

**Dated**

**2010**

## **CONSTITUTION**

**APPLE FIELDS LIMITED**

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## 1. INTERPRETATION

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

“**Act**” means the Companies Act 1993;

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

“**Class**” means a class of Securities having identical rights, privileges, limitations and conditions

“**Company**” means Apple Fields Limited;

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

“**Director**” means a person appointed as a director of the Company;

“**Equity Security**” means a Security, which has been issued, or is to be issued, by the Company, as the case may require; and

- (a) which confers a present or future right to participate in the assets of the Company after payment of claims payable under section 313(1) of the Companies Act 1993; or
- (b) which confers a present or future right to participate in the income or profits of the Company; or
- (c) which carries, or will in future carry, a Vote, or a right to participate in the ultimate control of the Company; or
- (d) which may be Converted into a Security of the nature referred to in (a) to (c) without:
  - (i) the agreement of the holder; or
  - (ii) approval of the precise terms and conditions of issue of the Security of the nature referred to in (a) to (c) on Conversion;

“**Independent Director**” has the meaning given in the Listing Rules;

“**Minimum Holding**” means 20,000 ordinary shares or other Securities of an equivalent value to 20,000 ordinary shares;

“**Net Asset Value**” means the Net Asset Value of the Company as shown in its last annual accounts;

“**Ordinary Resolution**” means a resolution passed by a simple majority of the votes of shareholders of the Company entitled to vote and voting on the resolution;

“**Personal Representative**” means:

- (a) in relation to a deceased individual shareholder, the executor, administrator or trustee of the estate of that shareholder;
- (b) in relation to a bankrupt individual shareholder, the assignee in bankruptcy of that shareholder; and
- (c) in relation to any other individual shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988 a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act;

**“Relevant Interest”** has the meaning given to it in sections 5 and 6 of the Securities Markets Act 1988;

**“Representative”** means a person appointed as a proxy or representative under clause 6 of Schedule 2 or a Personal Representative;

**“Security”** means any interest or right to participate in any capital, assets, earnings, royalties, or other property of the Company and includes:

- (a) any renewal or variation of the terms or conditions of any existing security;
- (b) any Debt Security; and
- (c) any Option or Right;

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

**“Subsidiary”** means:

- (a) a subsidiary within the meaning of section 5 of the Act (read together with sections 6 to 8 inclusive of that Act); and
- (b) an entity treated as a subsidiary or in substance subsidiary within the meaning of any financial reporting standard approved in terms of section 27(3) of the Financial Reporting Act 1993.

1.2 **Construction:** In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and vice versa and one gender includes the other genders;
- (e) the words “written” and “writing” include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (f) the word “person” includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (g) references to the Company’s previous constitution include that constitution as amended from time to time in accordance with the Act; and
- (h) words or expressions defined in the Act have the same meaning in this Constitution except as otherwise expressly provided in this Constitution.

- 1.3 **Powers of shareholders:** Unless otherwise specified in the Act or this Constitution any power reserved to shareholders may be exercised and any approval of shareholders may be given by Ordinary Resolution.

## 2. COMPANIES ACT

**Companies Act:** The Company, the Board, each Director and each shareholder of the Company have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

## 3. RIGHTS ATTACHING TO SHARES

- 3.1 **Existing ordinary shares:** Each ordinary share in the Company at the date of adoption of this Constitution confers on the holder the following rights (in addition to the rights set out elsewhere in this Constitution):

- (a) subject to the rights of holders of any shares or other Equity Securities which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board; and
- (b) subject to the rights of holders of any shares or other Equity Securities which confer special rights as to surplus assets, the right to an equal share in the distribution of surplus assets of the Company.

- 3.2 **New shares:** Subject to clause 4, further shares in the Company (including different Classes of shares) may be issued which:

- (a) rank equally with, or in priority to, existing shares in the Company; or
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
- (c) confer preferential rights to distributions of capital or income; or
- (d) confer special, limited or conditional voting rights; or
- (e) do not confer voting rights; or
- (f) are redeemable in accordance with section 68 of the Act; or
- (g) are convertible; or
- (h) have any one or more of the rights or limitations set out in clause 3.2(a) to (g).

- 3.3 **Alteration of Rights:** The issue by the Company of any further shares or Equity Securities which rank equally with, or in priority to, any existing shares or Equity Securities, whether as to voting rights or distributions, shall:

- (a) be permitted (subject to clause 4); and

- (b) not be deemed to be action affecting the rights attached to those existing shares or other Equity Securities.

