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**CONSTITUTION OF  
LOWER WAITAKI IRRIGATION COMPANY LIMITED**

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## CONSTITUTION OF LOWER WAITAKI IRRIGATION COMPANY LIMITED

### PART I: DEFINITIONS

#### 1 Definitions and interpretation

- 1.1 In this Constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

**Act** means the Companies Act 1993;

**Amalgamation** means the completed act of the Company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one Company, which may be one of the amalgamating companies or may be a new Company;

**Annual Meeting** means a meeting of Shareholders held pursuant to clause 12.1;

**Balance Date** means the date adopted by the Company as the end of its financial year for the purpose of its annual financial statements;

**Board** means the Directors numbering not less than the required quorum acting as the Board of Directors of the Company, and where one Director is a quorum it means that Director so acting alone;

**Board Appointed Director** means a person who the Elected Directors have determined has the experience to act as a Director and shall be appointed by the Irrigator Directors pursuant to clause 14;

**Call** means a resolution of the Board under clause 9.1 requiring Shareholders to pay all or part of the unpaid amount of the issue price of any shares and, where the context requires, means the obligation of a Shareholder to meet the amount due pursuant to such a resolution;

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

**Chairperson** means the chairperson of the Board, elected or appointed under clause 17.2;

**Commercial Share** means a share as set out in clause 3.2(b) of the Company's Constitution;

**Company** means Lower Waitaki Irrigation Company Limited;

**Constitution** means this Constitution of the Company and all amendments to it from time to time;

**Director** means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a Director of the Company;

**Distribution**, in relation to shares held by a Shareholder, means:

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

whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means;

**Distribution System** means the races pipes, valves, gates and other equipment and infrastructure constructed and installed by or on behalf of the Company to take water from the Waitaki River and to distribute water;

**Dividend** means a Distribution by the Company other than a Distribution to which section 59 or section 76 of the Act applies;

**Elected Directors** has the meaning given to that term in clause 14.1;

**Encumbrance** means the form of encumbrance as required by the Company to be registered over a Shareholder's property to secure a Shareholder's obligations to the Company.

**Interest Group** means 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;

For the purposes of this definition:

- (a) one or more Interest Groups may exist in relation to any action or proposal; and
- (b) if —
  - (i) action is taken in relation to some holders of shares in a Class and not others; or
  - (ii) a proposal expressly distinguishes between some holders of shares in a Class and other holders of shares of that Class,

holders of shares in the same Class may fall into 2 or more Interest Groups;

**Interests Register** means a register kept by the Company at its registered office as required by section 189(1)(c) of the Act;

**Irrigation Share** means a share giving rights and obligations set out in clause 3.1(a) of the Company's Constitution;

**Irrigator Director** means a person that can hold office as a Director as elected by the Shareholders (by Ordinary Resolution) because that appointed person, is a:

- (a) Qualifying Shareholder; or
- (b) holder of not less than 25% of the voting shares in a company which is a Qualifying Shareholder and that holder is an active participant in a farming operation located in the Scheme Area; or
- (c) person who is an active participant in a farming operation located in the Scheme Area and is a trustee or beneficiary of a trust which is a Qualifying Shareholder; or
- (d) person who is an active participant in a farming operation located in a Scheme Area and is a trustee or beneficiary of a trust which holds not less than 25% of the voting shares in a company that is a Qualifying Shareholder; or
- (e) person who is an active participant in a farming operation located in a Scheme Area and is the General Partner, or a director of company that acts as a General Partner, of a limited partnership that is a Qualifying Shareholder; or

- (f) person who is an active participant in a farming operation located in a Scheme Area and holds at least a 25% ownership interest (either directly or indirectly) in a limited partnership or other ownership structure/vehicle that is a Qualifying Shareholder.

For the purposes of the definition of “Irrigator Director”, the Board may (from time to time) determine the requirements of being an “active participant in a farming operation in the Scheme Area”.

**Major Transaction** means in relation to the Company,:

- (a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the Company’s assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of (whether contingent or not), assets of the Company, the value of which is more than half the value of the Company’s assets before the disposition; or
- (c) a transaction which has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half the value of the Company’s assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of the Company;

Nothing in paragraph (c) of this definition applies by reason only of the Company giving, or entering into an agreement to give, a charge secured over assets of the Company the value of which is more than half the value of the companies’ assets for the purpose of securing the repayment of money or the performance of an obligation;

**Managing Director** means a Director who is appointed under clause 19 as an employee of the Company, with the responsibility for the management of the Company (together with any other employee);

**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;

**Policies** means all farming, environmental, irrigation and other practices, procedures and operational protocols, including the Rules of Operation and environmental provisions, as determined by the Board from time to time;

**Qualifying Shareholder** means a Shareholder who holds Irrigation Shares;

**Register** means the register of shares required by clause 6 of this Constitution and section 87 of the Act to be kept;

**Rules of Operation** means the Company’s operational rules which may be updated annually (and at such other times the Company determines in its sole discretion), and are available on the Company’s website;

**Registrar** means the Registrar of Companies appointed under section 357(1) of the Act;

**Scheme Area** means the area in the Lower Waitaki Valley (and surrounding catchment) that is serviced by the Distribution System and includes such other areas as the Board may determine;

**Shareholder** means a person:

- (a) registered in the Register as the holder of one or more shares; or
- (b) until the person's name is entered in the Register, a person named as a Shareholder in the application for registration of the Company at the time of registration of the Company; or
- (c) until the person's name is entered in the Register, a person who is entitled to have that person's name entered in the Register under a registered Amalgamation proposal as a Shareholder in an amalgamated Company.

**Solvency Test** means an examination to be applied to the financial state of the Company, which will be satisfied if:

- (a) the Company is able to pay its Debts as they become due in the normal course of business; and
- (b) the value of the Company's assets is greater than the value of its Liabilities, including contingent liabilities, and in respect of which regard has been had to the matters referred to in section 4(2) of the Act.

For the purpose of this definition **Debts** and **Liabilities** have the meaning given to those terms in sections 52(4) or 108(5) of the Act as applicable.

