

**CONSTITUTION OF AMURI IRRIGATION
COMPANY LIMITED**

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Constitution of Amuri Irrigation Company Limited

Pursuant to the Companies Act 1993

1. Definitions and interpretation

Definitions

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

"A Share"	means a Share giving the holder the right to irrigate one hectare and such rights and obligations as set out in clause 3.2.
"Act"	means the Companies Act 1993.
"alternate director"	means a director appointed pursuant to clause 16.12.
"amalgamation"	means the completed act of the Company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company.
"annual meeting"	means a meeting of shareholders held pursuant to clauses 14.1 and 14.2.
"associated person"	means any person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or under common control of a shareholder/s or director. A person shall be deemed to control another person for the purpose of this definition, if the first such person possesses, directly or indirectly, the power to appoint a majority of directors to the second person, or otherwise direct or cause the direction or management of the policies of the second person, whether through the ownership of voting securities, control of the appointment of trustees to a trust, by contract or otherwise.
"balance date"	means the date adopted by the Company as the end of its financial year for the purpose of its annual financial statements. [Section 2 of the Act]
Balmoral scheme	means that part of the scheme servicing the shareholders in the Balmoral area.
"Balmoral shareholders"	means the holders of A and/or D shares whose shares relate to land owned by them situated in the Balmoral irrigation scheme.
"Board"	means the directors numbering not less than the required quorum acting as the Board of directors of the Company, and where one director is a quorum it means that director so acting alone. [Section 127]
"call"	means a resolution of the Board under clause 9.1 requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares and, where the context requires, means the obligation of a shareholder to meet the amount due pursuant to such a resolution.
"chairperson"	means the chairperson of the Board, elected or appointed under

clauses 19.2 and 19.4.

"class" and "shares"	"class of shares" means a class of shares having attached to them identical rights, privileges, limitations, and conditions. [Section 116]
"Company"	means Amuri Irrigation Company Limited.
"consents"	means the resource consents held by the Company together with all the renewals, variations or amendments to those consents and includes all conditions relating to those consents.
"constitution"	means this constitution of the Company and all amendments to it from time to time.
"director"	means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the Company.
"distribution"	in relation to shares held by a shareholder, means: <ol style="list-style-type: none"> a. the direct or indirect transfer of money or property, other than shares, by the Company to or for the benefit of that shareholder; or b. the incurring of a debt by the Company to or for the benefit of a shareholder, <p>whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means. [Section 2(1)]</p>
"dividend"	means a distribution by the Company other than a distribution to which section 59 or section 76 of the Act applies. [Section 53]
"D Share"	means non-voting shares giving the holder such other rights and obligations as set out in clause 3.3.
"infrastructure"	means the canals, races, turn-outs, bridges, off takes, siphons, dams, ponds, controls or other infrastructure used to convey water through the scheme.
"interest group"	in relation to any action or proposal affecting rights attached to shares, means a group of shareholders: <ol style="list-style-type: none"> a. whose affected rights are identical; and b. whose rights are affected by the action or proposal in the same way; and c. who comprise the holders of one or more classes of shares.

For the purposes of this definition:

- a. one or more interest groups may exist in relation to any action or proposal; and
- b. if —

- i. action is taken in relation to some holders of shares in a class and not others; or
- ii. a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class,

holders of shares in the same class may fall into 2 or more interest groups. [Section 116]

"interests register" means a register kept by the Company at its registered office as required by section 189(1)(c) of the Act.

"irrigation season" means the period from the 1st day of September in one year to the 30th day of April in the following year or such other period as the Company may from time to time determine.

"land" means a property within the scheme.

"major transaction" in relation to the Company, means:

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

but does not include:

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

Nothing in paragraph (c) of this definition applies by reason only of the Company giving, or entering into an agreement to give, a charge secured over assets of the Company the value of which is more than half the value of the company's' assets for the purpose of securing the repayment of money or the performance of an obligation. [Section 129(2), (2A) and (3)]

"managing director" means a director who is appointed under clause 1 as an employee of the Company, with the responsibility for the management of the Company (together with any other employee).

