- 8.9 **Proceedings for recovery of call:** In any proceedings for recovery of a call:
- (a) it is sufficient to prove that:
 - (i) the name of the relevant Shareholder is entered in the Share Register as the holder, or one of the holders, of the Shares to which the call relates; and
 - (ii) except in relation to any amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date, the resolution making the call is entered in the Records and notice of the call has been duly given;
 and proof of the matters mentioned in this clause is conclusive evidence of the debt; and
 - (b) it is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.
- 8.10 **Payment in advance of calls:** The Company may receive from any Shareholder in advance any amount uncalled and unpaid upon any Shares held by that Shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the Board and the Shareholder agree.

9. FORFEITURE OF SHARES

- 9.1 **Notice requiring payment of call:** If a Shareholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.
- 9.2 **Contents of notice:** The notice shall specify a further date (not earlier than 14 days after the date of service of notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due, is liable to be forfeited.
- 9.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited Share and not paid before the forfeiture.
- 9.4 **Notice of forfeiture:** When a Share has been forfeited, the Company shall give notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture, and shall enter in the Share Register details of the forfeiture.
- 9.5 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.

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

10. LIEN ON SHARES

- 10.1 **Lien on Shares:** The Company has a first and paramount lien upon each Share, the proceeds of sale of the Share, and all Distributions made in respect of the Share, for:
- (a) all unpaid calls owing in respect of the Share and interest thereon (if any);
 - (b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived; and
 - (c) all liabilities and obligations of the Shareholder to the Company, whether solely or jointly with any other person, whether incurred or arising before or after notice to the Company of any equitable interest in any person other than the Shareholder, and whether or not the date for payment, fulfilment or discharge thereof has arrived.
- 10.2 **Waiver of lien:** Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share, except as provided in clause 14.2.

11. SALE OF SHARES SUBJECT TO FORFEITURE OF LIEN

- 11.1 **Company may sell Shares:** The Company may sell any forfeited Share. ~~or~~ any Share on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any Shares:
- (a) unless the amount in respect of which a lien exists is due and payable;
 - (b) until the expiry of 14 days after written notice demanding payment of the amount has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Shares; and
 - (c) unless, before exercising the power of sale, the Board first offers the Shares for sale to the holders of the remaining Shares in the Company in the manner set out clauses 2.2 and 2.6.
- 11.2 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale ~~of the sale~~ of a forfeited Share or ~~of any Share or~~ of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale or, if applicable in either case, to the Personal Representative of the holder.
- 11.3 **Evidence:** A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.
- 11.4 **Sale procedure:** For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the ~~case sale~~ is in damages only and solely against the Company.

12. TRANSFER OF SHARES

- 12.1 **Power to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share by an instrument of transfer complying with this Constitution.
- 12.2 **Form of transfer:** Any Share may be transferred by an instrument of transfer complying with the Act. Every other instrument of transfer shall:
- (a) be in any usual or common form or any other form which the Board may approve;

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

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

12.4 **Board may refuse to register:** Subject to section 6584 of the Act (which imposes certain procedural requirements on a board), the Board may refuse to register a transfer of any Share if:

- (a) the Company has a lien on the Share;
- (b) the Share is not fully paid up;
- (c) the instrument of transfer is not accompanied by the relevant Share certificate (if any) and such other evidence as the Board reasonably requires to prove the title of the transferor to ~~the~~ or right of the transferor to transfer, the Share;
- (d) the Board has notice of any agreement by the Shareholder to transfer only to some specified person or subject to some specified condition;
- (e) the Board, in its absolute discretion, believes that registration of the transfer would not be in the best interests of the Company; or
- (f) the transferor has not complied with the provisions of section 13;

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

12.5 **When transfer effective:** A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

12.6 **Company to retain transfer:** If the Company registers a transfer it shall retain the instrument of transfer.