**Special meeting** means any meeting (other than an Annual Meeting) of Shareholders entitled to vote on an issue, called at any time by the Board, or by any other person who is authorised by the Board to call meetings of Shareholders.

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

**Voting Restrictions** means the voting restrictions set out in clause 13.2(i);

**Water Supply Agreement** means an agreement (in the form prepared by the Company) between the Company and an irrigator or water user in the Scheme Area allowing access to water as such agreement may be amended, updated or replaced from time to time by the Company;

**Working Day** means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Matariki, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday; and
- (d) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

1.2 In this Constitution unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government

department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;

(e) “written” and “in writing” includes any means of reproducing words, figures or symbols in a tangible and visible form; and

(f) a reference to a clause is to that clause in this Constitution unless stated otherwise.

1.3 Subject to this clause 1, expressions contained in this Constitution bear the same meaning as specified in the Act as amended from time to time.

1.4 If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.

## **2 Capacity and powers**

### **2.1 Rights, powers and duties**

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.

### **2.2 Full capacity**

Subject to this Constitution, the Act, any other enactment and the general law, the Company has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.

## **PART II: SHARES**

### **3 Capital and issue of shares**

#### **3.1 Classes of Shares**

The share capital of the Company will at the date of adoption of this Constitution consist of two classes of shares:

- (a) Irrigation Shares; and
- (b) Commercial Shares

#### **3.2 Rights attaching to Irrigation Shares and Commercial Shares**

- (a) The following rights and obligations shall attach to Irrigation Shares:
  - (i) the right to one vote per Irrigation Share held subject to the Voting Restrictions;
  - (ii) the right to an equal share in Dividends as authorised by the Board;
  - (iii) the right to an equal share in the Distribution of the surplus assets of the Company on winding up (and ranking equally with the Commercial Shares in this regard); and
  - (iv) Irrigation Shares may only be issued or transferred to and held by an owner of a property in the Scheme Area as determined and approved by the Board, or to such other person as the Board may determine and approve in its sole discretion.
- (b) The Commercial Shares shall continue to have the rights that attach to them as at the adoption of this Constitution.

#### **3.3 Shareholder Obligations under the Constitution**

- (a) All Shareholders are required to comply with the Policies (as the Board may approve, update and/or amend from time to time); and
- (b) All holders of Irrigation Shares are required to:
  - (i) enter into a Water Supply Agreement and to comply with its terms (including as to charges payable under the Water Supply Agreement);
  - (ii) be subject to the Encumbrance and have the Encumbrance registered on all properties that are related to the Irrigation Shares; and
  - (iii) unless the Board determines otherwise, hold one (1) Irrigation Share for each hectare of the property in the Scheme Area to which those Irrigation Shares relate.

#### **3.4 Board may issue shares**

- (a) Subject to this Constitution, the Board may from time-to-time issue in such numbers at such prices as it thinks fit, Irrigation Shares to an owner of a property in the Scheme Area and/or Commercial Shares. Notwithstanding any other provision of this Constitution, Shareholder approval is not required in respect of the issue of any Irrigation Shares or Commercial Shares and section 45 of the Act does not apply to Irrigation Shares, Commercial Shares or any other shares (including shares issued under clause 3.4(b)).

- (b) The Board may issue additional shares (and rights and options to acquire shares) of any Class (including redeemable shares) at any time, to any person and in such numbers as the Board thinks fit including any shares which rank equally with or in priority to existing shares (whether as to voting rights or Distribution) and such issue shall not be deemed to be action affecting the rights attaching to existing shares.

### 3.5 Consolidation and subdivision of shares

The Board may authorise:

- (a) the consolidation and division of shares or any Class of Shares in proportion to those shares or the shares in that Class; and
- (b) the subdivision of the shares or any Class of Shares in proportion to those shares or the shares in the Class.

## 4 Repurchase and redemption of shares

### 4.1 Purchase by Company of its shares

The Company may purchase or otherwise acquire its shares in accordance with, and subject to, sections 58 to 65 and 110 to 112 of the Act and may hold the acquired shares in accordance with sections 67A to 67C of the Act.

### 4.2 Redemption by Company of Irrigation Shares

The Company may redeem Irrigation Shares at its option in accordance with sections 68(b)(i), 69(1)(b)(ii) and 71 of the Act if:

- (a) a holder of Irrigation Shares fails to enter into the then current Water Supply Agreement within the expiration of twenty (20) Working Days' notice (or such longer period as the Company may determine at its discretion) from the Company requiring the holder to do so;
- (b) a holder of Irrigation Shares requests the Company redeem all or part of the Irrigation Shares held, and the Company agrees to do so (in the Board's sole discretion); or
- (c) the holders of the Irrigation Shares alienate the Irrigation Shares from the property in breach of clause (b)(a)(v).

The total price payable for the Irrigation Shares shall be \$1.00 or such other amount as the Company and the relevant Shareholder may agree.

### 4.3 No liability

The Company and the Board shall be under no liability to the Shareholders in respect of any cost, loss or damage, whether direct or indirect resulting from the redemption of the Irrigation Shares in accordance with clause 4.2.

## 5 Transfer of shares

### 5.1 Sale of property

If any Shareholder wishes to sell a property to which Irrigation Shares relate, then they must also transfer the Irrigation Shares to the purchaser of the property. In the event that they default in transferring the Irrigation Shares, the Company shall arrange for the execution of the necessary share transfers on behalf of the Shareholder and for avoidance of doubt the Shareholder transferring the property irrevocably appoints any of the Directors of the Company as their power of attorney for the purposes of effecting the transfer of their shares and the sale price of the shares in this instance shall be determined by the Directors at their sole discretion.



No Irrigation Shares shall be transferred separately or alienated in any way from the property to which they relate unless the Board determines otherwise in its sole discretion.

## **5.2 Entry in Register**

Subject to clause 5.3, shares may be transferred by entry of the name of the transferee on the Register.

## **5.3 Signed transfer**

For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or the holder's personal representative must be delivered to the Company or to the agent of the Company who maintains the Register.