"month" means calendar month.

"ordinary resolution" means a resolution that is approved by a simple majority of the

- votes of those shareholders entitled to vote and voting on the question. [Section 105(2)]
- "owner" means the owner of a property within the scheme area.
- "register" means the register of shares required by clause 6 of this constitution and section 87 of the Act to be kept.
- "Registrar" means the Registrar of Companies appointed under section 357(1) of the Act.
- "scheme or scheme area " means the properties serviced by irrigation infrastructure owned and operated by the Company including properties within the Waiau Plains irrigation scheme, Balmoral irrigation scheme and the Waiareka Downs irrigation scheme and such new properties or schemes as the directors may determine from time to time.
- "Share" means A and/or D shares and such other classes of shares as may be issued pursuant to clause 3.9.
- "shareholder" means a person:
- a. registered in the register as the holder of one or more shares; or
 - b. until the person's name is entered in the register, a person named as a shareholder in the application for registration of the Company at the time of registration of the Company; or
 - c. until the person's name is entered in the register, a person who is entitled to have that person's name entered in the register under a registered amalgamation proposal as a shareholder in an amalgamated Company. [Section 96]
- "solvency test" means an examination to be applied to the financial state of the Company, which will be satisfied if:
- a. the Company is able to pay its debts as they become due in the normal course of business; and
 - b. the value of the Company's assets is greater than the value of its liabilities, including contingent liabilities, and in respect of which regard has been had to the matters referred to in section 4(2) of the Act.
- For the purpose of this definition "debts" and "liabilities" have the meanings given to those terms in sections 52(4) or 108(5) of the Act as applicable.
- "special meeting" means any meeting (other than an annual meeting) of shareholders entitled to vote on an issue, called at any time by the Board, or by any other person who is authorised by the Board to call meetings of shareholders. [Section 121]

"special resolution"	means a resolution of shareholders approved by a majority of 75 per cent of the votes of those shareholders entitled to vote and voting on the question.
"water"	means water taken in accordance with the Company's consents.
Waiau Plains scheme	means that part of the scheme servicing the shareholders in the Waiau Plains area.
Waiau shareholders	means the holders of A and/or D shares whose shares relate to land owned by them situated in the Waiau Plains irrigation scheme.
Waiareka Downs scheme	means that part of the scheme servicing shareholders in the Waiareka Downs area.
Waiareka shareholders	means the holders of A and/or D shares whose shares relate to land owned by them situated in the Waiareka Downs irrigation scheme.
"water supply agreement"	means an agreement between the Company and the shareholder allowing access to water as revised or updated from time to time in accordance with its terms.
"working day"	means a day of the week other than: <ul style="list-style-type: none"> a. Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; b. a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year; c. if the first day of January in any year falls on a Friday, the following Monday; and d. if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday. [Section 2(1)]

1.2 In this Constitution unless the context otherwise requires:

- a. headings are inserted for convenience only and shall be ignored in construing this Constitution;
- b. the singular includes the plural and vice versa;
- c. one gender includes the other genders;
- d. a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
- e. "written" and "in writing" includes any means of reproducing words, figures or symbols in a tangible and visible form; and

- f. a reference to a clause is to that clause in this Constitution unless stated otherwise.
- 1.3 Subject to this clause 1, expressions contained in this Constitution bear the same meaning as specified in the Act as amended from time to time.
- 1.4 If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.

PART II: CAPITAL SHARES AND DIVIDENDS

2. Capital and Issue of Shares

Rights, powers and duties

- 2.1 The Company, the Board, each director and each shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution. [Section 27]

Full capacity

- 2.2 Subject to this Constitution the Act, any other enactment and the general law, the Company has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction. [Section 16]

Water Supply Agreements

- 2.3 All shareholders are required to enter into the Company's then current water supply agreement, immediately upon becoming shareholders in the Company.
- 2.4 The entry into the Company's then current water supply agreement shall be a condition precedent to the supply of water by the Company to the shareholder's land.
- 2.5 The shareholder acknowledges that the Company may at any time review the terms and conditions of the water supply agreement to take account of changes in legislation, water consents, and prudent irrigation practice and amend the agreement accordingly.
- 2.6 The shareholders shall be bound by such amendments on receiving written notice of the change or alternatively at the discretion of the Company shall be required to enter into a new water supply agreement.
- 2.7 In the event of any conflict between the then current water supply agreement and the terms upon which any Shares are issued by the Company the terms of the Share issue shall prevail.