#### **4. ISSUE OF NEW EQUITY SECURITIES**

4.1 **Issue of new Equity Securities:** The Board may issue Shares or other Equity Securities to any person and in any number it thinks fit. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Shares by the Company.

4.2 **Consolidation and subdivision of shares:** The Board may:

- (a) consolidate and divide the shares or shares of any Class in proportion to those shares or the shares in that Class; or
- (b) subdivide the shares or shares of any Class in proportion to those shares or the shares in that Class.

4.3 **Bonus issues:** The Board may resolve to apply any amount which is available for distribution to shareholders either:

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

or partly in one way and partly in the other.

#### **5. BUYBACKS AND REDEMPTIONS OF EQUITY SECURITIES AND FINANCIAL ASSISTANCE**

5.1 **Powers:** The Company may:

- (a) purchase or otherwise acquire shares issued by it from one or more shareholders;
- (b) purchase or otherwise acquire other Equity Securities from one or more holders;
- (c) hold any shares or other Equity Securities so purchased or acquired; and
- (d) redeem any redeemable shares or other Equity Securities held by one or more holders, in accordance with the provisions, and subject to the restrictions of the Act, and this Constitution.

5.2 **Permitted financial assistance:** The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of any shares or other Equity Securities issued, or to be issued, by the Company the Act.

## 6. CALLS ON SHARES

6.1 **Board's power:** The Board may, by notice in writing to a shareholder or shareholders, make calls in respect of all money unpaid on shares and which are not, by the terms applicable to the shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.

6.2 **Liability to pay:** Each relevant shareholder shall be liable (jointly and severally in the case of joint shareholders) to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant shares,

6.3 **Differential calls:** Calls may be made in respect of certain shares and not others and for different amounts in respect of certain shares from others. The Board may, at the time of issue of any shares, differentiate between the holders of shares received on that issue from holders of shares received on other issues as to the amount of calls to be paid and the time of payment.

6.4 **Installments:** The Board may determine that a call is payable by installments.

6.5 **Time call is made:** A call shall be deemed to have been made at the time the resolution of the Board authorising the call was passed.

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

6.7 **Unpaid instalments:** Any amount payable on issue of a share or on any fixed date or as an instalment of a call shall be deemed to be a call and if not paid, the provisions of this clause 6 and clauses 7 and 8 shall apply as if that sum had become payable by the making of a call.

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

6.9 **Evidence:** In any proceedings for the recovery of money due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:

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

shall be conclusive evidence of the indebtedness of the shareholder to the Company in respect of the call.

6.10 **Cancellation of unpaid amounts:** No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

## 7. LIEN ON SHARES

7.1 **Lien on unpaid and partly paid shares:** The Company shall have a first and paramount lien on every share which is not a fully paid share (and any dividends or other distributions in respect of that share) for:

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

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

- (a) the Company may sell the share on such terms as the Board determines; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the share to, or at the direction of, the purchaser.

7.3 **Absolute title of purchaser:** The title of a purchaser of any shares sold pursuant to clause 7.2 shall not be affected by any irregularity or invalidity in any sale.

7.4 **Application of sale proceeds:** The net proceeds of sale of any share sold pursuant to clause 7.2, after deducting expenses of sale shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the share at the date of sale.

## 8. FORFEITURE OF SHARES

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

8.2 **Forfeiture:** If the notice is not complied with the share may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.

8.3 **Sale of forfeited shares:** A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board determines. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

8.4 **Application of sale proceeds:** The net proceeds of sale of any forfeited share shall be applied in the same manner as set out in clause 7.4.

- 8.5 **Absolute title of purchaser:** The title of a purchaser of a forfeited share shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the share.
- 8.6 **Consequences of forfeiture:** A person whose shares have been forfeited shall cease to be a shareholder in respect of those shares and shall surrender the share certificate for cancellation but shall remain liable to the Company for all money due to the Company at the date of forfeiture in respect of the shares together with interest thereon.
- 8.7 **Evidence of forfeiture:** A statutory declaration by a Director or any other person authorised by the Board that a share has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

