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# Constitution of Ebos Group Limited

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## THE CONSTITUTION OF EBOS GROUP LIMITED

### PART 1 - PRELIMINARY

#### 1 INTERPRETATION

##### 1.1 Definitions

In this Constitution unless the context otherwise requires:

*Act* means the Companies Act 1993;

*Alternate Director* means an individual appointed as an alternate director under clause 17;

*Appoint* includes re-appoint and *elect* includes *re-elect*;

*Auditor* means any Person or Persons appointed to perform the duties of auditor of the Company;

*Capital* means the total aggregate amounts received in respect of any issue of Shares in the Company from time to time;

*Chairperson* means the Director who has been elected as Chairperson of the Board pursuant to clause 18.2(d);

*Company* means Ebos Group Limited, or such other name as Ebos Group Limited may adopt from time to time;

*Constitution* means this Constitution as amended from time to time;

*Debt Security* has the meaning set out in the Rules;

*Deputy Chairperson* means the Director who has been elected as deputy Chairperson of the Board pursuant to clause 18.2(d);

*Equity Security* has the meaning set out in the Rules;

*Executive Director* means any Director who is an Employee of the Company or any of its Related Companies and includes any Managing Director appointed in accordance with this Constitution;

*Individual* means a natural person;

*Issue* in relation to Securities means an issue or allotment of Securities and, where required by the Rules, includes any transfer of Treasury Stock, and "to issue" has a corresponding meaning;

*Issue Price* means the consideration which the Directors in accordance with the Act determine shall be payable for any Issue of Securities;

*Listed* has the meaning set out in the definition of "Listing" in the Rules;

*Managing Director* means an Individual appointed as managing director of the Company pursuant to clause 21;

*Month* means calendar month;

*the Office* means the registered office for the time being of the Company;

*NZX* means New Zealand Exchange Limited, its successors and assigns and, as the context permits, includes any authorised delegate of NZX;

*Option* has the meaning set out in the Rules;

*Person* includes an individual, a company, a corporation and any combination or association of individuals or corporate or unincorporated bodies including a trust and any state or Government or department or agency of a state or Government municipal, local or regional authority and any other entity or organisation incorporated or unincorporated (in each case whether or not having a separate legal identity);

*Proxy* means an individual appointed as a proxy of a Shareholder in accordance with clause 15.2;

*Register* means the register of Shareholders to be kept in compliance with the Act;

*Representative* means an individual authorised by a corporation in accordance with clause 15.3 (Corporations Acting by Representatives at Meeting) to act as its representative at a general meeting of the Company;

*Rules* means the Listing Rules applying to NZSX and NZDX as amended from time to time by NZX;

*Security* has the meaning set out in the Rules;

*Share* means an Equity Security in respect of which an entry has been made in the Register, except that where the context of any clause of this Constitution or the Rules require, means any Equity Security;

*Shareholder* means a holder of a Share;

*Statute* means any statute, act, regulation, ordinance, rule, by-law or order-in-council of New Zealand;

*Terms of Issue* means the terms or conditions attaching to a Security by agreement on or before Issue whether by reference to this Constitution or as expressly set out or as implied by law or otherwise as they may be duly modified from time to time, and which determine the rights, privileges and obligations of a holder of that Security;

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

## 1.2 **Construction**

In this Constitution unless the context otherwise requires:

*In Writing* and *Written* includes words typewritten, printed, lithographed, photocopied, telexed, copied by facsimile, or represented or reproduced in any other mode in a permanently visible form or partly in one and partly another.

Subject to clause 1.1, expressions used in this Constitution (whether or not expressed with an initial capital letter):

- (a) that are defined in the Rules have the meanings given by the Rules;
- (b) that are defined in the Act shall, unless the context otherwise requires, bear the same meaning in this Constitution as in the Act.

Where an expression or term is defined in this Constitution as having the meaning set out in the Rules, a reference to "Issuer" in the definition of such expression or term in the Rules shall be deemed a reference to the Company.

A reference to "*permitted by the Act*" or "*permitted by the Rules*" means not prohibited by the Act or not prohibited by the Rules.

In this Constitution, if not inconsistent with the context, words importing the singular number include the plural and vice versa, and words importing any gender also include all other genders.

Headings shall not affect the interpretation of this Constitution.

Unless the context otherwise requires, references to a Statute include:

- (a) amendments to that Statute;
- (b) a Statute passed in substitution for that Statute; and
- (c) regulations passed under that Statute or any of its amendments or under a Statute passed in substitution for that Statute.

Unless the context otherwise requires, references to any Rule of the Rules include:

- (a) amendments to that Rule; and
- (b) any Rule promulgated in substitution for that Rule.

### 1.3 **Compliance with Rules**

Subject to any enactment or rule of law, and to any Ruling given by NZX, the Company shall at all times comply with the Rules provided that this clause 1.3 shall apply only as long as the Company is Listed. If this Constitution contains any provision inconsistent with the Rules, as modified by any Ruling relevant to the Company, then the Rules prevail.

### 1.4 **Constitution Subject to Waiver from Exchange**

To the extent that NZX has granted or may, from time to time, grant any Ruling authorising an act or omission which in the absence of the Ruling would be in contravention of the Rules or this Constitution, the act or omission shall be deemed to be authorised by the Rules and this Constitution.

### 1.5 **Constitution Subject to Act**

The provisions of the Constitution shall apply to all the Company's business and affairs, except to the extent (if any) that such provisions contravene or are inconsistent with the Act.

### 1.6 **Incorporation of Rules while Listed**

For so long as the Company is Listed, this Constitution is deemed to incorporate all provisions of the Rules required under the Rules to be contained or incorporated by reference in this Constitution, as those provisions apply from time to time (and as modified by any Ruling relevant to the Company).

### 1.7 **Failure to comply with Rules has limited effect in some cases**

Any failure to comply with the Rules does not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the

failure to comply with the Rules is not entitled to enforce that transaction or contract. This clause does not affect the rights of any holder of Securities of the Company against the Company or the Directors of the Company arising from failure to comply with the Rules.

**1.8 Name**

The name of the Company is Ebos Group Limited.

**PART II- CAPITAL**

**2 SHARES**

**2.1 Board May issue Shares**

Subject to this Constitution and the Rules and any special rights attached to any Shares for the time being issued, the Shares shall be under the control of the Board which may classify, issue, or otherwise dispose of Shares to such persons and on such terms and conditions in such manner and for such consideration and at such times and subject or not to the payment of any part of the Issue Price in cash and with full power to give to any person time to make payment of any call on any Shares as the Board thinks fit.

**2.2 Board need not Comply with Statutory Pre-emptive Rights**

In exercising its powers under clause 2.1 the Board may, subject to the provisions of this Constitution, issue Shares that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares already issued by the Company without the necessity of first offering those Shares to the holders of existing Shares in a manner and on terms that would, if accepted, maintain relative voting and distribution rights of those holders, in accordance with Section 45(1) and 45(2) of the Act.