## **5.4 Form of transfer**

- (a) The form of transfer shall be in such form as approved by the Board.
- (b) The form of transfer must be signed by the transferee if registration as holder of the shares would impose a liability to the Company on the transferee.

## **5.5 Board's right to refuse or delay registration of transfer**

- (a) The Board may, within thirty (30) Working Days of the receipt of a form of transfer of shares, refuse or delay the registration of the transfer if:
  - (i) the transferee is not the purchaser of the relevant property to which the Irrigation Shares relate (where the transfer relates to Irrigation Shares);
  - (ii) the transferee of the shares has not entered into the then current Water Supply Agreement (where the transfer related to Irrigation Shares);
  - (iii) the transferee of the shares has not entered into the then current Encumbrance;
  - (iv) the holder of the shares has failed to comply with the terms of any contract with the Company (including a Water Supply Agreement and the Rules of Operation);
  - (v) the holder of the shares has failed to pay an amount due to the Company in respect of those shares;
  - (vi) the Board considers that to effect the transfer would result in a breach of the law;
  - (vii) the Board considers in its sole discretion that it is not in the best interests of the Company to register the transfer;
  - (viii) the Board does not approve of the transferee, in respect of which matter the Board shall have absolute discretion in its decision; or
  - (ix) clause 5.3 has not been complied with or the form of transfer has not been properly executed or does not comply with clause 5.4.

## **5.6 Registration of transfer**

Subject to clauses 5.3 and 5.4, on receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the Register as holder of the shares, unless the Board has resolved in accordance with clause 5.5 to refuse or delay the registration of the transfer of the shares.

## **6 Share Register**

### **6.1 Maintain Register**

- (a) The Company must maintain a Register which records all shares issued by the Company and which states:
  - (i) whether, under this Constitution or the terms of issue of any shares, there are any restrictions or limitations on their transfer; and
  - (ii) where any document that contains the restrictions or limitations may be inspected.
- (b) The Company may appoint an agent to maintain the Register.

### **6.2 Contents of Register**

The Register must state, with respect to each Class of Shares:

- (a) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last ten (10) years, a Shareholder;
- (b) the number of shares held by each Shareholder within the last ten (10) years;
- (c) the date of any:
  - (i) issue of shares to a Shareholder;
  - (ii) repurchase or redemption of shares from a Shareholder; or
  - (iii) transfer of shares by or to each Shareholder within the last ten (10) years; and in relation to the transfer, the name of the person to or from whom the shares were transferred.

### **6.3 Directors' duty to supervise Register**

It is the duty of each Director to take reasonable steps to ensure that the Register is properly kept and that the transferees' names are promptly entered on it in accordance with clause 6.2.

### **6.4 Register prima facie evidence**

Subject to section 91 of the Act, the entry of the name of a person in the Register as holder of a share is prima facie evidence that the legal title to the share is vested in that person.

### **6.5 Register evidence of rights**

The Company may treat the registered holder of a share as the only person entitled to:

- (a) exercise the right to vote attaching to the share;
- (b) receive notices in respect of the share;
- (c) receive a Distribution in respect of the share; and
- (d) exercise the other rights and powers attaching to the share.

### **6.6 Trust not to be registered or recognised**

- (a) No notice of a trust, whether express, implied, or constructive, may be entered on the Register.
- (b) Except as required by law, no person will be recognised by the Company as holding any share upon trust or holding any interest in a share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the share vested in the registered holder.
- (c) A personal representative of a deceased holder of shares is entitled to be entered in the Register as the holder of such shares as a personal representative.
- (d) The registration of a trustee, executor, or administrator as a personal representative of a deceased Shareholder does not constitute notice of a trust.

## **7 Share certificates**

### **7.1 Application for share certificate**

A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's shares.

### **7.2 Issue of share certificate**

- (a) The Company must, within twenty (20) Working Days after receiving an application for a share certificate under clause 7.1, send to the Shareholder a certificate stating the name of the Company, and the Class and number of shares to which the certificate relates.
- (b) If the application relates to some but not all of the applicant's shares, the Company must separate the shares shown in the Register as owned by the applicant into separate parcels; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares.

### **7.3 Transfer to be accompanied by share certificate**

Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the Company unless the form of transfer is accompanied by the share certificate relating to the shares (or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board).

### **7.4 Surrendered share certificate**

Where shares to which a share certificate relates are transferred, and the share certificate has been sent to the Company to enable registration of the transfer, the share certificate will be cancelled, and no further share certificate will be issued except at the request of the transferee.

## **8 Transmission of shares**

- (a) In the case of the death of a Shareholder, the survivor (where the deceased was a joint holder) or the legal personal representative of the deceased (where the deceased was a sole holder) will be the only person recognised by the Company as having any title to the deceased's interest in the shares. Nothing contained in this clause 8(a) will release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.
- (b) The assignee of the property of a bankrupt Shareholder is entitled to be registered as the holder of the shares held by the bankrupt subject to the rights and obligations applying to any share.

## **9 Call on shares**

### 9.1 **Board may make Calls**

Subject to the terms of issue of any shares, the Board may resolve to require the holders of unpaid or partly paid shares to pay all or part of the amount unpaid on the shares. The terms of the resolution will constitute the terms of the obligation to pay the Call (including payment by instalments). The Call may be revoked or postponed at any time by the Board.

### 9.2 **Notice of Calls**

- (a) Notice of the Call must be given to the Shareholder at the time of the Call or to a subsequent holder of the shares. Failure to give notice to a Shareholder will not invalidate a Call but it will not be payable by that Shareholder until the notice has been served on the Shareholder. The notice must specify the day by which and the place at which the Call must be paid.
- (b) Notice of a Call sent by post to a Shareholder to the address recorded in the Register as the address of the Shareholder will be deemed to have been received by the Shareholder the day after it was posted.