3. Capital and issue of shares

Classes of shares

- 3.1 The Share capital of the Company will initially consist of two classes of shares being A shares and D shares.

A Shares

- 3.2 The following rights and obligations shall attach to A shares:

- a. One vote per A share;
- b. Each A Share shall have an initial issue price such as the Board determines in accordance with clause 3.8;
- c. A holder of A shares shall pay water charges to the Company on a per Share basis (to be determined by the directors in their absolute discretion) being an annual charge and as more particularly set out in clauses 3.4 to 3.7;
- d. The right to an equal Share in dividends as authorised by the Board;
- e. The right to an equal Share in the distribution of the surplus assets of the Company on winding up;
- f. A shares may only be issued, transferred to, and held by an owner of a property which forms part of the scheme;
- g. Each Share shall entitle the holder to an allocation of water (whether border dyke or spray) at a rate or volume that may be determined by the directors in their absolute discretion.;
- h. A shareholder may (with the company's consent and its absolute discretion) be entitled to irrigate more than one hectare per share on his or her land by irrigating at a lower application rate. By way of example, if a farmer with 100 shares is entitled to irrigate 100 hectares at .6L/per second, or if he so chooses 120 hectares at .5L/per second;
- i. The holder of A shares shall enter into the Company's then current water supply agreement in accordance with clause 2.3 to 2.7;
- j. Each shareholder has an obligation to allow water to be conveyed over his property whether via a pipe in accordance with the terms of the water supply agreement and this constitution (including appropriate compensation for disruptions to farming operations and production, if applicable).

D Shares

3.3 The following rights and obligations shall attach to D shares:

- a. The shares shall be non-voting shares;
- b. Each D Share shall have an initial issue price such as the Board determines in accordance with clause 3.8;
- c. A holder of D shares shall pay water charges to the Company on a per Share basis (to be determined by the directors in their absolute discretion) being an annual charge and as more particularly set out in clauses 3.4 to 3.7;
- d. The right to an equal Share in dividends as authorised by the Board;
- e. The right to an equal Share in the distribution of the surplus assets of the Company on winding up;
- f. D shares may only be issued, transferred to, and held by a holder of A shares.
- g. The holder of D shares shall enter into the Company's then current water supply agreement in accordance with clause 2.3 to 2.7;
- h. Each shareholder has an obligation to allow water to be conveyed over his property via a pipe in accordance with the terms of the water supply agreement

and this Constitution (including appropriate compensation for disruptions to farming operations and production, if applicable).

Water charges

- 3.4 The shareholder shall pay the Company an annual water charge to be determined by the Board of the Company from time to time in its absolute discretion.
- 3.5 The Board may differentiate between shareholders for charging as the Board deems appropriate including (but without limiting the generality of the foregoing) on the basis of type of irrigation, volume of water and benefit received.
- 3.6 The water charges shall be payable at such time and in such manner as the Board of the Company may from time to time determine.
- 3.7 The annual rate determined in clause 3.4 shall be payable by the shareholder to the Company whether or not the shareholder takes the water during the season and notwithstanding that the water may be cut off from the land pursuant to the provisions of the water supply agreement.

Board may issue shares

- 3.8 Subject to this Constitution, the Board may from time to time issue in such numbers at such prices as they think fit, A and/or D Shares (and rights and options to acquire A and D Shares) to an owner of a property within the scheme or a person who is proposing to join the scheme.
- 3.9 The Board may issue additional Shares (and rights and options to acquire Shares) of any class (including redeemable shares) at any time, to any person and in such numbers as the Board thinks fit, provided that such issue is approved by special resolution.