**3 ACQUISITION AND REDEMPTION OF OWN SHARES AND FINANCIAL ASSISTANCE**

**3.1 Company may acquire and hold Shares**

Subject to this Constitution and the Rules, the Company may:

- (a) purchase or otherwise acquire Shares issued by the Company and may hold Shares as treasury stock; and
- (b) make an offer to one or more holders of Shares to acquire Shares issued by the Company in such number or proportions as it thinks fit,

in accordance with the Act and the Rules.

### 3.2 **Options**

- (a) Subject to this Constitution and the Rules the Board may from time to time grant Options to subscribe for Equity Securities of the Company on such terms and conditions as to payment, transfer, exercise or otherwise as shall be determined by the Board at the time such Options are granted.
- (b) Notwithstanding any term of an Option, no Option shall confer on its holder a right to vote at any meeting of the Company.

### 3.3 **Debt Securities**

- (a) Subject to this Constitution and the Rules the Board may from time to time issue Debt Securities on such terms and conditions as shall be determined by the Board at the time such Debt Securities are issued.
- (b) Notwithstanding any term of a Debt Security, no Debt Security shall confer on its holder a right to vote at any meeting of the Company.

### 3.4 **Financial Assistance**

The Company may give financial assistance to any person for the purpose of or in connection with the purchase of Shares issued or to be issued by the Company (whether directly or indirectly) in accordance with the Act and the Rules.

## 4 **TRUST – EXCLUSION OF EQUITIES**

Except as required by law or as expressly authorised by this Constitution, no person shall be recognised by the Company as holding any Share upon any trust and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any Share or an interest in any fractional part of a Share or (except only as by this Constitution or by law otherwise provided) any other rights in respect of a Share except an absolute right to the entirety thereof in the registered holder.

## 5 **SEPARATE PARCELS FOR SHAREHOLDING**

The Company, on request by a Shareholder or proposed transferee, may register a shareholding in separate parcels identified by a distinguishing word number or other parcel differentiator. Where a Shareholder's shareholding is so registered, the Company may communicate separately with the Shareholder in respect of each parcel, pay Dividends, make Distributions and otherwise act so far as the Directors consider convenient, as if the separate parcels belonged to different Shareholders.

## 6 **CALLS ON SHARES**

### 6.1 **Board to Make Calls**

The Board may from time to time make such calls as it thinks fit upon the Shareholders in respect of all or any of the money which is unpaid on their Shares and which is not by the conditions of allotment thereof made payable at a fixed time or fixed times. Each Shareholder shall (subject to receiving at least 21 days' notice specifying the time or times and place of payment) pay the amount of every call so made on him or her to the Company or person (if any) appointed for the purpose and at the times and places appointed by the Board. For the avoidance of doubt, it is recorded that unless expressly stated to the contrary in its Terms of Issue liability for calls in respect of a Share will in all cases attach to the holder of such Share for the time being and not to any prior holder of the Share. A call may be made payable by instalments and may be revoked or postponed as the Board may from time to time determine.

### 6.2 **Time Call Made**

A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.

### 6.3 **Liability of Joint Holders**

The joint holders of a Share shall be jointly and severally liable to pay all calls in respect thereof.

### 6.4 **Interest on Calls**

If the sum payable in respect of any call or instalment is not paid on or before the day appointed for payment thereof, the person from whom the sum is due shall be liable to pay interest on the sum from the day appointed for the payment thereof to the time of actual payment at such rate as the Board may determine, but the Board shall be at liberty to waive payment of that interest wholly or in part.

### 6.5 **Sums Due on Issue are Calls**

Any sum which by the terms of any prospectus or by the Terms of Issue of a Share becomes payable on Issue or at any fixed date or which is payable by instalments shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which, by the Terms of Issue, the same becomes payable, as if it were a call duly made by the Board, and of which due notice had been given and all the relevant provisions of this Constitution with respect to the payment of calls, and in the case of non-payment the payment of interest and expenses and forfeiture of Shares for non-payment of calls, shall apply as if the amount had become payable by virtue of a call duly made and notified.

**6.6 Power to Differentiate Between Holders**

The Board may, by the Terms of Issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

**6.7 Payment of Call in Advance**

The Board may, if it thinks fit, receive from any Shareholder willing to advance the same, all or any part of the money uncalled and unpaid upon any Shares held by him or her, and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate as may be agreed upon between the Shareholder paying the sum in advance and the Board. The Board may at any time repay to any Shareholder the whole or any portion of any money so advanced upon giving such Shareholder at least 14 days' notice in writing and as from the date of such repayment interest (if any) shall cease to accrue on the money so repaid. No Shareholder shall be entitled as of right to any payment on any amount so paid in advance and the Board may decline to pay any interest. Any amount so paid in advance shall not be taken into account in ascertaining the amount of any Dividend or other Distribution payable upon the Shares concerned.

**6.8 Proof of Liability**

The amount of any unpaid call may be recovered as a debt due from the holder of the Share to the Company by proceedings commenced at any time after the call becomes payable. In any such proceedings it shall, subject to clause 6.6, be sufficient to prove that:

- (a) the name of the Shareholder sued is entered in the Register as the holder or one of the holders of the Share in respect of which such debt accrued;
- (b) a resolution of the Board making the call is duly recorded in the minute book; and
- (c) notice of such call was duly given to the Shareholder sued.

It shall not be necessary to prove the appointment or qualification of any member of the Board that made such call nor any other matter whatsoever. The proof of the matters aforesaid shall be conclusive evidence of the debt.

**6.9 Cancellation of Unpaid Amounts**

No obligation to pay any amount which is unpaid on any share shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

## 7 COMPANY'S POWER TO FORFEIT OR SELL SHARES

### 7.1 Forfeiture of Shares

- (a) *Notice Requiring Payment of Calls:* if a Shareholder fails to pay any call or instalment of a call on or by the day appointed for payment thereof, the Board may, at any time thereafter during such time as 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 any expenses that may have been incurred by the Company by reason of such non-payment.
- (b) *Notice to State Time and Place:* The notice shall name a further day (not earlier than the expiration of 14 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) *Forfeiture on Non-Compliance:* If the requirements of any such notice are not complied with, any Share in respect of which the notice has been given may at any time thereafter, 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 or other Distributions declared in respect of the forfeited Shares and not actually paid before the forfeiture.
- (d) *Company May Dispose of Forfeited Shares:* Any share so forfeited shall be deemed to be the property of the Company and may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit, and the provisions of clause 7.3(d) (Title to Shares Sold Subject to Lien) shall apply (with all necessary modifications) in relation to any such sale or other disposition. The Board may at any time before such Share is disposed of, cancel the forfeiture upon such terms and conditions as it may approve.
- (e) *Consequence of Forfeiture:* 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 forfeiture, was payable by that person to the Company in respect of the Shares, but that liability shall cease if and when the Company receives payment in full for all such money in respect of the Shares.
- (f) *Notice of Forfeiture:* On the forfeiture of any Share the Board shall cause a notice of such forfeiture and the date thereof to be entered in the Register and shall cause notice of such forfeiture and the date thereof to be sent to

the Shareholder in whose name the Share stood immediately prior to the forfeiture and shall upon the disposal of any forfeited Share cause a note of the manner and date of such disposal to be similarly entered in the Register.