### 9.3 **Liability for Calls**

- (a) The joint holders of shares are jointly and severally liable to pay all Calls in respect of the shares.
- (b) If a Call is not paid before or on the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment until the time of actual payment) at such rate as the Board determines either at the time of the Call or subsequently.
- (c) The liability for a Call which has become due and payable attaches to the current Shareholder and not a prior Shareholder, notwithstanding that at the date of the Call (or the date the Call fell due for payment) another person was the holder of the shares or that the notice of the Call was served on the then Shareholder and not the current Shareholder.
- (d) Following the registration in the Register of a change of ownership of shares in respect of which a Call has been made, a notice of the Call is not required to be served on the new Shareholder.

### 9.4 **Agreement to differentiate between Calls**

The Board may, on the issue of shares, by agreement with the Shareholders concerned, differentiate between the holders of the same Class as to the amount to be paid on the shares and the times for payment.

## 10 **Suspension of right to Dividends, forfeiture and lien**

### 10.1 **Notice of suspension of right to Dividends**

- (a) If a Shareholder fails to pay any Call (or instalment of a Call) on the day appointed for payment, the Board may at any time after that date, while any part of the Call or instalment payable by the Shareholder remains unpaid, suspend payment of any Dividends or other Distributions payable to the Shareholder.
- (b) The amount owing under the Call for the purposes of clauses 10.1, 10.2 and 10.3 may include any interest which may have accrued and all expenses which may have been incurred by the Company by reason of non-payment by the Shareholder of the amount owing under the Call.

### 10.2 **Application of suspended Dividends**

All Dividends and other Distributions suspended pursuant to clause 10.1(a) may be applied by the Company to reduce the amount owing under the Call or otherwise owing to the Company. Dividends so applied will be deemed to have been paid in full.

### 10.3 **Lifting suspension of right to Dividends**

When the total Dividends and Distributions withheld and applied under clause 10.2 equal the total amount owing under the Call, including amounts owing under clause 10.1(b), the suspension of the right to Dividends and Distributions will be lifted, and all rights to be paid Dividends and Distributions on the shares will resume.

### 10.4 **Forfeiture**

- (a) If a Shareholder fails to pay any Call or instalment of a Call on the day appointed for payment of it the Board may, while any part of the Call or instalment remains unpaid, serve a notice on him or her requiring payment of so much of the Call or instalment as is unpaid together with any interest, which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.
- (b) The notice shall name a further day (not earlier than the expiration of ten (10) Working Days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the Call was made will be liable to be forfeited.
- (c) If the requirements of the notice are not complied with, any share in respect of which the notice has been given may, at any time after the notice is given and before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all Dividends and any other Distributions in respect of the forfeited shares and not actually paid before the forfeiture.
- (d) When any share has been forfeited:
  - (i) notice of the resolution shall be given to the Shareholder in whose name the share was registered immediately before the forfeiture;
  - (ii) an entry of the forfeiture, with the date of the forfeiture, shall be made in the Register; and
  - (iii) the share certificate of any shares forfeited shall be immediately cancelled by the Company and the Shareholder shall return the share certificate for the forfeited share to the Company within ten (10) Working Days of receiving notice of the resolution.
- (e) A person whose shares have been forfeited shall cease to be a Shareholder in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the Company all money which at the date of the forfeiture was payable by him or her to the Company in respect of the shares but his or her liability shall cease if and when the Company receives payment in full of all such money in respect of the shares.
- (f) The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time as if the same had been payable by virtue of a Call duly made and notified.
- (g) Any failure to give the notice, or to make the entry, required under clause 10.4(d) does not invalidate the forfeiture.

### 10.5 **Lien**

- (a) The Company has a first and paramount lien upon every share registered in the name of a Shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares. This lien is for:
  - (i) all money payable (whether presently or not) in respect of shares held by the Shareholder;
  - (ii) all other money presently payable by the Shareholder to the Company or any subsidiary of the Company on any account whatever; and
  - (iii) any amount the Company may be called upon to pay under any statute or regulation in respect of shares of a deceased Shareholder or other Shareholder (whether or not the period for the payment, fulfilment or discharge has actually arrived).
- (b) The lien extends to all Dividends from time to time declared in respect of the shares.

#### **10.6 Sale on exercise of forfeiture or lien**

- (a) Subject to this clause 10.6 a forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board thinks it.
- (b) Subject to this clause 10.6, the Company may sell in such a manner as the Board thinks fit any shares on which the Company has a lien. No sale may be made until:
  - (i) a sum in respect of which the lien exists is due and payable;
  - (ii) a notice in writing stating, and demanding payment of, the amount due and payable (in respect of which the lien exists) has been given to the current registered holder of the share (or the person entitled to that share by reason of the registered holder's death or bankruptcy); and
  - (iii) ten (10) Working Days have expired since the giving of that notice.
- (c) The net proceeds of the sale of any forfeited share or any shares sold for the purpose of enforcing a lien are to be applied in or towards satisfaction of any unpaid Calls, instalments, in the case of a lien, or any other money in respect of which the lien existed. The residue, if any, shall be paid to the former holder of the shares.
- (d) A certificate signed by a Director stating that the power of sale provided in this clause 10.6 has arisen, and is exercisable by the Company under this Constitution, or that a share in the Company has been duly forfeited on the date stated, will be conclusive evidence of the facts stated in the certificate.
- (e) For giving effect to any sale after forfeiture or for enforcing a lien in purported exercise of the powers given in this Constitution, the Board may authorise some person to transfer the shares sold to the purchaser. The purchaser will be registered as the holder of the shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the Company exclusively. If the share certificate for the forfeited shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the share certificate not delivered up.

## **11 Distributions**

### **11.1 Solvency test**

- (a) Subject to clause 11.2, the Board may, if it is satisfied on reasonable grounds that the Company will satisfy the Solvency Test immediately after the Distribution, authorise a Distribution by the Company to Shareholders of any amount and to any Shareholders as it thinks fit.
- (b) The Directors who vote in favour of a Distribution must sign a certificate stating that, in their opinion, the Company will satisfy the Solvency Test immediately after the Distribution. The grounds for that opinion must also be stated in that certificate.