## 9. TRANSFER OF SHARES

- 9.1 **Transferor to remain holder until registration:** The transferor of a share shall remain the holder of the share until the name of the transferee is entered in the Share Register.
- 9.2 **Authorised transactions:** Any shares disposed of by an “authorised transaction” or a “stock exchange transaction” within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act or by an instrument complying with clause 9.4.
- 9.3 **Transfer executed outside New Zealand:** Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or otherwise in any usual manner for execution by such a corporation or in any other case if the signature of the transferor has been witnessed by a person who has added his or her occupation and address after his or her signature.
- 9.4 **Form of transfer:** Every instrument of transfer of shares not falling within clauses 9.2 and 9.3 shall comply with the following provisions:
- (a) the form of the instrument of transfer shall be any usual or common form or any other form which the Board may approve;
  - (b) the instrument of transfer must be signed or executed by or on behalf of the transferor; and
  - (c) where the shares being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.
- 9.5 **Power to refuse to register:** The Board may decline to register any transfer of shares where:
- (a) the Company has a lien on any of the shares; or
  - (b) registration, together with the registration of any further transfer then held by the Company and awaiting registration, would result in the proposed transferee holding shares of less than a Minimum Holding,

provided that the Board resolves to exercise its powers under this clause 9.5 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.

**9.6 Sale of less than Minimum Holding:** The Board may at any time give notice to any shareholder holding less than a Minimum Holding of shares of any Class that if at the expiration of three months after the date the notice is given the shareholder still holds shares which are less than a Minimum Holding the Board may exercise the power of sale of those shares set out in this clause 9.6. If that power of sale becomes exercisable:

- (a) the Board may arrange for the sale of those shares on an arms-length basis;
- (b) the shareholder shall be deemed to have authorised the Company to act on the shareholder's behalf and to execute all necessary documents for the purposes of that sale;
- (c) the Company shall account to the shareholder for the net proceeds of sale of the shares (after deduction of reasonable sale expenses), which shall be held on trust for the shareholder by the Company and paid to the shareholder on surrender of any certificates for the shares sold; and
- (d) the title of a purchaser of any shares sold pursuant to this clause 9.6 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

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

**9.8 Power to divide share register:** The Share Register may be divided into two or more registers kept in different places.

**9.9 Transfer of securities other than shares:** This clause 9 shall apply to transfers of Securities of the Company other than shares with any necessary modifications.

## **10. TRANSMISSION OF SHARES**

**10.1 Transmission on death of shareholder:** If a shareholder dies, the survivor, if the deceased was a joint shareholder, or the shareholder's 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. Nothing in this clause 10.1 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.

**10.2 Rights of Personal Representatives:** A shareholder's Personal Representative:

- (a) is entitled to exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the shares held by that shareholder; and

- (b) is entitled to be registered as holder of those shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this clause 10.2(b).

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

## 11. DIRECTORS

11.1 **Board composition:** The composition of the Board must include the following:

- (a) the minimum number of Directors (other than Alternate Directors) is three and the maximum number of Directors (other than Alternate Directors) is seven; and
- (b) at least two Directors must be ordinarily resident in New Zealand;
- (c)

11.2

11.3 **Existing Directors to continue in office:** The Directors in office at the date of adoption of this Constitution shall continue in office subject to the provisions of this Constitution.

11.4 **Appointment and removal by Ordinary Resolution:** A Director may be appointed by Ordinary Resolution. All Directors shall be subject to removal from office as director by Ordinary Resolution.

11.5 **Appointment by Board:** The Board may at any time appoint additional Directors. A Director appointed by the Board shall hold office only until the next annual meeting of the Company but shall be eligible for election at that meeting.

11.6

- (a)

11.7 **Vacation of office:** A Director shall cease to hold office as a Director if the Director:

- (a) becomes bankrupt or makes an arrangement or compromise with the Directors creditors generally;
- (b) becomes disqualified from being a Director pursuant to section 151 of the Act;
- (c) resigns from office by notice in writing to the Company;
- (d) is removed from office pursuant to this Constitution or the Act; or
- (e) has for more than six months been absent without permission of the Board from meetings of the Board held during that period.

11.8 **Timing of retirement and appointment:** If:

- (a) a Director retires at a meeting of shareholders and is not re-elected, the Director shall remain in office until, and his or her retirement shall take effect at the conclusion of the meeting;
- (b) a Director is removed from office at a meeting of shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting;
- (c) a person who is not already a Director is appointed or elected as a Director at a meeting of shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

11.9 **Appointment of Alternate Directors:** Each Director may from time to time appoint any person who is not already a Director and who is approved by a majority of the other Directors to be the Director's alternate director (an **Alternate Director**). No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.