- (g) *Title to Forfeited Share:* A written statutory declaration given by a Director that a Share has been duly forfeited on a date stated shall be conclusive evidence of the facts stated in the declaration as against all persons claiming to be entitled to the Share. The Company may receive the consideration, if any, given for the forfeited Share on any sale or disposition thereof and may, if necessary, execute a transfer of the Share in favour of the person to whom the share is sold or disposed of. In the case of a sale or other disposition, the person to whom the share is sold or disposed of shall be entered upon the Register as the holder of the Share and shall not be bound to see to the application of the purchase money, if any, nor shall his or her title to the Share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or other disposal of the Share.
- (h) *When Forfeiture Applies:* The provisions of these clauses as to forfeiture shall subject to clause 6.6 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.

## 7.2 **Surrender of Shares**

The Board may accept from any Shareholder a surrender of that Shareholder's Shares which are liable to forfeiture or any part thereof upon such terms as may be agreed upon between the Shareholder and the Board.

## 7.3 **Company's Lien**

- (a) *When Lien Imposed:* The Company shall have a first and paramount lien upon all the Shares that are registered in the name of a Shareholder (whether solely or jointly with others) and upon the proceeds of sale thereof for any amount payable in respect of the Shares and interest thereon and sale expenses owing to the Company in respect of such Shares and also for such amounts (if any) as the Company may be called upon to pay under any Statute in respect of Shares of that Shareholder, whether the period for the payment, fulfilment or discharge thereof respectively shall have actually arrived or not and no equitable interest in any Share shall be created except upon the footing and condition that clause 4 is to have full effect and such lien shall extend to all Dividends and other Distributions from time to time declared in respect of such Shares.

- (b) *Registration to Operate as a Waiver*: The registration of a transfer of Shares on which the Company has any lien shall, unless notice to the contrary shall first be given to the transferee, operate as a waiver of the Company's lien, if any, on such Share.
- (c) *Sale of Shares Subject to Lien*: The Company may sell, in such manner as the Board thinks fit, any Shares on which the Company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the Share, or the person entitled thereto by reason of his or her death or bankruptcy.
- (d) *Title to Shares Sold Subject to Lien*: To give effect to any such sale the Board may authorise some person to transfer the Shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the Shares comprised in any such transfer and thereupon he or she shall be the holder of such Shares discharged from all calls due prior to such purchase. The purchaser shall not be bound to see to the application of the purchase money nor shall his or her title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

#### 7.4 **Power to Sell where less than Minimum Holdings**

- (a) *Notice to Shareholder holding less than Minimum Holding*: Where the Shares registered in the name of a Shareholder are less than a Minimum Holding the Board may at any time give written notice of that fact and of the provisions of sub-clause (b) to the Shareholder.
- (b) *Power of Sale*: Where notice has been given under sub-clause (a) the Company may, at any time after the expiration of 3 months from the date of the notice if the Shares then registered in the name of the Shareholder are less than a Minimum Holding, sell the Shares by means of a transaction on the NZSX, and account to the Shareholder for the proceeds of sale after deduction of reasonable sale expenses.
- (c) *Provisions Relating to Sale*: To give effect to any sale under sub-clause (b) the Board may authorise some person to transfer the Shares sold to the purchaser thereof. The purchaser shall not be bound to see to the application of the purchase money nor shall his or her title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

#### **7.5 Evidence of Power of Sale or Forfeiture**

A written statutory declaration of a Director that a power of sale under this clause 7 has arisen and is exercisable by the Company or that a Share has been duly forfeited on the date stated therein, shall be conclusive evidence of the facts stated therein.

#### **8 APPLICATION OF PROCEEDS OF SALE**

The proceeds of sale of any Shares sold under clause 7 shall be applied as follows:

- (a) First, in payment of any expenses incurred in regard to the sale;
- (b) Secondly, in satisfaction of any unpaid calls, instalments or premiums, interest thereon, expenses and any other money in respect of which a lien existed;
- (c) The residue (if any) shall be paid to, or in accordance with a direction of, the person who was the holder of the Shares immediately before the sale or the executors or administrators or assigns of that person.

#### **9 TRANSFER OF SHARES – POWER TO REFUSE OR DELAY REGISTRATION**

The Board may in its absolute discretion refuse or delay registration of a transfer of any Shares (subject to their terms of issue) if permitted to do so by the Act and the Rules.

#### **10 TRANSMISSION OF SHARES - PERSONS RECOGNISED ON DEATH OF A SHAREHOLDER**

In the case of the death of a Shareholder, the survivor, or survivors where the deceased was a joint holder and the legal personal representatives of the deceased where he or she was the sole holder, shall be the only persons recognised by the Company as having any title to the deceased's interest in the Shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by him or her with any other person or persons.

#### **11 SHARE REGISTER**

The Register may by a resolution of the Board be divided into two or more registers to be kept at different places provided that in such circumstances the provisions of section 88 of the Act are complied with.

## **PART III - MEETINGS OF SHAREHOLDERS**

### **12 MEETINGS**

#### **12.1 Annual Meetings**

- (a) The Board shall call a meeting of Shareholders in addition to any other meetings in that year, and shall specify the meeting as the annual meeting in the notice calling it.
- (b) No more than 15 months shall elapse between the date of one annual meeting of the Company and that of the next.
- (c) An annual meeting must not be held later than 6 months (or such other latest period as may be permitted by the Act) after the balance date of the Company.
- (d) Subject to the provisions of the Act, all general meetings shall be held at such time and place as the Board appoints.
- (e) All general meetings other than annual meetings shall be called special meetings.

#### **12.2 Special Meetings**

Whenever it thinks fit, the Board may convene a special meeting and special meetings shall also be convened on such request as is provided by section 121 of the Act.

#### **12.3 Meetings of Groups of Shareholders**

A meeting of the holders of Shares in an Interest Group may be called by the Board at any time, and shall be called on the written request of persons holding Shares carrying together not less than five (5) per cent of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the Interest Group. All the provisions of this Constitution relating to meetings of Shareholders apply, with all necessary modifications to a meeting of an Interest Group of holders of Shares, except that:

- (a) the necessary quorum is one person holding or representing the holders of Shares of the Interest Group;
- (b) if the Board so elects, one meeting may be held of holders constituting more than one Interest 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 Interest Group;

- (c) any holder of Shares in the Interest Group, present in person or by Representative, may demand a poll.

### 13 NOTICE OF GENERAL MEETINGS

#### 13.1 Method of Notice

- (a) Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of meeting and to every Director and Auditor of the Company not less than 10 working days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.
- (b) The notice must:
  - (i) state the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
  - (ii) state the text of any special resolution to be submitted to the meeting; and
  - (iii) contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice; and
  - (iv) comply with the requirements of the Rules.