#### 11.2 Dividends payable *pari passu*

- (a) Subject to clause 11.2(c), the Board may not authorise a Dividend:
  - (i) in respect of some but not all the shares in a Class; or
  - (ii) that is of a greater value per share in respect of some shares of a Class than 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 Shareholder's liability under this Constitution or under the terms of issue of the share.
- (b) A Shareholder may waive his or her entitlement to receive a Dividend by giving a notice in writing, signed by or on behalf of the Shareholder, to the Company.
- (c) If all the Shareholders of the same Class concur in writing in respect of each proposed Dividend, the Company may pay a Dividend which is distributed other than in accordance with clause 11.2(a).

#### 11.3 Unclaimed Distributions

- (a) Any Distribution that has not been claimed after one (1) year from the date of the Distribution may be invested or otherwise made use of by the Board for the benefit of the Company until it is claimed. The Company shall not be regarded as holding any such amount used on trust for the claimant.
- (b) Any Distribution remaining unclaimed for a period of five (5) years from the date of the Distribution may be forfeited by the Board for the benefit of the Company, provided that the Board may in its discretion cancel the forfeiture and pay the Distribution to any person producing evidence satisfactory to the Board that he or she is entitled to the amount claimed.

#### 11.4 Financial assistance on acquisition of shares

The Company may, subject to and in accordance with sections 76 to 80, 107 and 108 of the Act, give financial assistance (whether directly or indirectly) to a person for the purpose of, or in connection with, the purchase of shares issued (or to be issued) by the Company, or by its holding Company.

#### 11.5 Shareholder proposals

- (a) 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 the Shareholders at which the Shareholder is entitled to vote.
- (b) If the notice is received by the Board not less than twenty (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's proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

- (c) If the notice is received by the Board not less than five (5) Working Days and not more than twenty (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's proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- (d) If the notice is received by the Board less than five (5) 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 may, if practicable and (at the expense of the Shareholder) give notice of the Shareholder's proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- (e) If the Directors intend that Shareholders may vote on the proposal by proxy, 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.
- (f) The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous, or vexatious.
- (g) Where the costs of giving notice of the Shareholder's 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.



## **PART III: MEETINGS OF SHAREHOLDERS**

### **12 Meetings of Shareholders**

#### **12.1 Annual Meeting**

- (a) The Board must, in accordance with section 120 of the Act, call an Annual Meeting of Shareholders to be held:
  - (i) not later than six (6) Months after the Balance Date of the Company; and
  - (ii) not later than fifteen (15) Months after the previous Annual Meeting.
- (b) The Company must hold the Annual Meeting on the date on which it is called to be held.

#### **12.2 Special meetings**

A Special Meeting:

- (a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting; and
- (b) must be called by the Board on the written request of Shareholders holding not less than 5 per cent of the votes entitled to be cast on the issue.

#### **12.3 Chairperson of meetings of Shareholders**

- (a) If the Directors have elected a Chairperson, and that Chairperson is present at a meeting of Shareholders, he or she must chair the meeting.
- (b) If no Chairperson has been elected or if, at any meeting of Shareholders, the Chairperson is not present within fifteen (15) minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their numbers to chair the meeting.

#### **12.4 Shareholders entitled to notice of meeting**

- (a) The Shareholders entitled to receive notice of a meeting of Shareholders are those Shareholders of the relevant Class:
  - (i) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of meeting, whose names are registered in the Register on that date; or
  - (ii) if the Board does not fix a date for purpose of establishing an entitlement to receive the notice of meeting, whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.
- (b) A date fixed by the Board under clause 12.4(a)(i) must not precede by more than thirty (30) Working Days nor less than ten (10) Working Days the date on which the meeting is to be held.

#### **12.5 Notice of meeting**

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

#### **12.6 Contents of notice**

The notice referred to in clause 12.5 must state:

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

#### **12.7 Irregularities in notice**

- (a) 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.
- (b) The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.

#### **12.8 Method of holding meeting**

A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting;
- (b) by means of audio, or audio and visual, or electronic communication by which all Shareholders participating and constituting a quorum; or
- (c) by a combination of the methods in clause 12.8(a) and (b).

#### **12.9 Adjournments**

- (a) The Chairperson of a meeting of Shareholders may, at the request of those Shareholders present in person or by proxy who are between them able to exercise a majority of the votes able to be cast at the meeting, adjourn the meeting.
- (b) No business shall be transacted of any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) If a meeting of Shareholders is adjourned for less than thirty (30) days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clauses 12.5 and 12.6.

#### **12.10 Minutes**

- (a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Shareholders.
- (b) Minutes which have been signed as correct by the Chairperson of the meeting are prima facie evidence of the proceedings.

### **13 Voting at meetings**

#### **13.1 Quorum**

- (a) A quorum for a Shareholders meeting is present if Shareholders (present in person or by proxy) who are between them are able to exercise 20% of the votes to be cast on the business to be transacted at the meeting.
- (b) No business may be transacted at a meeting of Shareholders if a quorum is not present.

- (c) If a quorum is not present within thirty (30) minutes after the time appointed for the meeting:
  - (i) in the case of a meeting called pursuant to a requisition of Shareholders under clause 12.1(a), the meeting is dissolved;
  - (ii) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint.

### 13.2 **Voting**

- (a) In the case of a meeting of Shareholders held under clause 12.2(a) unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the Chairperson of the meeting:
  - (i) voting by voice; or
  - (ii) voting by show of hands.
- (b) In the case of a meeting of Shareholders held under clause 12.2(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- (c) A declaration by the Chairperson of the 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 13.2(e); or
- (d) At a meeting of Shareholders, a poll may be demanded by:
  - (i) not less than five Shareholders having the right to vote at the meeting; or
  - (ii) 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
  - (iii) 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; or
  - (iv) the Chairperson of the meeting.
- (e) A poll may be demanded either before or after the vote is taken on a resolution.
- (f) If a poll is taken, votes must be counted according to the votes attached to the shares of each Shareholder present (in person or by proxy) and voting.
- (g) The Chairperson of a Shareholders' meeting is not entitled to a casting vote.
- (h) For the purposes of this clause, 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.
- (i) Each Shareholder is entitled to the right to one vote per share held on a poll at a meeting of the Company or on any resolution, up to a maximum of 500 votes for any one Shareholder.