Consideration for issue of Shares

- 3.10 Subject to clause 3.20, before the Board issues Shares, it must:
- a. decide on the consideration for which the Shares will be issued and the terms on which they will be issued;
 - b. if the Shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue;
 - c. resolve that, in its opinion, the consideration for the Shares and their terms of issue are fair and reasonable to the Company and to all existing shareholders; and
 - d. if the Shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of that consideration is not less than the amount by which the Shares would be credited as paid up.
- 3.11 Clause 3.10 does not apply to:
- a. the issue of Shares that are fully paid up from the reserves of the Company to all shareholders of the same class in proportion to the number of Shares held by each such shareholder; or
 - b. the consolidation or subdivision of Shares.
- 3.12 The consideration for which Shares are issued, or for the payment of Shares already issued, may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the Company.

Directors' certificate on consideration for issue

- 3.13 The directors who vote in favour of a resolution under clause 3.10 must sign a certificate:
- a. stating the consideration for, and the terms of, the issue;
 - b. describing the consideration in sufficient detail to identify it;
 - c. where a present cash value has been determined in accordance with clause 3.10d, stating that value and the basis for assessing it;
 - d. stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the Company and to all existing shareholders; and
 - e. if the Shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value is not less than the amount to be credited as paid up for the issue of the Shares.
- 3.14 A copy of the directors' certificate given in respect of the consideration for the issue of Shares must be filed with the Registrar within ten (10) working days after it is given.

Payment for Shares already issued

- 3.15 Before Shares that have already been issued are credited as fully or partly paid up other than for cash, the Board must:
- a. determine the reasonable present cash value of the consideration; and
 - b. resolve that, in its opinion, the present cash value of the consideration is:
 - i. fair and reasonable to the Company and all existing shareholders; and
 - ii. not less than the amount to be credited in respect of the Shares.

Directors' certificate on payment for Shares already issued

- 3.16 The directors who vote in favour of a resolution under clause 3.15 must sign a certificate:
- a. describing the consideration in sufficient detail to identify it; and
 - b. stating:
 - i. the present cash value of the consideration and the basis for assessing it;
 - ii. that the present cash value of the consideration is fair and reasonable to the Company and to all existing shareholders; and
 - iii. that the present cash value of the consideration is not less than the amount to be credited in respect of the Shares.
- 3.17 A copy of the directors' certificate given under clause 3.16 must be filed with the Registrar within ten (10) working days after it is given.

Deemed payment other than for cash

- 3.18 For the purposes of clauses 3.10 and 3.15, Shares that are (or are to be) credited as paid up (whether wholly or partly) as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments (whether simultaneously or not), must be treated as paid up other than in cash to the value of the property or services.

Amount owing on issue of Shares

- 3.19 Where money or other consideration is due at a fixed time to the Company on Shares in accordance with their terms of issue, that amount does not comprise a call and no notice is required to be given to the shareholder (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.

Bonus Shares

- 3.20 The Board may authorise the allotment of Shares to shareholders of Shares issued as fully or partly paid up from the assets of the Company.

Consolidation and subdivision of Shares

- 3.21 The Board may authorise:
- a. the consolidation and division of Shares or any class of Shares in proportion to those Shares or the Shares in that class; and
 - b. the subdivision of the Shares or any class of Shares in proportion to those Shares or the Shares in the class. [Section 48]

Company paying up partly paid Shares

- 3.22 Subject to the solvency test being satisfied after the distribution is made and to clause 3.15, the Board may authorise the payment (from the assets of the Company) of any amount unpaid on Shares already issued by the Company.

4. Purchase of own Shares**Purchase by Company of its Shares**

- 4.1 The Company may purchase or otherwise acquire its Shares in accordance with, and subject to, sections 58 to 66, 107, and 110 to 112 of the Act.