Without limiting this clause (b), notices in respect of proposed changes to this Constitution must be sufficiently explicit to enable the effect of such changes to be understood without reference to the existing or proposed Constitution and the notice must state that the changes have been approved by NZX.

#### 13.2 Register Conclusive

The Shareholders entitled to receive a notice of meeting shall:

- (a) if the Board fixes a date for the purpose of determining the entitlement, be those Shareholders registered in the Register on that date; or
- (b) if the Board does not fix a date, be those Shareholders registered in the Register at the close of business on the day immediately preceding the day on which the notice is given,

PROVIDED that the Board shall not fix a date under this clause if such date precedes by more than 30 working days or less than 10 working days the date upon which the meeting is to be held.

### 13.3 **Omission of Notice**

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Shareholder shall not invalidate the proceedings at that meeting.

### 13.4 **Notice Irregularity**

Any irregularity in a notice of meeting shall be waived if all of 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.

### 13.5 **Form of Proxy to be Included with Notice of Meeting**

The Company shall send a proxy form that complies with clause 15.2(d) to every Shareholder entitled to attend and vote at a meeting of the Company with the notice convening the meeting.

## 14 **PROCEEDINGS AT GENERAL MEETINGS**

### 14.1 **Quorum**

- (a) Subject to clause (b) no business shall be transacted at any general meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business. Save as is provided in clause (b), the quorum for a meeting shall be five (5) Shareholders having the right to vote at the meeting present in person or by Proxy, Attorney or Representative.
- (b) If within 30 minutes from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders under section 121 of the Act, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place or to such other day and at such other time and place as the Board may determine and if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the Shareholder or Shareholders having the right to vote at the meeting who are present at the meeting shall be a quorum.

### 14.2 **Chairperson**

- (a) The Chairperson of the Board, if any, must if present, preside as Chairperson of every meeting of the Shareholders.
- (b) If no Chairperson of the Board has been elected, or if at any meeting the Chairperson of the Board is not present within 15 minutes of the time

appointed for the commencement of the meeting, the Shareholders present may choose one of their members to be Chairperson of the meeting.

#### 14.3 Powers to Adjourn Meeting

- (a) The Chairperson of any meeting at which a quorum is present may, at his or her sole discretion (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### 14.4 Powers to Dissolve Meetings

- (a) If any general meeting shall become 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 any reason therefor, either adjourn or dissolve the meeting.
- (b) If any general meeting is dissolved by the Chairperson pursuant to clause (a) the unfinished business of the meeting shall be dealt with as follows:
  - (i) in respect of any resolution not voted upon by the meeting concerning a Distribution, the Board in the exercise of the powers conferred on it by this Constitution may make such Distribution;
  - (ii) in respect of any resolution not voted upon by the meeting concerning the remuneration of the Auditor, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the Auditor; and
  - (iii) the Chairperson may direct at any time that 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 clause 14.6.

**14.5 Voting**

- (a) Unless a poll is demanded any voting at any meeting shall be by show of hands or voice vote (as the Chairperson may direct).
- (b) A declaration by the Chairperson that a resolution has on a voice vote or on a show of hands been carried by the requisite majority, shall be conclusive evidence of the fact unless a poll is demanded.

**14.6 Polls**

At a meeting, a poll may be demanded by:

- (a) the Chairperson
- (b) not less than 5 Shareholders having the right to vote at the meeting; or
- (c) a Shareholder or Shareholders representing not less than 10 percent of the total voting rights of all Shareholders having the right to vote at the meeting; or
- (d) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all the Shares that confer that right.

**14.7 Poll May be Demanded Before or After Show of Hands or Voice Vote**

A poll may be demanded either before or after the vote by show of hands or voice vote at any time before the earliest of the next item of business or closure of the meeting.

**14.8 Votes Attached to Shares Counted in a 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 represented by proxy or otherwise and voting. The result of a poll declared by the Chairperson of the meeting shall be deemed to be the resolution of the meeting at which the poll was demanded.

**14.9 Chairperson Not Allowed Casting Vote**

In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the Chairperson of the meeting shall not be entitled to a second or casting voice.

**14.10 Different Polls to be Taken at Different Times**

A poll demanded on the election of a Chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the Chairperson of the meeting directs, and the

meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

#### 14.11 **Proxy Allowed to Demand a Poll**

The instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder shall have the same effect as a demand by the Shareholder.

#### 14.12 **Directors May Attend Meetings**

Each Director shall be entitled to attend every general meeting of the Company notwithstanding that he or she is not a Shareholder of the Company.

#### 14.13 **Notices, Reports, Financial Statements**

Shareholders shall be entitled to attend general meetings and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying Votes.

### 15 **VOTES OF SECURITY HOLDERS**

#### 15.1 **Power to Vote**

- (a) *General Power* - Subject to any rights or restrictions for the time being attaching to any Shares and to any restrictions in the Rules or this Constitution, every Shareholder entitled to Vote present, in person or by Proxy, Attorney, or Representative shall be entitled:
- (i) on a vote by voices or show of hands, to one vote; and
  - (ii) on a poll:
    - (A) to one vote for each Share held by such Shareholder the Issue Price of which is fully paid; or
    - (B) in respect of each Share held by such Shareholder the Issue Price of which is not fully paid, a fraction of the vote which would have been exercisable if the Share were fully paid, that fraction being equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).
- (b) *Joint Holders Right to Vote* - In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by Proxy, Attorney, or Representative, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the Register.

- (c) *Votes of Personal Representatives* - Where two or more persons are entitled under section 93 of the Act to be registered as holder of Shares of a deceased or bankrupt Shareholder, the right of one of them to vote shall be determined by the order in which their names appear in the Register.
- (d) *Shares Subject to Unpaid Calls* - No Shareholder shall be entitled at any general meeting to exercise voting rights in respect of any Shares or to form part of any quorum by virtue of his or her holding such Shares unless all calls or other sums presently payable by it, him or her to the Company in respect of the Shares have been paid.
- (e) *Votes Need Not be Cast in Same Way* - On a poll a Shareholder (including the holder of a proxy) entitled to more than one vote need not use all its, his or her votes or cast all the votes it, he or she uses in the same way.

**15.2 Proxies**

- (a) A Shareholder may exercise the right to vote at a meeting either by being present in person or by Proxy. A proxy form shall be sent with each notice of meeting.
- (b) A Proxy is entitled to attend and be heard at a meeting as if the proxy were the Shareholder.
- (c) *Appointment of Proxy to be in Writing* - A Proxy must be appointed by a notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or for a specified period not exceeding 12 months. A Proxy need not be a Shareholder.
- (d) *Form of Proxy* - A notice appointing a Proxy shall be in the following form or in such other form which complies with the Rules and has been approved by the Board:

I \_\_\_\_\_ of \_\_\_\_\_  
 being a Shareholder of Ebos Group Limited hereby appoint \_\_\_\_\_  
 \_\_\_\_\_ or failing him or her \_\_\_\_\_  
 \_\_\_\_\_ as my proxy to vote for me and on my behalf at the  
 meeting of Shareholders to be held on the \_\_\_\_\_ day of  
 [ ] and at any adjournment thereof.