### 13.3 **Proxies and representatives**

- (a) A Shareholder may exercise the right to vote either by being present or by proxy.

- (b) A proxy for a Shareholder is entitled to attend, be heard, and vote at a meeting of Shareholders as if the proxy were the Shareholder.
- (c) A proxy must be appointed by notice in writing signed by the Shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding five (5) years or such other period as the Board may determine.
- (d) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- (e) A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy and all provisions of this Constitution that apply to a proxy will apply to the corporate representative.

#### 13.4 **Votes of joint holders**

Where two or more persons are recorded in the Register as the holder of a share, the vote of the person named first in the Register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.

#### 13.5 **Unpaid sums**

If a sum due to the Company in respect of a share has not been paid, then no share registered in the name of that Shareholder or issued in respect of the relevant property may be voted at a Shareholders' meeting other than at a meeting of an Interest Group.

#### 13.6 **Meetings of Interest Groups**

The provisions of clauses 12 and 13 shall, with such consequential amendments as may be necessary, govern the proceedings of any meeting of an Interest Group.

#### 13.7 **Other proceedings**

Except as provided in this Constitution the Shareholders may regulate their own procedure.

## **PART IV: DIRECTORS**

### **14 Appointment and removal**

#### **14.1 Number of Directors and appointment of Directors**

- (a) Subject to clause 17.10, the number of Directors may not be fewer than four (4) Directors nor more than six (6).
- (b) At least four (4) of the Directors must be Irrigator Directors who shall be elected by the Shareholders by Ordinary Resolution.
- (c) Provided that all times that clause 14.1(b) is satisfied, an additional Director may be elected by the Shareholders by Ordinary Resolution and such Director may, but is not required to, satisfy the Irrigator Director criteria,  
  
with the Directors in clauses 14.1(b) and (c) to be referred to as the "Elected Directors".
- (d) One (1) of the Directors may be a Board Appointed Director and shall be appointed pursuant to clause 14.6.
- (e) The Directors of the Company shall be those persons holding office at the date of adoption of this Constitution and such directors shall be deemed to be appointed in accordance with clause 14.1, clause 14.2 and clause 14.6 (as applicable).

#### **14.2 Removal of Directors by resolution**

- (a) A Director removed from office by an Ordinary Resolution.
- (b) A notice of meeting at which the removal of a Director will be considered must state that a purpose of the meeting is the removal of the Director.

#### **14.3 Appointment and removal by notice**

- (a) Without limiting clauses 14.1 and 14.2, the Directors are the persons appointed from time to time as Directors by a notice in writing signed by the majority (by shareholding) of the Shareholders and who have not resigned or been removed or disqualified from office under this Constitution.
- (b) A Director may be removed from office at any time by a notice in writing signed by a majority of Shareholders.
- (c) A notice given under clauses 14.2(a) or (b) takes effect upon receipt of it at the registered office of the Company (including the receipt of a copy delivered by email) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by the Shareholders giving the notice.
- (d) A Director holds office until his or her resignation, disqualification, or removal in accordance with this Constitution.

#### **14.4 Disqualification and removal**

A person will be disqualified from holding the office of Director if he or she:

- (a) absences him or herself from a meeting of Directors for a period of six (6) Months, or does not attend at least half of the meetings of the Directors held in each year, without special leave of absence from the Directors; or
- (b) being an employee of the Company, ceases such employment; or

- (c) is removed under clauses 14.2 or 14.3; or
- (d) resigns in writing under clause 14.5 and is not reappointed in accordance with this Constitution, or
- (e) becomes disqualified from being a Director pursuant to section 151 of the Act; or
- (f) is prohibited from being a Director or promoter of or being concerned with or taking part in the management of a Company under section 382, 383 or section 385 of the Act; or
- (g) dies; or
- (h) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (i) is under 18 years of age; or
- (j) is an undischarged bankrupt; or
- (k) in the respect of an Irrigator Director only, ceases to meet the criteria of an Irrigator Director. If this clause 14.4(k) applies then the person shall cease to be a Director effective at the next Annual Meeting following the date such person fails to meet the criteria of an Irrigator Director.

#### **14.5 Resignation**

A Director may resign office by signing a written notice of resignation and delivering it to the Company. The notice takes effect upon the later of the receipt of it at the registered office of the Company (including receipt of a copy delivered by email) and any later time specified in the notice.

#### **14.6 Board Appointed Director**

The Elected Directors, may, acting unanimously and subject to clause 14.1(a) and (b), appoint one (1) Board Appointed Director. The Elected Directors, shall have the following powers in respect of those appointments:

- (a) the right to remove any person so appointed by a unanimous vote of the Elected Directors; and
- (b) any other terms and conditions of holding office.

#### **14.7 Rotation and retirement of Directors**

- (a) At each Annual Meeting, one (1) or two (2) (as may be determined by the Board pursuant to clause 14.7(c)) of the Elected Directors, shall retire from office.
- (b) The Shareholders may at each Annual Meeting fill the vacated office(s) by election of the number of persons required to fill the vacated office(s) (as the case may be in that year) to be Elected Directors. For the avoidance of doubt, this clause 14.7 shall not apply to the Board Appointed Director.
- (c) In making its determination in each year as to whether one (1) or two (2) of the Elected Directors are required to retire from office pursuant to clause 14.7(a), the Board:
  - (i) shall have regard to the principle that, wherever reasonably practical, all Elected Directors are able to remain as a Director for a term of three (3) years at a time before being required to retire; and
  - (ii) may at its discretion agree on the procedure for determining which Elected Directors shall retire in each year.

- (d) A retiring Elected Director continues to hold office until:
  - (i) he or she is re-elected; or
  - (ii) if he or she is not re-elected, until the Shareholders at the meeting of which he or she retires (or any adjournment of that meeting) elect someone in his or her place; or
  - (iii) if the meeting does not elect someone in his or her place, until the end of the meeting or an adjournment of the meeting.
- (e) A retiring Elected Director who is not disqualified under the Act is eligible for election.