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

13. PRE-EMPTIVE RIGHTS

13.1 **Definitions:** In this section and section 14:

“**Fair Value**” means the value of Specified Shares determined in accordance with the provisions of this section.

“**Notice of Dispute**” means a written notice given by a Transferee to the Company requiring the Fair Value of Specified Shares to be determined.

“**Specified Amount**” means the amount which the Transferor specifies in the Transfer Notice as the price at which the Specified Shares are offered for sale.

“**Transfer Notice**” means a written notice, signed by a Shareholder or Personal Representative (as the case may be), offering to sell the Shares specified in the notice.

“**Transferee**” means any person who has accepted an offer to sell Specified Shares pursuant to the provisions of this section.

“**Transferor**” means a person who has given a Transfer Notice in accordance with the provisions of this section.

13.2 **Transfer notice:** Every Shareholder or Personal Representative who wishes to sell, transfer or otherwise dispose of the legal or beneficial interest in any Shares (other than pursuant to clause 5.1) shall give a Transfer Notice in respect of those Shares to the Company. A Transfer Notice is not revocable by the Transferor without the approval of the Board.

- 13.3 **Company appointed agent for sale:** A Transfer Notice constitutes the Company the agent of the Transferor for the sale of the Specified Shares in accordance with this section.
- 13.4 **No obligation to sell part:** A Transfer Notice does not operate as a separate Transfer Notice in respect of each of the Specified Shares and notwithstanding any other provision of this section the Transferor is not obliged to sell or transfer less than all of the Specified Shares.
- 13.5 **Offer to Shareholders:** Subject to the provisions of this section, and unless otherwise approved by the Shareholders by Special Resolution, a Transfer Notice shall be dealt with as follows:
- (a) Upon receipt of the Transfer Notice the Company shall promptly give written notice to Shareholders offering the Specified Shares in accordance with the provisions of this clause.
 - (b) The Specified Shares shall be offered first to the holders of the remaining Shares as nearly as possible in proportion to the number of Shares held by each of them. The offer shall be made by written notice to each of those Shareholders stating:
 - (i) the number of Shares to which that Shareholder is entitled;
 - (ii) the Specified Amount;
 - (iii) the time (not being less than 14 days nor more than 28 days) within which the offer, if not accepted, will be deemed to be declined;
 - (iv) that any Shareholder who wishes to purchase Shares in excess of that person's entitlement must, when accepting the offer, state the number of excess Shares which that person wishes to purchase; and
 - (v) that any Shareholder who does not accept that the Specified Amount represents the value of the Specified Shares and requires the Fair Value to be determined must, when accepting the offer, give a Notice of Dispute to the Company.
 - (c) If all Shareholders do not claim their full entitlements, the unclaimed Shares must be used for satisfying the requests for excess Shares. If there are insufficient unclaimed Shares to satisfy such requests, the unclaimed Shares shall be allocated to the Shareholders requesting excess Shares in proportion to their existing shareholdings in the Company, but no Shareholder shall be allocated more excess Shares than the number which that Shareholder has requested.
 - (d) If thereafter any Specified Shares remain unallocated, the Company may offer those Shares to any person whom the Board is prepared to register as a Shareholder.
- 13.6 **Determination of Fair Value:** If a Transferee gives a Notice of Dispute, the Company shall give a copy to the Transferor. The Fair Value shall be determined by the arbitration of a single arbitrator if the Transferor and the Transferee agree upon a single arbitrator or otherwise of two arbitrators, one to be appointed by Transferor and one by the Transferee or, if they are unable to agree, of an umpire to be appointed by the arbitrators prior to commencing the arbitration. The arbitration shall be conducted under the provisions of the Arbitration Act ~~Chapter 46-1996~~. One half of the costs of the arbitration shall be borne by the Transferor and the other half by the Transferee (equally between them, if more than one Transferee has given a Notice of Dispute), unless the arbitrator or umpire determines otherwise. The Company shall promptly give a copy of the arbitration award to the Transferor and the relevant Transferee.
- 13.7 **Revocation by Transferor:** If a Notice of Dispute is given in respect of any Specified Shares and the Fair Value is less than the Specified Amount the Transferor may, within 14 days after receiving written notice of the Fair Value, revoke the Transfer Notice by written notice to the Company, in which event the Transferor shall bear all the costs of determining the Fair Value under clause 13.6 notwithstanding the provisions of any award pursuant to the arbitration thereunder. If that Transferor does not give such a notice, the Transfer Notice shall remain in full force and effect..
- 13.8 **Revocation by Transferee:** If a Transferee has given a Notice of Dispute and the Fair Value is greater than the Specified Amount, that Transferee may, within 14 days after receiving written notice of the Fair Value, by written notice to the Company revoke that Transferee's agreement to purchase the relevant Specified Shares, in which event that Transferee shall bear all costs of determining the Fair Value under clause 13.6 notwithstanding the provisions of any award pursuant to the arbitration thereunder. If that Transferee does not give such a notice, that Transferee's agreement to purchase the relevant Specified Shares shall remain in full force and effect.
- 13.9 **Obligation to transfer:** If the Company finds a Transferee ~~or f~~ Transferees in respect of all of the specified Shares within two months after receipt of a Transfer Notice the Company shall promptly