SIGNED this \_\_\_\_\_ day of [ ]

This form is to be used in favour of/against the resolution [strike out the inappropriate words].

Unless otherwise instructed the Proxy will vote or abstain from voting as he or she thinks fit.

- (e) *Proxy Not to be Named* - The Company shall not issue any proxy form with a Proxy named therein either by name or by reference to an office which he or she may hold, but the Company may indicate in a footnote that certain persons are willing to act as a Proxy if a Shareholder desires to appoint any of them and the Company may set out on any proxy form issued by the Company the names of the Directors for the time being of the Company.
- (f) *Validity on Death or Insanity* - A vote given in accordance with the terms of a notice of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy is given or the transfer of the Share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation or transfer has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used or has been handed to the Chairperson of the meeting before the vote is given.
- (g) *Notice of proxy to be Lodged 48 Hours Before Meeting* - No Proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced not less than 48 hours before the time of the meeting in the manner set out in sub-clause (h).
- (h) *Notice of Proxy to be Lodged in Particular Manner 48 hours Before Meeting* - A copy of the written notice appointing a Proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the Office or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote.
- (i) *Two-way Voting* - A proxy shall (to the extent that the subject matter of the relevant resolution reasonably permits) allow the Shareholders to instruct the Proxy to vote either for or against any resolution.
- (j) *Resolutions* - So far as is reasonably practicable resolutions shall be framed in a manner which facilitates two way voting instructions for proxy holders.

### 15.3 Corporations Acting by Representatives at Meeting

Any corporation which is a Shareholder, or an Attorney of a Shareholder of the Company may by resolution of its directors or their governing body authorise

such Individual as it thinks fit to act as its representative at any particular general meeting of the Company or any particular meeting of any Shareholders of the Company or at all such meetings until notice of revocation of such authority shall have been given to the Company and any Individual so authorised shall be entitled to exercise the same powers on behalf of the corporation which he or she represents as that corporation could exercise if it were an individual Shareholder of the Company.

#### 15.4 **Appointment of Attorney**

Any Shareholder may at any time and from time to time by power of attorney appoint any person to be his or her attorney to attend meetings of the Company and on behalf of the Shareholder to vote and generally to act for the Shareholder in the capacity as such as fully and effectually to all intents and purposes as such Shareholder could do if present in person or by Proxy or Representative.

### **PART IV - DIRECTORS**

#### 16 **DIRECTORS**

##### 16.1 **Number of Directors**

Subject to the Rules the number of Directors to hold office shall be fixed from time to time by the Board.

##### 16.2 **Appointment of Directors**

- (a) Any natural person who is not disqualified under the Act and, if required under the Rules, who has been nominated in accordance with, and within the time limits prescribed under, the Rules, may be appointed as a Director by an ordinary resolution of the Company..
- (b) The Board may appoint any person who is not disqualified under the Act to be a Director to fill a casual vacancy or as an addition to the existing Directors. Any Director appointed under this clause (including any person who subsequent to his or her appointment as a Director becomes an Executive Director) may hold office only until the next annual meeting, and is then eligible for election, but must not be taken into account in determining the Directors who are to retire by rotation at that meeting.
- (c) The persons holding office as directors of the Company on adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution. Similarly the Chairperson of the Board continues in office and is deemed to have been appointed as Chairperson pursuant to this Constitution.

**16.3 Rotation of Directors**

- (a) At the annual meeting in each year at least one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office, but shall be eligible for re-election at that meeting. The following Directors are exempt from this particular obligation to retire:
- (i) Directors appointed by the Board pursuant to clause 16.1(b) (who are offered for election under that clause); and
  - (ii) The Managing Director if one has been appointed pursuant to clause 21 or, if not, one Executive Director nominated by the Board.

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

- (b) The Directors to retire at an annual meeting will be those Directors who have been longest in office since their last election. Persons who became Directors on the same day must retire in the order determined by lot, unless the Board resolves otherwise.
- (c) A retiring Director continues to hold office:
- (i) until he or she is re-elected; or
  - (ii) if he or she is not re-elected, until the meeting of Security holders at which he or she retires (or any adjournment of that meeting) elects someone in his or her place; or
  - (iii) if the meeting of Security holders does not elect someone in his or her place, until the end of the meeting or any adjournment of the meeting.
- (d) The Security holders entitled to vote may by ordinary resolution fill the office vacated by a Director who is retiring in accordance with this clause by electing a person who is not disqualified under the Act to that office at the annual meeting at which the outgoing Director retires.

**16.4 No Shareholding Qualification for Directors**

An Individual shall not be required to hold Shares in order to make him or her eligible for appointment as a Director or as an Alternate Director.

**16.5 Appointment of Directors Voted on Individually**

No resolution to elect a Director (including a resolution to re-elect any Director appointed under clause 16.1(b)) shall be put to holders of Shares unless:

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

Nothing in this clause 16.5 prevents the election of two or more Directors by ballot or poll.

**16.6 Directors entitled to expenses**

The Directors shall be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendance at meetings of the Board or a committee, or of the Company and when in any other manner whatsoever and wheresoever engaged on the business or affairs of the Company together with an expense allowance of such sum as the Board may consider reasonable for each day, or part of a day, upon which the Director is absent from his or her usual place of residence in the execution of such duties.

**16.7 Disqualification of Directors**

The office of Director shall be vacated by a Director, if the Director:

- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
- (b) becomes prohibited from being a Director by reason of section 151(2) of the Act; or
- (c) becomes of unsound mind or becomes subject to a property order under the Protection of Personal and Property Rights Act 1988; or
- (d) resigns his or her office; or
- (e) absents himself or herself from attendance at meetings of the Board continuously for the space of six months (calculated from the date of the last meeting of the Board attended by that Director) without special leave of absence from the Board and his or her alternate (if any) shall not have attended any such meeting in his or her stead, unless the Board resolves otherwise; or
- (f) is removed from office pursuant to an ordinary resolution of shareholders; or

- (g) is required to vacate office pursuant to clause 16.3; or
- (h) being an Executive Director, ceases for any reason to be in the salaried employment of the Company or any of its Subsidiaries unless the Board resolves otherwise.

#### 16.8 **Validity of Acts**

The actions taken by the Board, or any committee of Directors, or any Director to whom the Board has delegated any of its powers or by any Individual acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid or that they or any of them were not qualified for appointment, be as valid as if every such person had been duly appointed and was qualified to be a Director.

### 17 **ALTERNATE DIRECTORS**

#### 17.1 **Appointment of Alternate Director**

Each Director shall have the power to appoint, by notice in writing to the Company, any Individual who is not already a Director and who is approved by a majority of the other Directors, to act as an alternate director in his or her place, either for a specified period, or generally during the absence or inability to act from time to time of such Director, and may revoke such appointment by written notice to the Company at any time and such Director shall be subject to the same provisions in this Constitution as the Directors appointing him or her. The appointment of an Alternate Director may, in addition to the aforesaid, be revoked by a majority of his or her co-Directors.