#### 14.8 **Nomination**

- (a) No person, other than an Elected Director retiring at the Annual Meeting pursuant to clause 14.7 will be eligible for election to the office of Director at any Annual Meeting unless:
  - (i) he or she has been recommended by the Board for election; or
  - (ii) there has, at least twenty (20) Working Days before the meeting (or such other period as the Board may determine), been served on the Company by notice in writing, signed by a Shareholder qualified to attend and vote at the meeting for which the notice is given, of his intention to propose a person for election and a notice in writing signed by the person nominated of his willingness to be elected.
- (b) A notice of each and every eligible candidate for the office of Director must be either included in the notice of the meeting at which the election is to take place or be sent by the Company to all persons entitled to receive notice of the meeting at least five (5) Working Days prior to the meeting. Failure to send such notice to any such person will not invalidate the nomination nor any election of the Director at the meeting.

#### 14.9 **Board may fill a casual vacancy**

Subject to clause 14.1, the Board may appoint any person to be an Elected Director to fill a casual vacancy provided that the person so appointed must resign at the Annual Meeting of the Company that the applicable appointee's predecessor was required to retire at (in accordance with clause 14.7), but may stand for re-election at the applicable Annual Meeting.

### 15 **Indemnity and insurance**

#### 15.1 **Indemnity of Directors and Employees**

- (a) The Board may cause the Company to indemnify a Director or Employee of the Company or a related Company for costs incurred by him or her in any proceeding:
  - (i) that relates to liability for any act or omission in his capacity as a Director or Employee; and
  - (ii) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- (b) The Board may cause the Company to indemnify a Director or an Employee of the Company or a related Company in respect of:
  - (i) liability to any person other than the Company or a related Company for any act or omission in his or her capacity as a Director or Employee; or

- (ii) costs incurred by the Director or Employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;

not being:

- (iii) criminal liability; or
- (iv) liability for the breach of section 131 of the Act; or
- (v) liability for breach of any fiduciary duty owed to the Company or related Company.

## 15.2 Insurance of Directors and employees

- (a) The Board may, subject to section 162 of the Act, cause the Company to effect insurance for Directors and Employees of the Company or a related Company in respect of:
  - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or Employee; or
  - (ii) costs incurred by such Directors or Employees in defending or settling any claim or proceeding relating to any such liability; or
  - (iii) costs incurred by a Director or Employee in defending any criminal proceedings that have been brought against the Director or Employee in relation to any act or omission in his or her capacity as a Director or Employee and in which he or she is acquitted.
- (b) The Directors who vote in favour of authorising the effecting of insurance under clause 15.2 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.
- (c) The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or Employee of the Company or related Company are forthwith entered in the Interests Register.

## 15.3 Definitions

For the purpose of this clause 15, **Director** includes a former Director and **Employee** includes a former employee.

## 16 Powers and duties of the Board

### 16.1 Powers of the Board

- (a) Subject to clause 16.1(b) and any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- (b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the Shareholders or any other person.

### 16.2 Delegation by Board

- (a) Subject to the Act, the Board may delegate to a committee of Directors, a Director, an employee of the Company, or any other person any one or more of its powers.



- (b) The Board is responsible for the exercise of a power by any delegate (where that power is delegated under this clause 16.2(a)) as if the power had been exercised by the Board, unless the Board:
  - (i) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the Directors by the Act and this Constitution; and
  - (ii) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.
- (c) The proceedings of meetings of any committee formed pursuant to clause 16.2(a) shall be in accordance with the provisions of clause 17, with such consequential amendments as may be necessary, and any other rules that may be imposed on it by the Board.

#### **16.3 Directors to act in good faith**

- (a) Subject to this clause 16.3, a Director, when exercising powers or performing duties, must act in good faith and in what the Director believes to be the best interests of the Company.
- (b) Nothing in this clause 16.3 limits the power of a Director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.

#### **16.4 Major transactions**

The Board may not procure or permit the Company to enter into a Major Transaction unless the transaction is:

- (a) approved by a Special Resolution; or
- (b) made contingent on approval by a Special Resolution.

### **17 Proceedings of the Board**

#### **17.1 Third Schedule**

The provisions of this clause apply instead of the provisions of the third schedule to the Act.

#### **17.2 Chairperson**

- (a) The Directors may elect one of their number as Chairperson of the Board.
- (b) The Director elected as Chairperson holds that office until he or she ceases to be a Director or the Directors elect a Chairperson in his or her place.
- (c) If no Chairperson is elected, or if at a meeting of the Board the Chairperson is not present within five (5) minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their numbers to be Chairperson of the meeting.

#### **17.3 Notice of meeting**

- (a) A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause 17.3.
- (b) Not less than two (2) Working Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. The notice must include the date, time and place of the meeting and the matters to be discussed.

- (c) The giving of a notice of a meeting or an irregularity in the notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- (d) Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.
- (e) It is not necessary to give notice of a meeting of the Board to any Director for the time being absent from New Zealand.

#### 17.4 **Method of holding meetings**

- (a) A meeting of the Board may be held either:
  - (i) by a number of Directors sufficient to form a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - (ii) by means of audio, or audio and visual communication, by which all the Directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.
- (b) Where a meeting of the Board is held pursuant to clause 17.4(a)(ii), at the commencement of the meeting each Director participating must acknowledge his or her presence to all the other Directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the Chairperson.

#### 17.5 **Quorum**

- (a) A quorum for a meeting of the Board is four (4) Directors.
- (b) No business may be transacted at a meeting of Directors if a quorum is not present.

#### 17.6 **Voting**

- (a) Every Director has one vote.
- (b) The Chairperson does not have a casting vote.
- (c) 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 are in favour of it.
- (d) A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board, unless he or she expressly dissents from (or votes against) the resolution at the meeting.
- (e) A Director may vote in respect of any transaction in which the Director is interested and if the Director does so the Director's vote will be counted, and the Director will be counted in the quorum present at the meeting.