- give notice of that fact to the Transferor and Transferee of Transferees, and except as provided in clauses 13.7 and 13.8, and subject to clauses 12.4:
- (a) each Transferee is bound to purchase the Shares which that Transferee has agreed to purchase:
 - (i) at the Specified Amount, in respect of Shares purchased by each Transferee who has not given a Notice of Dispute as provided in this section; and
 - (ii) at the lesser of the Specified Amount and the Fair Value, in respect of Shares purchased by each Transferee who has given a Notice of Dispute;
 - (b) the Transferor is bound to transfer the Specified Shares to the Transferee or Transferees upon payment of the amount payable by the relevant Transferee under sub-clause (a) subject to deduction and payment to the Company of any amount to which the Company is entitled pursuant to any lien on the Shares.
- 13.10 **Company may effect transfer:** If a Transferor defaults in transferring any Specified Shares in accordance with clause 13.9 the Company may execute a transfer of the Specified Shares on behalf of the Transferor, receive the purchase price and, subject to section 12, enter the name of the Transferee or the Transferees in the Share Register as the holder of the Specified Shares. Subject to deduction of any amount to which the Company is entitled pursuant to any lien on the Shares, the Company shall hold the purchase price in trust for the Transferor. The receipt of the Company shall constitute a valid discharge for the purchase price and no question shall be raised as to the title of a Transferee to Specified Shares after entry of the name of the Transferee in the Share Register as the holder of those Shares.
- 13.11 **Transferor may sell to non-Shareholders:** If the Company does not within two months after receipt of a Transfer Notice find one or more Transferees who agree to purchase all of the Specified Shares and who complete the purchase thereof in months thereafter, sell, transfer or otherwise dispose of all the Specified Shares or the beneficial interest therein (but not a portion only) to any person at a price not lower than the Specified Amount and on terms no more advantageous to the purchaser than those offered to the other Shareholders, and the preceding provisions of this section shall not apply.
- 13.12 **Transfer with Shareholder approval:** The preceding provisions of this section do not apply to a transfer of Shares to any person if the holder or the holders of not less than 75 per cent of the Shares in the Company consent in writing to the transfer, and Board shall register such transfer.
- 14. TRANSMISSION OF SHARES**
- 14.1 **Transmission on death of Shareholder:** If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder, but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share, or constitute a release of any lien which the Company may have in respect of any Share.
- 14.2 **Rights of Personal Representatives:** A Personal Representative of a Shareholder:
- (a) is entitled to exercise all rights (including without limitation the rights to receive Distributions, to attend meetings and vote in person or by Representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and
 - (b) is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this subclause.
- 14.3 **Transfer of Shares by Personal Representative:** If the Shares of a deceased Shareholder are not transferred pursuant to clause 13.10. The Personal Representative of a deceased Shareholder must, not later than six months after the death of the Shareholder, give a Transfer Notice in respect of all the Shares held by the deceased Shareholder and all the provisions of section 13 shall apply accordingly. If the Personal Representative fails to do so then, at the expiration of six month period, the Personal Representative shall be deemed to have given a Transfer Notice, and specified the Fair value as the Specified Amount, in respect of all Shares held by the deceased Shareholder, unless the requirements of this clause have previously been waived by written notice to the Company signed by the holder of holders of all not less than 75 per cent of the Shares in the Company.