#### 17.2 **Termination of Appointment**

The appointment of an Alternate Director shall terminate on the happening of any event which if he or she were a Director would cause him or her to vacate such office in accordance with the terms of this Constitution applying to his or her appointor, or if his or her appointor ceases to be a Director provided that a director retiring by rotation pursuant to clause 16.3(b) at the meeting of the Company and being re-elected at that meeting shall not for the purposes of this provision be treated as having ceased to be a director.

#### 17.3 **Powers of Alternate Director**

An Alternate Director shall, unless otherwise provided by the terms of his or her appointment, whilst acting in the place of the Director he or she represents, have, exercise, and discharge all the powers, rights, duties and privileges (including without limitation the right to receive notice of, and participate in, meetings of the Board, the power to sign resolutions of the Directors in accordance with clause 18.3, (Resolution in Writing Assented to by All Directors), but excluding the right of acting as Managing Director and excluding the right to appoint an alternate Director) of the Director appointing him or her and be

subject in all respects to the same terms and provisions as that Director except in respect of remuneration.

#### 17.4 **Remuneration of Alternate Directors**

An Alternate Director may be paid expenses, and shall be entitled to be indemnified by the Company to the same extent, with any necessary modifications, as if he or she were a Director but he or she shall not be entitled to receive from the Company, in respect of his or her appointment as Alternate Director, remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointor as such appointor may by notice in writing to the Company from time to time direct.

### 18 **PROCEEDINGS OF DIRECTORS**

#### 18.1 **Third Schedule Does Not Apply**

The proceedings at meetings of the Board shall be as set out in this Constitution and the provisions set out in the Third Schedule to the Act shall not apply to proceedings of the Board.

#### 18.2 **Meetings of Directors**

- (a) *Convening of Meetings* - The Board may meet for the despatch of business, adjourn, and otherwise regulate its meetings and proceedings as it thinks fit. The Chairperson, or in his or her absence the Deputy Chairperson (if any), or in the absence of both, the Managing Director (if any) or alternatively any two (2) Directors may at any time summon a meeting of the Board (including a teleconference meeting as provided for in clause 18.4).
- (b) *Notice of Meetings* - Notice of every meeting of the Board shall be given to every Director either personally or by written notice sent to the last address notified to the Company by the Director for this purpose. A notice convening a meeting of the Board shall be in writing and shall specify:
  - (i) the date and time (in accordance with New Zealand time) at which the meeting is to be held;
  - (ii) the place at which the meeting is to be held; and
  - (iii) in the case of a meeting which may be attended by telephone or other instantaneous audio (or audio and visual) communication the telephone number to which it is necessary to be connected for the purposes of attending the meeting by such means.
- (c) *Quorum* - Until otherwise determined by the Board, the quorum necessary for the transaction of the business of the Board shall be three (3)

Directors. A meeting of the Board at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under this Constitution for the time being vested in or exercisable by the Board.

- (d) *Chairperson* - The Board may elect a Chairperson and (if it thinks fit) a Deputy Chairperson and determine the period for which each is to hold office. The Chairperson, or in his or her absence the Deputy Chairperson (if any), shall preside at all meetings of the Board but if neither the Chairperson nor the Deputy Chairperson (if any) is present within 15 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.
- (e) *Votes* - Questions arising at any meeting of the Board shall be decided by a majority of votes. Each Director present at the meeting shall have one vote. In the case of an equality of votes the Chairperson shall have a second or casting vote but only where the quorum of the meeting concerned exceeds two (2) Directors.
- (f) *Proceedings in Case of Vacancy* - The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors or Director may act only for the purposes of increasing the number of Directors to the said minimum number or to summon a meeting of the Company but for no other purpose.
- (g) *Presence by Telephone* - Without limiting clause 18.4, a Director may attend any meeting of the Board by telephone or other instantaneous audio (or audio and visual) communication provided such Director has given notice in writing of his or her intention so to do to the Company at least 48 hours prior to the scheduled commencement time of such meeting. The requirements as to such notice may be waived by the Board. Any such Director:
  - (i) must throughout the meeting be able to hear each of the other Directors taking part;
  - (ii) must, at the commencement of the meeting, acknowledge his or her presence for the purpose of the meeting, to all other Directors taking part;
  - (iii) may not leave such meeting by disconnecting his or her telephone or other means of communication unless he or she has first obtained the express consent of the Chairperson;

- (iv) shall (for the purposes of this Constitution) be conclusively presumed to have been physically present and to have formed part of the quorum at all times during the meeting unless he or she first obtained the express consent of the Chairperson of the meeting to leave the meeting as aforesaid. Neither the meeting, nor any business conducted thereat, shall be invalidated regardless of whether a Director leaves a meeting conducted as aforesaid, without the express consent of the Chairperson.
- (h) *Restriction on Leaving Teleconference* - Neither the meeting nor any business conducted thereat shall be invalidated if a Director leaves a meeting conducted pursuant to clause (g) without the express consent of the Chairperson.
- (i) *Provisions to Apply Except Where Otherwise Agreed* - The provisions contained in this clause 18 shall apply in relation to all meetings of the Board except where otherwise agreed by all the Directors for the time being in relation to any particular meeting or meetings.
- (j) *Omission of Notice* - The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Director shall not invalidate the proceedings at that meeting.

### 18.3 **Resolution in Writing Assented to by All Directors**

A resolution in writing signed or assented to by letter, telex, facsimile, or other written message, by each Director (or by his or her Alternate Director) shall be as valid and effective as if it had been passed at a meeting of the Board duly called and constituted. Any such resolution may consist of several documents in like form, each signed or purporting to have been despatched by one or more Directors or their Alternate Directors as the case may be. Every such resolution shall be recorded in the minutes.

### 18.4 **Teleconference Meeting of Directors**

- (a) *Power to Meet by Teleconference* - For the purpose of this Constitution the contemporaneous linking together by telephone or other means of instantaneous audio (or audio and visual) communication of a number of the Directors not less than the quorum of a meeting of the Board, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Board and all the provisions in this Constitution as to meetings of the Board shall apply to such meetings so long as the following conditions are met:
  - (i) all the Directors for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of a meeting by telephone or other means of communication and to be linked by

telephone or such other means for the purposes of such meeting. Notice of any such meeting may be given on the telephone or by other means of communication at least two hours before the time of commencement of the meeting;

- (ii) each of the Directors taking part in the meeting by telephone or other means of communication must throughout the meeting be able to hear each of the other Directors taking part; and
  - (iii) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other Directors taking part.
- (b) *Minutes at Teleconference* - A minute of the proceedings at such a meeting by telephone or other means of communication shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting.