11.10 **Appointment and removal of Alternate Directors:** Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.

11.11 **Rights of Alternate Director:** Each Alternate Director will be entitled to:

- (a) receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
- (b) attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
- (c) in the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.

11.12 **Remuneration of Alternate Directors:** Each Alternate Director's remuneration (if any) must be paid by the Director who appointed the Alternate Director; and

11.13 **Expenses of Alternate Directors:** The expenses incurred by each Alternate Director in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

11.14 **Cessation of appointment of Alternate Directors:** An Alternate Director will cease to be an Alternate Director:

- (a) if the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment;
- (b) on the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director; or
- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

11.15 **Appointment and removal of managing Director:** The Board may from time to time appoint one or more Directors to be a managing Director either for a fixed term (but not exceeding five years) or

otherwise and on such other terms (including remuneration) as the Board determines. The Board may from time to time remove any such managing Director and appoint another or others in his or her place. Any managing Director who is removed by resolution of the Board shall have no right or claim to continue in office and his or her only remedy against the Company (if any) shall be in damages. Any Director holding the office of Managing Director at the date of adoption of this Constitution shall continue in office.

11.16 **Resignation of managing Director:** A managing Director shall, subject to the provisions of any contract between him or her and the Company, be subject to the same provisions concerning resignation, removal and disqualification as the other Directors. If a managing Director ceases to hold the office of Director from any cause he or she immediately ceases to be managing Director.

## 12. DIRECTORS' REMUNERATION

12.1

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

12.3 **Special remuneration:** The Board may authorise special remuneration to any Director who is or has been engaged by the Company or a Subsidiary to carry out any work or perform any services which is not in the capacity of a director of the Company or a Subsidiary.

## 13. INDEMNITY AND INSURANCE

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

13.2 **Other indemnities and insurance:** In addition to the indemnity set out in clause 13.1, the Company may:

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

13.3 **Interpretation:** Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 13.

## 14. NOTICES

14.1 **Joint holders:** A notice may be given by the Company to the joint holders of a Security by giving the notice to the joint holder named first in the register in respect of the Security.

## 15. DIVIDENDS

15.1 **Method of payment:** Any dividend or other money payable to a holder of Securities may be paid by electronic transfer to a bank account nominated from time to time by the person entitled to the payment or in any other manner determined by the Board. In the case of joint holders, payments shall be made to the bank account nominated by the holders jointly.

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

15.3 **Deductions:** The Board may deduct from dividends payable to any shareholder in respect of any shares any:

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

15.4 **Entitlement date:** Dividends and other distributions or payments to holders of Securities of the Company will be payable to the persons who are the registered as holders of those Securities on an entitlement date fixed by the Board.

15.5 **Unclaimed dividends:** Dividends or other monetary distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Company shall, nevertheless, annul the forfeiture and pay a claimant which produces evidence of entitlement.

## 16. INSPECTION OF RECORDS

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

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

## **17. LIQUIDATION**

17.1 **Distribution of surplus:** Subject to the rights of the holders of any Securities in the Company and to clauses 17.2 and 17.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the shareholders in proportion to their shareholding. If any shareholder's shares are not fully paid up the liquidator of the Company may require those shares to be fully paid up before the shareholder receives any distribution of the surplus assets of the Company in respect of those shares.

17.2 **Distribution in kind:** With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator of the Company may divide amongst the shareholders in kind the whole or any part of the surplus assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

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

17.3 **Trusts:** With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of shareholders of the Company. The liquidator may determine the terms of the trust.

## **18. TRANSACTIONS WITH RELATED PARTIES AND MAJOR TRANSACTIONS**

18.1 Notwithstanding any other provisions of this Constitution, the rules set out in Schedule 3 shall apply.

## **19. EXECUTION OF DEEDS**

19.1 **Manner of execution:** 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;
- (b) any Director, or any person authorised by the Board, whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with section 181 of the Act.