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

15. EXERCISE OF POWERS OF SHAREHOLDERS

- 15.1 **Alternative forms of meeting:** A meeting of Shareholders may be held either:
- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.
- 15.2 **Exercise of power by meeting or written resolution:** A power reserved to the Shareholders by the Act or by this Constitution may be exercised either:
- (a) at a meeting of Shareholders; or
 - (b) by a resolution in writing signed in accordance with section ~~422~~ 103 of the Act.
- 15.3 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Act or this constitution, a power or right of approval reserved to Shareholders may be exercised by Ordinary Resolution.

16. MEETINGS OF SHAREHOLDERS

- 16.1 **Annual meetings:** Subject to clause 16.3, the Company shall hold an annual meeting in each calendar year in addition to any other meetings in that year not later than:
- (a) 6 months after the balance date of the Company; and
 - (b) 15 months after the previous annual meeting.
- 16.2 **Time and place of annual meeting:** Each annual meeting shall be held at such time and place as the Board appoints.
- 16.3 **Resolution in lieu of annual meeting:** It is not necessary for the Company to hold an annual meeting in any calendar year if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section ~~422~~ 103 of the Act.
- 16.4 **Special meetings:** All meetings other than annual meetings shall be called special meetings.
- 16.5 **Calling of special meetings:** A special meeting:
- (a) may be called by the Board at any time;
 - (b) shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5 per cent of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.
- ## 17. NOTICE OF MEETINGS OF SHAREHOLDERS
- 17.1 **Written notice:** Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director, and to the auditor (if any) of the Company, not less than ~~10 Working Days~~ 14 days before the date on which the meeting is to be held, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.
- 17.2 **Contents of notice:** A notice of meeting shall state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any Special Resolution to be submitted to the meeting.
- 17.3 **Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

- 17.4 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any person, does not invalidate the proceedings at that meeting.
- 17.5 **Notice of adjourned meeting:** If a meeting of Shareholders is adjourned for less than ~~30 days~~ one month it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 17.1.

18. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

- 18.1 **Requirement for quorum:** Subject to clause 18.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 18.2 **Quorum:** Subject to clause 18.3, a quorum for a meeting of Shareholders is a Shareholder or Shareholders present in person or by Representative and holding, or representing the holder or holders of not less than 75 per cent of the Shares in the Company.
- 18.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called by the Board on the written request of Shareholders entitled to exercise that right, the meeting is dissolved;
 - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Board may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.
- 18.4 **Regulation of procedure:** Subject to the provisions of the Act, and except as provided in this Constitution, a meeting of Shareholders may regulate its own procedure.
- 18.5 **Adjournment of meeting:** The Chairperson may, with the consent of a meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.

19. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 19.1 **Chairperson:** If the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.
- 19.2 **Director may appoint chairperson:** If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.
- 19.3 **Shareholders may appoint chairperson:** If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

20. VOTING AT MEETINGS OF SHAREHOLDERS

- 20.1 **Voting at one place:** In the case of a meeting of Shareholders held under clause 15.1(a), unless a poll is demanded in accordance with clause 21.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