#### 18.5 **Scheduling and Notice of Meetings**

- (a) Regular Meeting - The Board shall schedule its regular meetings in advance as follows:
- (i) as soon as reasonably practicable after the commencement of each calendar year, the Board shall decide upon the date, time and place of every meeting ("scheduled meeting") of the Board then proposed to be held during the remainder of the then current calendar year;
  - (ii) as soon as reasonably practicable after the Board has decided upon the date, time and place of every scheduled meeting of the Board for any calendar year, the Chairperson, Managing Director or, failing him or her, any other Director appointed for that purpose by the Board, shall give a notice to every Director setting out that information and such notice shall serve as notice of each such meeting for the purposes of this clause 18.5.
- (b) *Notice Periods* - The following periods of notice shall apply to the convening of meetings of the Board:
- (i) in the case of a scheduled meeting of the Board, where notice of that meeting has previously been given in accordance with sub-clause (a)(ii) no further notice shall be required. The minimum period of notice required in order to change the scheduled date, time or place of a scheduled meeting of the Board shall be five clear days;

- (ii) except in the case of urgency falling within sub-clause (iii) the minimum period of notice for convening a meeting of the Board other than a scheduled meeting shall be five clear days;
- (iii) in the case of urgency where, in the opinion of the Chairperson or in his or her absence the Deputy Chairperson (if any) or in the absence of both, the Managing Director, (if any) or alternatively any two (2) Directors a meeting of the Board is required in the interests of the Company to be convened on less than five clear days' notice, the meeting may be convened on shorter notice provided that:
  - (A) not less than two-thirds of the Directors consent to such shorter notice; or
  - (B) the Chairperson or in his or her absence the Deputy Chairperson (if any) or in the absence of both the Managing Director (if any) and at least one other Director consider that by reason of extreme urgency, a meeting on shorter notice determined by them is required in the interests of the Company and that it is not practicable to comply with sub-clause (iii)(A) above.
- (c) *Meetings Convened on Short Notice* - In the case of a meeting convened on short notice pursuant to sub-clause (b)(iii) so far as can reasonably be achieved:
  - (i) a copy of the notice convening the meeting shall be given to each Director either personally or sent by facsimile transmission to his or her facsimile number prior to the holding of the meeting;
  - (ii) the Chairperson, if any, or Managing Director shall endeavour to contact every Director personally or by telephone prior to the holding of the meeting to try to ensure that every Director is aware that the meeting is to be held;
  - (iii) every Director shall be entitled to attend the meeting telephonically notwithstanding his or her failure to give the required notice provided for under clause 18.2(g); and
  - (iv) except with the consent of all Directors taking part in the meeting the business to be transacted at the meeting shall be limited to business related to the urgent matter or matters which necessitated the meeting being called on short notice.

- (d) *Despatch of Notices* - Subject as provided in sub- clause (c)(i), notices convening a meeting of the Board shall, so far as the circumstances reasonably permit be despatched as follows:
- (i) a copy of the notice convening the meeting shall be either:
    - (A) delivered to each Director at his or her address; or
    - (B) sent by facsimile transmission to the Director's facsimile number; or
    - (C) handed to the Director personally;
  - (ii) in the case of a Director having an address outside New Zealand, the notice shall be either:
    - (A) sent by air courier to the Director's address (in which case an advice of despatch shall be promptly sent by facsimile transmission to the Director's facsimile number); or
    - (B) sent by facsimile transmission to the Directors facsimile number; or
    - (C) handed to the Director personally.
- (e) *Board Papers* - Any Director may require that board papers, comprising:
- (i) an agenda of the general nature of the business to be transacted at the meeting;
  - (ii) where practicable, details of the resolutions to be put to the meeting; and
  - (iii) such explanatory or background papers as may be reasonably necessary to allow informed discussion at the meeting;
- be circulated a reasonable time before the meeting.
- (f) *Notices*
- (i) Each Director shall from time to time give written notice to the Company of his or her address, facsimile number, and telephone number or numbers for the purposes of this clause 18.

- (ii) A notice given to a Director pursuant to the preceding provisions of this clause 18 shall be deemed to be given when delivered at the address notified under sub-clause (i) or in the case of a facsimile transmission when the Company receives an acknowledgement of receipt.

## 19 **COMMITTEE OF DIRECTORS**

19.1 The Board may, from time to time, appoint committees consisting of a person or such persons (whether or not Directors) as it thinks fit and may, subject to the Act and the Rules, delegate any of its powers to any such committee and may, from time to time, vary, suspend or remove such delegation. Any committee so formed shall in the exercise of its powers so delegated conform to any regulation that may be imposed on it by the Board.

### 19.2 **Proceedings of Committees**

- (a) A committee of the Board may elect a Chairperson of its meetings; if no such Chairperson is elected, or if at any meeting the Chairperson is not present within 15 minutes after the time appointed for holding the same, the members present may choose one of their number to be Chairperson of the meeting.
- (b) A committee of the Board may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the Chairperson of the meeting shall have a second and casting vote except when only two members are present at the meeting.
- (c) The provisions of this Constitution (including those relating to teleconference meetings) relating to the meetings and proceedings and quorum of the Board shall, so far as not altered by any regulations made by the Board, apply also to the meetings and proceedings of any committee.

## 20 **BOARD TO CAUSE MINUTES TO BE KEPT**

20.1 The Board shall cause minutes to be made, in books provided for the purpose of recording:

- (a) all appointments of officers made by the Board;
- (b) the names of all the Directors present at each meeting of the Board; and the names of all members present at each meeting of a committee of the Board;

- (c) all resolutions and proceedings at all meetings of the Company, and of the Board, and of committees of the Board;
- (d) all instruments whose execution is authorised.

20.2 *Evidence of Minutes* - Any minutes of any meeting of the Company or of the Board of any committee, purporting to be signed by the Chairperson of such meeting or of the next succeeding meeting, shall be receivable in all courts, and by any person authorised to take evidence, and may be relied on by all other persons (not being persons having actual knowledge to the contrary), as prima facie evidence of the matters stated in such minutes.

## 21 **MANAGING DIRECTOR**

### 21.1 **Power to Appoint Managing Director**

The Board may from time to time appoint a Director to the office of Managing Director of the Company for such period not exceeding five years and on such terms as it thinks fit and may on the expiration of such period of appointment as aforesaid reappoint such Director as Managing Director for a further period not exceeding five years and may likewise reappoint such Director for such further period or periods of appointment in accordance with the Rules. If the Board so determines, a Managing Director may be referred to as the Chief Executive of the Company. The provisions of this clause 21.1 as to tenure shall also apply to any Executive Director. The appointment of a Managing Director shall terminate automatically if he or she ceases to be a Director.

### 21.2 **Managing Director Liable to Dismissal**

Subject to clause 21.4, a Managing Director is subject to the same provisions as regards resignations, removal and disqualification as the other Directors and in addition shall be liable to be dismissed or removed by the Board (with or without cause), but the Board may, subject to the Rules, 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 term of his or her employment, but so that the remedy of any such person for any breach of the agreement shall be in damages only, and he or she shall have no right to claim or continue in such office contrary to the will of the Board.