## SCHEDULE 1 – BOARD MEETINGS

### 1. PROCEEDINGS OF THE BOARD

1.1 **Methods of holding meetings:** 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 the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

1.2 **Notice of meeting:** A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause 1.2 and clause 1.3 of this Schedule. Each Director must be given not less than two days' notice of a meeting of the Board, unless the Director waives that right or in the opinion of the chairperson or of Directors who would together constitute a quorum at the meeting, the meeting is necessary as a matter of urgency, in which event such notice as is practicable in the circumstances shall be given. Notice may be given to a Director in any of the following ways:

- (a) by delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered;
- (b) by sending the notice by facsimile transmission to the facsimile number given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when sent; or
- (c) by posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted.

1.3 **Contents of notice:** A notice of a meeting must specify the date, time and place of the meeting and, if the meeting is to be by means of audio or audio and visual communication, the manner in which the Director will be contacted to participate at the time of the meeting.

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

1.5 **Quorum:** A quorum for a meeting of the Board is a majority of Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

1.6 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the minimum number fixed by clause 11.1(a), the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purpose.

- 1.7 **Chairperson:** The Directors may elect one of their number as chairperson of the Board and determine the period for which the chairperson is to hold office. If no chairperson is elected, or if at any meeting the chairperson is not present within five 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.
- 1.8 **Votes:** Subject to clauses 1.12 and 1.13 of this Schedule, every Director has one vote. In the case of an equality of votes the chairperson will not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.
- 1.9 **Resolutions in writing:** A resolution in writing, signed or assented to by all Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings.
- 1.10 **Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of the Board.
- 1.11 **Validity of acts:** All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:
- (a) any defect in the appointment of any Director or person acting as a Director; or
  - (b) that they or any of them were disqualified;
  - (c) any irregularity in a notice of meeting.
- 1.12 **Interested Directors may not vote:** Subject to clause 1.13 of this Schedule, a Director may not vote on a Board resolution in respect of a matter in which the Director is interested, and the Director shall not be counted in the quorum for the purposes of consideration of that matter. In this clause and clause 1.13 of this Schedule the word "interested" has the meaning given to that word in section 139 of the Act.
- 1.13 **Exception to voting prohibition:** Notwithstanding clause 1.12 of this Schedule, a Director may vote in respect of and be counted in the quorum for the Board for the purposes of a matter in which the Director is interested if the matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.
- 1.14 **Other procedures:** Except as set out in this Schedule, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

## SCHEDULE 2 – SHAREHOLDERS’ MEETINGS

### 1. MEETINGS OF SHAREHOLDERS

1.1 **Methods of holding meetings:** 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 a number of shareholders, who constitute a quorum, being assembled together at the date and time appointed for the meeting and at one or more venues at which, by means of audio, or audio and visual, communication all participating shareholders can simultaneously hear each other throughout the meeting.

1.2 **Meetings of other groups:** A meeting of the holders of Securities in an Interest Group may be called by the Board at any time, and shall be called on the written request of persons holding Securities carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the group in question. All the provisions of this Constitution relating to meetings of shareholders apply, with all necessary modifications, to a meeting of a group of Security holders, except that:

- (a) the necessary quorum is two persons holding, or representing the holders of, Securities of the group;
- (b) if the Board so elects, one meeting may be held of holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group; and
- (c) any holder of Securities in the group, present in person or by Representative, may demand a poll.

### 2. NOTICE OF SHAREHOLDERS’ MEETINGS

2.1 **Written notice:** Written notice of the time, date 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 10 working days before the meeting.

2.2 **Rights of Equity Security holders and Directors:** Equity Security holders of all Classes shall be entitled to attend meetings of shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying votes. Each Director who is not also a shareholder shall have the same rights.

2.3 **Contents of notice:** The notice must state:

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

- 2.4 **Irregularity in notice:** An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.
- 2.5 **Adjourned meetings:** If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time, date and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

### 3. CHAIRPERSON OF SHAREHOLDERS' MEETINGS

- 3.1 **Chairperson of the Board to act:** If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of shareholders, that Director must chair the meeting.
- 3.2 **Other chairperson:** If no chairperson of the Board has been elected or if at any meeting of shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or the chairperson is unwilling or unable to act, the Directors present, if any, may elect one of their number to be chairperson of the meeting. If no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairperson.