- 20.2 **Voting at audio/visual meeting:** In the case of a meeting of Shareholders held under clause 15.1(a), unless a poll is demanded in accordance with clause 21.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 20.3 **Entitlement to vote:** A Shareholder may exercise the right to vote either in person or by Representative.
- 20.4 **Number of votes:** Subject to clause 20.8 and to any rights or restrictions for the time being attached to any Class of Shares:
- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
 - (b) on a poll every Shareholder present in person or by Representative has one vote in respect of each Share held by that Shareholder.
- 20.5 **Declaration by the chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 21.1.
- 20.6 **Chairperson's casting vote:** The chairperson of a meeting of Shareholders is not entitled to a casting vote.
- 20.7 **Joint Shareholders:** Where two or more persons are registered as joint Shareholders, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- 20.8 **No vote when amount owing on Share:** A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

21. POLLS

- 21.1 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:
- (a) the chairperson; or
 - (b) not less than five Shareholders having the right to vote at the meeting; or
 - (c) a Shareholder or Shareholders representing not less than 10 per cent of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (d) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all Shares that confer that right.
- 21.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 21.3 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of a poll is deemed to be a resolution of the meeting at which the poll is demanded.
- 21.4 **When poll taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.
- 21.5 **Votes:** On a poll:
- (a) votes may be given either personally or by Representative;
 - (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those shares;
 - (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

22. PROXIES

- 22.1 **Right to appoint:** A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting and to demand or join in demanding a poll, as if the proxy were the Shareholder.
- 22.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term not exceeding 12 months.
- 22.3 **Production of notice:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced not later than 48 hours before the start of the meeting.
- 22.4 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

23. CORPORATE REPRESENTATIVE

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

24. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

- 24.1 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause ~~8-9~~ of the ~~first~~ second schedule to the Act apply to any notice given pursuant to this clause.
- 24.2 **Management review by Shareholders:** The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but the resolution will not be binding on the Board.

25. APPOINTMENT AND REMOVAL OF DIRECTORS

- 25.1 **Number of Directors:** The number of Directors shall not at any time be less than two.
- 25.2 **Appointment:** A person may be appointed as a Director at any time by Special Resolution. Two or more persons may be appointed as Directors by a single resolution.
- 25.3 **Existing Directors to continue:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed pursuant to this Constitution.
- 25.4 **Removal:** A Director may at any time be removed from office by Special Resolution.
- 25.5 **Alternate Directors:** Each Director shall have power from time to time by notice to the Company to appoint any person who is not already a Director and who is approved by a majority of the other Directors to act as an alternate Director in his or her place. The following provisions shall apply to an alternate Director:
- (a) The appointment may at any time be revoked by notice to the Company given by the appointor and is automatically revoked when the appointor vacates office.
 - (b) The alternate Director is not entitled to any remuneration in his or her capacity as an alternate Director additional to that of the Director in whose place he or she acts.
 - (c) Unless otherwise provided by the terms of the appointment, the alternate Director:
 - (i) has the same rights, powers and privileges (including, without limitation, the power to sign resolutions of Directors, and the power to execute documents on behalf of the Company, but excluding the power to appoint an alternate Director); and

(ii) shall discharge all the duties and obligations; of the Director in whose place he or she acts.

25.6 **Notice of appointment and removal:** Any notice to the Company pursuant to this section appointing or removing a Director or alternate Director must:

- (a) be signed, or purport to be signed, by the person exercising such right;
 - (b) in the case of joint Shareholders, be signed, or purport to be signed, by all of those Shareholders;
 - (c) if given by a Shareholder which is a corporation, be signed, purport to be signed, on behalf of the corporation by any Director or other person holding equivalent office; and
 - (d) be given to the Company by delivering the notice, or by sending the notice through the post or by facsimile or other electronic means of communication, to its registered office;
- and may be comprised in one or more separate notice, each signed or purporting to be signed by one or more persons. A notice shall be effective from the time of receipt of the notice by the Company at its registered office.