### 21.3 **Remuneration of Managing Director**

Subject to the Rules, the remuneration of a Managing Director shall be fixed by the Board and may be in addition to the remuneration of that Managing Director as an ordinary Director.

### 21.4 **Managing Director Not Liable to Retire by Rotation**

The Managing Director shall not, while he or she continues to hold that office, be liable to retire by rotation, but he or she shall be taken into account in

determining the number of Directors to retire. If the Managing Director ceases to hold the office of Director from any cause, he or she shall thereupon cease to be a Managing Director. If a Managing Director shall cease to be employed by the Company then, unless the Board otherwise determines, he or she shall ipso facto cease to be a Director.

#### **21.5 Powers Capable of Being Conferred Upon Managing Director**

The Board may from time to time entrust to and confer upon a Managing Director any of the powers exercisable by the Board upon such terms and conditions, and with such restrictions, as it may think fit and either collaterally with or to the exclusion of its own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers.

#### **21.6 Voting by Managing Director**

The Managing Director shall have the same voting powers as the other Directors in accordance with clause 18.2(e).

### **22 DIRECTORS INDEMNITY AND INSURANCE**

#### **22.1 Company May Indemnify Directors and Employees for Certain Liabilities**

The Company may indemnify a Director or Employee of the Company or a Related Company in respect of any liability or costs for which a director or employee may be indemnified in accordance with the Act.

#### **22.2 Company May Effect Insurance for Directors and Employees**

The Company may, with the prior approval of the Board, effect insurance for a Director or Employee of the Company or a Related Company in respect any liability or costs for which a company may effect insurance for a director or employee in accordance with the Act.

### **23 EXECUTION OF CONTRACTS**

#### **23.1 Manner of Execution**

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

- (a) 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:
  - (i) two or more Directors; or
  - (ii) a Director or other person or class of persons authorised by the Board whose signatures must be witnessed; or

- (iii) one or more attorneys appointed by the Company in accordance with clause 23.2 below;
- (b) 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
- (c) 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.

#### **23.2 Company May Appoint Attorneys**

The Company may, by an instrument in writing executed in accordance with clause 23.1(a) above, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. Any act of an attorney in accordance with the instrument shall bind the Company.

### **PART V - DISTRIBUTIONS**

#### **24 DISTRIBUTIONS**

##### **24.1 Distributions do not bear interest**

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

##### **24.2 Unclaimed Dividends**

- (a) All Dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed and the Company shall be entitled to mingle the amounts of any such Dividends with other money of the Company or spend the same, and shall not be required to hold them or regard them as being impressed with any trust.
- (b) All Dividends, and any other moneys payable to any Shareholder or former Shareholder in respect of Shares and/or interest in respect of Debt Securities issued by the Company remaining unclaimed for five years after having been declared or otherwise having become payable, shall, at the expiry of such period of five years after having been declared or otherwise having become payable, be automatically forfeited for the benefit of the Company, unless the Board shall resolve otherwise. The Board may at any time annul such forfeiture and pay the Dividend or other moneys so forfeited to any person producing evidence that he or she is entitled to the same and shall do so unless in the opinion of the Board such payment would embarrass the Company.

### 24.3 **Waiver**

A Shareholder may waive his or her right to receive a Dividend by notice in writing to the Company signed by or on behalf of the Shareholder.

## **PART VI - GENERAL**

### 25 **NOTICES**

#### 25.1 **Manner of Notice**

Subject to the Rules, a notice may be given by the Company to any Shareholder either personally or by sending it by post (which, in the case of a registered address outside New Zealand, shall be airmail post) to that Shareholder or to that Shareholder's registered address.

#### 25.2 **Service of Notice**

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post. In proving the giving of any notice by mail it shall be sufficient to prove that the letter, post card, envelope or wrapper containing the notice was properly addressed, stamped and posted and a certificate in writing signed by any Director or other officer or Employee of the Company that the letter, post card, envelope or wrapper containing the notice was so addressed, stamped and posted shall be conclusive proof thereof. If a holder of a Security quoted on the NZSX or NZDX markets has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that Security holder at such address and shall be deemed to have been received by that Security holder 24 hours after the time of the posting.

#### 25.3 **Notice Where Shareholder has no Registered Address**

If a Shareholder has no registered address he or she shall not be entitled to have any notice sent to him or her from the Company and all proceedings taken without notice to any such Shareholder shall be as valid as if he or she had due notice thereof. If a Shareholder has no registered address, a notice may (but need not) be given by the Company to any such Shareholder by advertisement in a newspaper circulating in the neighbourhood of the Office addressed to the Shareholders of the Company generally and any notice so given shall be deemed to have been duly given at noon on the day on which the advertisement appears.

#### 25.4 **Notice to Joint Holders**

A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder first named in the Register in respect of the Share.

**25.5 Notice to Representatives or Manager**

A notice may be given by the Company to the person entitled to a Share in consequence of the mental disorder, death or bankruptcy of a Shareholder, by sending it through the post in a prepaid letter addressed to him or her by name, or by the title of the manager of the mentally disordered person, or the legal personal representatives of the deceased, or the assignee of the bankrupt, or by any like description, as the case may be, at the address, if any, supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the mental disorder, death or bankruptcy had not occurred.

**25.6 Signature of Notice**

The signature of any notice to be given by the Company may be written in accordance with the definition of "*Written*" in clause 1.1.

**25.7 Registered Address**

The address entered in the Register shall be the registered address of each Shareholder. It shall be the duty of each Shareholder upon changing his, her or its address to notify the Company of such change. If notices or communications posted to a Shareholder's registered address shall be returned to the Company marked by the postal authorities or otherwise to the effect that the Shareholder is not known at that address or that delivery cannot be effected to that address and the Company shall have sent a registered letter to the Shareholder's registered address and such registered letter shall be returned not having been delivered, then the Shareholder shall be deemed to have no registered address.

**26 LIQUIDATION**

If the Company is liquidated, the liquidator may, with the sanction of the Company by Special Resolution and any other sanction required by the Act, divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as he or she deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the Shareholders or different classes of Shareholders. 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 contributories as the liquidator, with the like sanction, thinks fit, but so that no Shareholder shall be compelled to accept any Shares or other Securities on which there is any liability.

**27 DISTRIBUTION OF ASSETS****27.1 Distribution of Excess Assets**

Subject to the terms and conditions upon which any Shares may have been issued, upon liquidation the surplus assets of the Company shall be distributed

among the Shareholders in proportion of the number of Shares held by them respectively less any amounts of the Issue Price for such Shares which remain outstanding.

**27.2 Interpretation**

In this clause 27 "*surplus assets*" means the assets in the hand of the liquidator after the payment of all the debts and liabilities of the Company including all the costs of the winding up.

**DOCUMENT IDENTIFICATION**

This document is the Constitution of the Company to be adopted by the Company pursuant to the Special Resolution of Shareholders to be passed on the 19<sup>th</sup> day of October 2005.



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Chairperson of Directors