#### 17.7 **Minutes**

- (a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.
- (b) Minutes of proceedings of the Board which have been signed correct by the Chairperson are prima facie evidence of the proceedings.

#### 17.8 **Unanimous resolution**

- (a) A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- (b) Any such resolution may consist of several documents (including electronic copies or other similar means of communication) in like form each signed or assented to by one or more Directors.
- (c) A copy of any such resolution must be entered in the minute book of Board proceedings.

#### 17.9 **Other proceedings**

Except as provided in this clause 17 the Board may regulate its own procedure.

#### 17.10 **Continuing Directors**

The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors. If their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors will comprise the Board only for the purpose of summoning a Special Meeting.

### 18 **Interested Directors**

#### 18.1 **Authority to remunerate Directors**

- (a) The Board may authorise:
  - (i) the payment of remuneration (or the provision of other benefits), by the Company to a Director for his or her services as a Director (or in any other capacity), or by way of compensation for loss of office provided that the total aggregate remuneration payable to the Directors by the Company for each financial year must be approved/ratified by the Shareholders by way of Ordinary Resolution.
  - (ii) the entering into of a contract to record the matters in clause 18.1(a),  
if the Board is satisfied that to do so is fair to the Company.
- (b) The payment of remuneration (or the giving of any other benefit) to a Director in accordance with a contract authorised pursuant to clause 18.1(a) need not be separately authorised by the Board.
- (c) The Board must ensure that forthwith after authorising any payment under clause 18.1(a), particulars are entered in the Interests Register.
- (d) The Directors who vote in favour of authorising a payment under clause 18.1(a) must sign a certificate stating that, in their opinion, the making of the payment, or the entering into of the contract is fair to the Company. Grounds for that opinion must also be stated in the certificate.

#### 18.2 **Other offices with Company held by Director**

- (a) Any Director may act by himself or herself, or by the Director's firm in a professional capacity for the Company; and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor for the Company.

- (b) A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the Director's office of Director, for such period and on such terms (as to remuneration and otherwise) as the Board may determine.
- (c) A Director is not disqualified by virtue of his or her office from entering into any transaction with the Company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a Director and not in a fiduciary relationship with the Company. No such Director shall be liable to account to the Company for any profit realised by the transaction by reason of the Director holding that office or of the fiduciary relationship thereby established.

### 18.3 Notice of interest to be given

- (a) A Director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, and, if the Company has more than one Director, disclose to the Board of the Company:
  - (i) if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (ii) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- (b) A Director is not required to comply with clause 18.3(a) if:
  - (i) the transaction or proposed transaction is between the Director and the Company; and
  - (ii) the transaction or proposed transaction is or is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.
- (c) For the purposes of clause 18.3(a), a general notice entered in the Interests Register or disclosed to the Board to the effect that a Director is a Shareholder, Director, officer or trustee of another named Company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that Company or person, is a sufficient disclosure of interest in relation to that transaction.

## 19 Managing Directors

### 19.1 Appointment and dismissal

- (a) The Board may from time to time appoint one or more of their body to the office of Managing Director or Managing Directors of the Company, either for a fixed term or an indefinite term.
- (b) Every Managing Director is liable to be dismissed or removed by a resolution of the Board. The Board may enter into any agreement on behalf of the Company with any person who is or is about to become a Managing Director with regard to the length and conditions of the Managing Director's employment. The remedy of any such person for any breach of the agreement will be in damages only and the Managing Director will not have a right or claim to continue in office as Managing Director contrary to the will of the Board.

### 19.2 Termination of employment

A Managing Director is, subject to the terms of any contract, subject to the same provisions as regards resignation, removal, and disqualification as the other Directors. If the Managing Director ceases to hold the office of Director for any reason, the Managing Director will immediately cease to be a Managing Director.

## 20 **Authority to bind**

### 20.1 **Method of contracting**

- (a) A contract or other enforceable obligation may be entered into by the Company as follows:
  - (i) 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 of the Company (or where there is only one Director, by that Director whose signature must be witnessed); or
    - (B) a Director or any other person or class of persons authorised by the Board for that purpose whose signature or signatures must be witnessed; or
    - (C) one or more attorneys appointed by the Company in accordance with clause 20.2
  - (ii) 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
  - (iii) 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.
- (b) A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the Company shall be proof of such authority notwithstanding that the authority may have been subsequently revoked.

### 20.2 **Attorneys**

- (a) The Company may, by an instrument in writing executed in accordance with clause 20.1 appoint a person as its attorney either generally or in relation to a specified matter or matters.
- (b) An act of the attorney in accordance with the instrument binds the Company.

## 21 **Liquidation**

### 21.1 **Appointment of liquidator**

A liquidator of the Company may be appointed by a Special Resolution of those Shareholders entitled to vote and voting on the question.

### 21.2 **Distribution of surplus assets**

- (a) Subject to the terms of issue of any shares, upon the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed among the holders of the shares in proportion to their shareholding, provided however that a holder of shares not fully paid up shall receive only a proportionate share of his or her entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the shares.

- (b) Upon the liquidation of the Company the liquidator may, with the sanction of an Ordinary Resolution and any other sanction required by law, divide amongst the holders of shares in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not). The liquidator may for that purpose set such value as the liquidator deems fair upon any assets to be divided as aforesaid. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the holders of shares as the liquidator thinks fit (but so that no holders of shares shall be compelled to accept any shares or other securities whereon there is any liability).

### 21.3 **Removal from New Zealand Register**

- (a) Subject to sections 318 and 320 of the Act, a Director, who has been authorised by the Board to do so, may request the Registrar to remove the Company from the New Zealand Register on the grounds that:
  - (i) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
  - (ii) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the court under section 241 of the Act for an order putting the Company into liquidation.
- (b) For the purposes of this clause the Company shall have distributed its surplus assets in accordance with this Constitution if the Company does so in accordance with clause 21.2 except that no liquidator needs to be appointed and references to the liquidator in that clause shall be construed as references to the Shareholders acting by an Ordinary Resolution.