25.7 **Appointment of managing director:** The Board may from time to time appoint one or more Directors to the office of managing director for such period, and on such terms, as the Board thinks fit and, such to the terms of any agreement entered into in any particular case, may revoke such appointment. A managing director shall be subject to the same provisions as to vacation of office as apply to the other Directors and, if a managing director ceases for any reason to hold office as a Director, he or she shall immediately cease to hold the office of managing director.

25.1 **Vacation of office:** A Director ceases to be a Director if he or she:

- (a) dies, or becomes ~~of unsound mind mentally disordered or is convicted on indictment of any offence in connection with any company, subject to a property order to personal order made under the Protection of Personal and Property Rights Act 1988;~~ or
- (b) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (c) becomes disqualified from being a Director pursuant to the Act; or
- (d) is removed from office in accordance with clause 25.4; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally.

26. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

26.1 **Power to authorise:** The Board may not exercise the power conferred by section ~~139~~ 161 of the Act to authorise any payment or other benefit of the kind referred to in that section to or in respect of a Director in his or her capacity as such, without the prior approval of the Shareholders by Special Resolution.

27. INDEMNITY AND INSURANCE

27.1 **Indemnity of Directors:** Subject to clause 27.3 every Director shall be indemnified by the Company:

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

27.3 **Other indemnities:** Subject to clause 27.3 the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or a related company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and

- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, or costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

27.3 **Exceptions:** An indemnity conferred by clause 27.1(b), or given pursuant to clause 27.2(b), shall not apply in respect of:

- (a) any criminal liability; or
- (b) in the case of an employee of the Company or a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (c) in the case of a Director or a director of a related company, any liability in respect of a breach of the duty specified in section ~~112~~ ~~131~~ of the Act.

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

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her in defending any criminal proceedings in which he or she is acquitted.

27.5 **Definitions:** In this section 27:

- (a) “Director” includes a former Director and “director” includes a former director; and
- (b) other words given extended meanings in section ~~107~~ ~~162~~ of the Act have those extended meanings.

28. POWERS OF DIRECTORS

28.1 **Management of Company:** Except as provided in clause 28.3, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

28.2 **Exercise of powers by Board:** Subject to the provisions of clause 28.3, the Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

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

28.4 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the ~~second~~ ~~third~~ schedule to the Act.

28.5 **Appointment of attorney:** The Company may exercise the power conferred by section ~~156~~ ~~184~~ of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

28.6 **Ratification by Shareholders:** Subject to the provision of section ~~154~~ ~~177~~ of the Act (relating to ratification of Directors’ actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

28.7 **Change of name of Company:** The Board shall not authorise a change of name of the Company without the prior approval of Shareholders by Special Resolution.

29. INTERESTS OF DIRECTORS

29.1 **Disclosure of Interests:** A Director shall comply with the provisions of section ~~118~~ ~~440~~ of the Act (relating to disclosure of interest of Directors) but failure to comply with that section does not affect the operation of clause 29.2

29.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to section ~~119~~ ~~107(3)~~ ~~and~~ ~~141~~ of the Act (relating to avoidance of transactions in which a Director is interested) and section ~~193(2)~~ ~~199(2)~~ of the Act (prohibiting a Director from acting as auditor of a company), a Director may:

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

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

29.3 **Interested Directors may vote, etc:** A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

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

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

30. PROCEEDINGS OF DIRECTORS

30.1 **~~Third-Fourth~~ schedule of the Act not to apply:** The provisions of the ~~third- fourth~~ schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

30.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

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

30.3 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure.

30.4 **Notice of meeting:** The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings or as provided in clause 30.5):

- (a) Not less than two days' notice of a meeting of the Board shall be sent to each Director, unless the Director waives that right.
- (b) Notice to a Director of a meeting of the Board may be:
 - (i) delivered to the Director;
 - (ii) posted to the address given by the Director to the Company for such purpose;
 - (iii) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (iv) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.