#### 3.3 Regulation of procedure

- (a) Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of shareholders.
- (b) Without limiting the chairperson's powers under clause 3.3(a) of this Schedule, the chairperson has the power to:
- (i) determine all matters relating to the proper conduct of meetings, including power to ensure that the business of the meeting is not restricted by any immaterial procedural irregularities;
  - (ii) preserve order in the conduct of those present at meetings;
  - (iii) confine discussion to relevant matters within the scope of the meeting and reasonable limits of time;
  - (iv) determine whether proposed motions, amendments and discussion items are in order;
  - (v) close the discussion and move to a vote on any matter;
  - (vi) determine any dispute as to the admission or rejection of a vote; and
  - (vii) expel and remove from a meeting any shareholder or other person interfering unduly with the reasonable conduct of the meeting or preventing the proper transaction of business,

and make all rulings necessary to give effect to these powers.

#### 4. QUORUM FOR SHAREHOLDERS' MEETINGS

- 4.1 **Quorum required:** Subject to clause 4.3 of this Schedule, no business may be transacted at a meeting of shareholders if a quorum is not present.
- 4.2 **Quorum:** A quorum for a meeting of shareholders is present if five shareholders are present in person or by Representative.
- 4.3 **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 shareholders under section 121(b) of the Act, 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 Directors may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the shareholders or their Representatives present will constitute a quorum.

#### 5. VOTING AT SHAREHOLDERS' MEETINGS

- 5.1 **Meetings in one place:** In the case of a meeting of shareholders held under clause 1.1(a) of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:
- (a) voting by voice; or
  - (b) voting by show of hands.
- 5.2 **Audio-visual meetings:** In the case of a meeting of shareholders held under clause 1.1(b) of this Schedule, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- 5.3 **Postal votes:** Unless the Board determines otherwise, shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the First Schedule to the Act together with any other procedures determined by the Board.
- 5.4 **Number of votes:** Subject to the provisions of clause 5.5 of this Schedule and subject to any rights or restrictions attached to any share:
- (a) where voting is by voice or a show of hands, every shareholder present in person or by Representative has one vote;
  - (b) on a poll every shareholder present in person or by Representative has:

- (i) one vote in respect of every fully paid share held by that shareholder;
- (ii) in respect of each share held by that shareholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that share was fully paid. That fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amount paid and payable (excluding amounts credited and amounts paid in advance of a call).

5.5 **Voting restrictions:** No shareholder shall be entitled to vote at any meeting:

- (a) in respect of Shares on which any call or other money is due and unpaid; or
- (b) in favour of a resolution when that person is disqualified from doing so by virtue of any applicable voting restriction in this Constitution.

5.6 **Declaration of chairperson conclusive:** A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 5.7 of this Schedule.

5.7 **Right to demand poll:** At a meeting of shareholders, a poll may be demanded by:

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

For the purposes of this clause 5.7, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

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

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

5.10 **Counting of votes on poll:** If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by Representative and voting.

5.11 **Scrutineers:** If a poll is taken the scrutineers shall be the auditors of the Company for the time being unless they are unable or unwilling to act or unless the chairperson directs to the contrary in which case the scrutineers shall be appointed by the chairperson.

- 5.12 **Declaration of result:** The chairperson shall be entitled to declare the result of a poll upon the receipt of a certificate from the auditors setting out the maximum number of votes which could be cast at the meeting and upon receipt of notice from the scrutineers that, in the light of the auditors' certificate, sufficient votes to determine the result of the resolution have been counted. The auditors' certificate may set out the maximum number of votes which could be cast at the meeting if all persons entitled to attend and vote at the meeting did so, or it may set out the maximum number of votes which could be cast at the meeting if all persons at the meeting who are entitled to vote did vote.
- 5.13 **Chairperson's casting vote:** The chairperson of the meeting is entitled to a casting vote.
- 5.14 **Votes of joint holders:** Where two or more persons are registered as the holder of a share, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- 5.15 **Validity of votes:** In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination made in good faith shall be conclusive.

## 6. PROXIES AND CORPORATE REPRESENTATIVES

- 6.1 **Proxies permitted:** A shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
- 6.2 **Form of proxy:** 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.
- 6.3 **Lodging proxy:** No proxy is effective in relation to a meeting unless the proxy form is received by or on behalf of the Company at any place specified for the purpose in the notice of meeting not later than 48 hours before the start of the meeting.
- 6.4 **Validity of proxy vote:** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 6.5 **Corporate representatives:** A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. A representative shall have the same rights and powers as if the representative were a proxy.

## 7. SHAREHOLDER PROPOSALS

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

to vote. The provisions of clause 9 of the First Schedule of the Act apply to any notice given pursuant to this clause.

## **8. MINUTES OF SHAREHOLDERS' MEETINGS**

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

## **9. ADJOURNED AND DISORDERLY MEETINGS**

- 9.1 **Chairperson's discretion to adjourn meetings:** The chairperson may, in his or her sole discretion, at any time during the meeting adjourn from time to time and place to place (including either to a later time at the same meeting or to an adjourned meeting):

- (a) the meeting; or
- (b) any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion in relation to any of those matters.

In addition, if at any meeting a motion or proposal to adjourn the meeting has been defeated, the chairperson has an absolute discretion whether or not to accept and put to the meeting any further motion or proposal to adjourn the meeting.

- 9.2 **Direction to adjourn:** If directed by the meeting, the chairperson must adjourn the meeting.
- 9.3 **Provisions relating to adjourned meetings:** No business can be transacted at any adjourned meeting other than the unfinished business at the original meeting. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as the original meeting. Otherwise, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 9.4 **Adjournment of disorderly meetings:** If any meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving reasons, either adjourn or dissolve the meeting.
- 9.5 **Completion of unfinished business:** If any meeting is dissolved by the chairperson pursuant to clause 9.4 of this Schedule, the unfinished business of the meeting shall be dealt with as follows:
- (a) in respect of any resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act, authorise the Distribution;
  - (b) in respect of any resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors;

- (c) the chairperson may direct that any item of business which is uncompleted at the meeting, and which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion in accordance with clauses 5.9 to 5.15 of this Schedule.

## **SCHEDULE 3 – TRANSACTIONS WITH RELATED PARTIES AND MAJOR TRANSACTIONS**

### **1. DISPOSAL OR ACQUISITION OF ASSETS**

1.1 Approval of resolution: The Company shall not (subject to Clause 1.3 of this Schedule) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Company or assets to be held by the Company:

- (a) which would change the essential nature of the business of the Company; or
  - (b) in respect of which the gross value is in excess of 10% of the Net Asset Value of the Company;
- except with the prior approval of an Special Resolution of the Company.

1.2 Contents of Notice: The notice of meeting containing the resolution to approve any transaction referred to in Clause 1.1 shall contain or be accompanied by such information, reports, valuations, and other material as are necessary to enable the holders of Securities to appraise the implications of the transactions.

1.3 Exception: Clause 1.1 shall not apply to any transaction entered into by the Company with a Bank, on arms length terms and in the ordinary course of banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank.

### **2 TRANSACTIONS WITH RELATED PARTIES**

2.1 The Company shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction;

Unless that Material Transaction is approved by an Ordinary Resolution of the Company

2.2 Definition of Material Transaction: For the purposes of Clause 2.1,

“Material Transaction” means a transaction or a related series of transactions whereby the Company:

- (a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Net Value in excess of 5% of the Net Asset Value of the Company; or

- (b) issues its own Securities or acquires its own Equity Securities having a market value in excess of 5% of the Net Asset Value of that Company; or

(c) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 5% of the Net Asset Value of the Company; or

(d) enters into any guarantee, indemnity, or similar obligation, or gives any security, for or of obligations which could expose the Company to liability in excess of 5% of the Net Asset Value of the Company; or

(e) provides or obtains any services (including without limitation the underwriting of Securities or services as an employee) in respect of which the actual gross cost to the Company in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 0.5% of the Net Asset Value of the Company; or

(f) amalgamates, except for amalgamations of a wholly owned Subsidiary with another wholly owned Subsidiary or with the Company:

Provided that for the purposes of this Clause 2.2:

“Aggregate Net Value” as used in Clause 2.2(a) means the net value of those assets calculated as the greater of the net tangible asset backing value (from the most recently published financial statements) or market value.

2.3 Definition of a Related Party. For the purposes of Clause 2.1, “Related Party” means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

(a) a Director or executive officer of the Company or any of its Subsidiaries; or

(b) a Substantial Security Holder of the Company; or

(c) an Associated Person of the Company or any of the persons referred to in (a) or (b), other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or

(d) a person in respect of whom there are arrangements other than the Material Transaction itself, intended to result in that person becoming a person described in (a), (b), or (c), or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself; but excludes a wholly owned Subsidiary of the Company, other than a wholly owned Subsidiary which:

(i) is a party to a Material Transaction of the type described in Clause 2.2(d); and

(ii) the Company intends to sell, or otherwise dispose of, the subsidiary to a Related Party.