- (c) It is not necessary to give notice of a meeting to an alternate Director, unless the Director who appointed that person has given written notice to that effect to the Company.
 - (d) A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual, communication, the manner in which each Director may participate in the proceedings of the meeting.
 - (e) A notice given to a Director pursuant to this clause is deemed to be given:
 - (i) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (ii) in the case of posting, three days after it is posted;
 - (iii) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
 - (iv) in the case of electronic means, at the time of transmission.
- 30.5 **Director may convene meeting:** Without limiting the provisions of clauses 30.3 or 30.4, a Director has the right at any time to convene a meeting of the Board, or to require an employee of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than seven days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.
- 30.6 **Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if each of the Directors either attend the meeting without protest as to the irregularity or agrees to the waiver.
- 30.7 **Quorum:** A quorum for a meeting of the Board is two Directors. No business may be transacted at a meeting of Directors if a quorum is not present.
- 30.8 **Chairperson:** The Directors may elect one of their number as chairperson of the Board and determine the period for which he or she is to hold office. If no chairperson is elected or if, at a meeting of the Board, the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.
- 30.9 **Voting: Every Director has one vote:** The chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or if a majority of the votes cast on it are in favour of the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.
- 30.10 **Written resolution:** A resolution in writing, signed or assented to by all the Directors is as valid and effective as if passed at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one of more Directors. A copy of any such resolution shall be entered in the Records.
- 30.11 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.
- 30.12 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 30.13 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

31. METHOD OF CONTRACTING

- 31.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:
- (a) two or more Directors; or
 - (b) if there is only one Director, by that Director whose signature must be witnessed; or
 - (c) one or more attorneys appointed by the Company.
- 31.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf the Company by a person acting under the express or implied authority of the Company.

32. DISTRIBUTIONS

- 32.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test may, subject to the Act and this Constitution, and with the prior approval of the Shareholders by Special Resolution, authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.
- 32.2 **Form of Distribution:** Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit, but shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.
- 32.3 **Entitlement to dividends:** ~~Subject to section 107 of the Act (relating to unanimous consent to certain actions),~~ The Board shall not authorise a dividend:
- (a) in respect of some but not all the Shares in a Class; or
 - (b) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class;
- unless the amount of the dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under this Constitution or under the terms of issue of the Share, but a Shareholder may waive that Shareholder's entitlement to received a dividend or any part thereof by written notice to the Company signed by or on behalf of that Shareholder.
- 32.4 **Deduction of money:** The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.
- 32.5 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.
- 32.6 **No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

33. INSPECTION OF RECORDS

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

34. NOTICES

- 34.1 **Reports, etc to Shareholders:** Annual reports, notices and other documents required to be sent to a Shareholder shall be sent in the manner provided in section ~~394~~ 210 of the Act.

- 34.2 **Accidental omissions:** The failure to send an annual report, notice, or other document to a Shareholder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.
- 34.3 **Joint Shareholders:** A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholders named first in the Share Register in respect of the Share.
- 34.4 **Shareholder deceased or bankrupt:** If a Shareholder dies or is adjudicated bankrupt, notice may be given in any manner in which a notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section ~~391~~210 of the Act to the Personal Representative of the Shareholder at the address supplied to the Company for that purpose.
- 34.5 **Waiver by Shareholders:** Subject to section ~~240~~ 211 of the Act (which requires financial statements to be sent to Shareholders who elect not to receive annual reports), a Shareholder may from time to time, by written notice to the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

35. LIQUIDATION

- 35.1 **Distribution of assets:** If the Company is liquidated the ~~liquidator~~ may, with the approval of Shareholders by special Resolution and any other sanction required by the Act:
 - (a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
 - (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

CERTIFICATE

I(*insert name of person*) have compared this copy document of(*insert number of pages*) pages with the original document and certify that this copy document is a true copy of the original document.

Signed.....Dated.....

This is the annexure of(*insert number of pages*) pages marked(*insert an identifying mark*) referred to in the(*insert a description of the form*) signed by(*insert the name of the person signing the form*) and dated(*insert the date of signing*).

Signed.....Dated.....