2.4 Exceptions: Clause 2.1 shall not apply to:

(a) any transaction entered into by the Company with a Bank which is a Related Party of that Company, on arm’s length terms and in the normal course of banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank; or

(b) the issue, acquisition or redemption by the Company of Securities of that Company, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder. For the purposes of this paragraph, the transfer, by the Company, of shares held by the Company in itself, shall be deemed to constitute an issue of Securities; or

(c) an employment contract or contract for personal services with the Company which is a Material Transaction under Clause 2.2(e), where:

(i) the terms of the contract are set on an arm's length, commercial basis and have been approved by the Independent Directors of the Company; and

(ii) the Independent Directors approving the contract sign a certificate stating Clause 2.4(c)(i) has been complied with; and

(iii) material particulars of the contract (including the Company's use of this exception) are disclosed in the next annual report of the Company; or

(d) any transaction indemnifying any Director or Employee of the Company or any Related Company which would be a Material Transaction under Clause 2.2(d), where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or Employee under the proposed indemnity; or

(e) arrangements, amalgamations or compromises pursuant to Part XV of the Companies Act 1993; or

(f) a Material Transaction with a total value that (or, in the case of a Material Transaction referred to in Clause 2.2(e), the actual gross cost to the Company in any financial year that), does not exceed \$250,000; or

(g) a Material Transaction that is an employment agreement with a natural person who is not a director within the meaning of section 126 of the Companies Act 1993 of the Company or any of its Subsidiaries.

2.5 Notice of Meeting The text of any resolution to be put to a meeting of the Company for the purposes of Clause 2.1 shall be set out in the notice of the relevant meeting. That notice shall contain such other material as is necessary to enable the holders of Securities of the Company to decide whether the transaction price and terms are fair.

### 3 VOTING RESTRICTIONS

Notwithstanding anything to the contrary in this Constitution, on any resolution of the nature listed in column 1 of the table below, no Vote in favour of any such resolution shall be cast on any Securities

held by a person of the nature listed in respect of that resolution in column 2 of the table below, or by any Associated Person of such a person.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolutions under Clauses 3.5.1 and 3.5.2	The Director intended to receive a payment.
Resolution under Clause 7.3.1	Subject to Clause 9.3.2: (a) Any person to whom it is proposed to issue the new Securities referred to in the resolution; or (b) If the resolution does not specify the persons to whom it is proposed to issue Securities, any Director of the Issuer who is not excluded by the terms of the resolution from participation in the issue.
Resolution under Clause 7.3.1 to approve a Rights issue of Equity Securities which is not Renounceable	Any Director of the Issuer.
Resolution under Clause 7.3.5(b)(iii)	Any person who has been issued, or has acquired, Securities the subject of ratification by that resolution.
Resolution under Clause 7.3.6	Any Director intended or likely to benefit from the issue referred to in the resolution.
Resolution under Clause 7.5	Any person whose effective control of the Issuer would be materially increased.
Resolution under Clause 8.4	Any person who is intended to benefit from the reduction, deferral, or cancellation, unless the reduction, deferral, or cancellation benefits all holders of Equity Securities of the Issuer on the same basis.
Resolution under Clause 1.2.1	Any person referred to in Clause 1.2.3 who is a party or beneficiary (in terms of Clause 1.2.1 (a) or (b)) to or of the transactions the subject of the resolution.

3.2 Exception: On a resolution a person to whom it is proposed to issue the new Securities referred to in that resolution is not disqualified from voting if the new Securities are to be offered on the same basis to all holders of Securities of the same Class as the Securities held by that person.

3.3 Proxies or Representatives: Clause 1.3.1 shall not prevent a person disqualified from Voting under that Clause, who has been appointed as a proxy or Voting representative by another person who is not disqualified from Voting under that Clause, from Voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.

3.4 Discovery of Disqualified Persons: The Company shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in Clause 1.3.1, the identity of holders of Securities who are disqualified from voting on that resolution pursuant to Clause 1.3.1, and on request shall supply a list of such holders to any holder of Equity Securities of the Company.

3.5 Deadline for Challenge: Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of Clause 1.3.1, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of Clause 1.3.1. Any objection by a holder of Securities to the accuracy or completeness of any list provided pursuant to Clause 1.3.4 shall be disregarded by the Company and the chairman of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.