Cancellation of Shares

- 4.2 Shares acquired by the Company pursuant to clause 4.1 will be deemed to be cancelled immediately on acquisition by the Company (except to the extent they comprise Treasury Stock in the terms of Sections 67A-67C of the Act) but any Shares so cancelled may be reissued by the Company.

5. Transfer of Shares**Sale of Land**

- 5.1 If any shareholder wishes to sell a property to which shares relate, then they must also transfer the shares (or the appropriate parcel of shares in the event of a subdivision) to the purchaser of the property. In the event that they default in transferring the shares, the Company shall arrange for the execution of the necessary share transfers on behalf of the shareholder and for avoidance of doubt the shareholder transferring the property irrevocably appoints any of the directors of the Company as their power of attorney for the purposes of effecting the transfer of their Shares and the sale price of the Shares in this instance shall be determined by the directors at their sole discretion. No Shares shall be transferred separately or alienated in any way from the property to which they relate other than in accordance with clauses 5.2 and 5.3.

Transfer of Surplus A and D Shares

- 5.2 Notwithstanding clause 5.1, shareholders shall be entitled to transfer any A and D Shares, separately from the land to which the Shares, relate to:
- a. existing A and D shareholders; or
 - b. persons who are not currently shareholders in the Company but who own land sufficiently close to the Scheme to irrigate from it and wish to become part of the Scheme as shareholders in the Company.
- 5.3 The shareholders acknowledge that the transfer of the surplus A and D Shares shall be subject to the consent of the Company in its sole and absolute discretion and that in giving its consent the Company may require:
- a. that the rights attaching to the Shares be varied taking into account the availability of water in the relevant area or part of the scheme; and/or
 - b. that specific arrangements are entered into and agreed between the Company and the transferee in relation to the off-take of the water and the access to the Company's infrastructure.

Entry in register

- 5.4 Subject to clause 5.5, Shares may be transferred by entry of the name of the transferee on the register.

Signed transfer

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

Form of transfer

- 5.6 The form of transfer may be in any usual or common form, or any other form approved by the Board.
- 5.7 The form of transfer must be signed by the transferee if registration as holder of the Shares would impose a liability on the transferee to the Company.

Board's right to refuse or delay registration of transfer

- 5.8 The Board may, within thirty (30) working days of the receipt of a form of transfer of Shares, refuse or delay the registration of the transfer if:
- a. the holder of the Shares has failed to pay an amount due to the Company in respect of those Shares;
 - b. the Board considers that to effect the transfer would result in a breach of the law;
 - c. the Board considers that it is not in the best interests of the Company to register the transfer; or
 - d. clause 7.4 has not been complied with or the form of transfer has not been properly executed or does not comply with clauses 5.6 and 5.7; or
 - e. the transferee has not entered into the Company's then current water supply agreement; or.

- f. the transferee has not acquired a beneficial interest in the transferor's land to which the Shares relate.

5.9 A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five (5) working days of the date of the resolution being passed.

Registration of transfer

5.10 Subject to clauses 5.5 to 5.7, on receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the register as holder of the Shares, unless the Board has resolved in accordance with clauses 5.8 and 5.9 to refuse or delay the registration of the transfer of the Shares.

6. Share register

Maintain register

6.1 The Company must maintain a register which records all Shares issued by the Company and which states:

- a. whether, under this Constitution or the terms of issue of any Shares, there are any restrictions or limitations on their transfer; and
- b. where any document that contains the restrictions or limitations may be inspected.

6.2 The Company may appoint an agent to maintain the register.

Contents of register

6.3 The register must state, with respect to each class of Shares:

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

6.4 each shareholder within the last ten (10) years; and in relation to the transfer, the name of the person to or from whom the Shares were transferred.

Directors' duty to supervise register

6.5 It is the duty of each director to take reasonable steps to ensure that the register is properly kept and that the transferees' names are promptly entered on it in accordance with clause 5.10.

Register prima facie evidence

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

Register evidence of rights

- 6.7 The Company may treat the registered holder of a Share as the only person entitled to:
- a. exercise the right to vote attaching to the Share;
 - b. receive notices in respect of the Share;
 - c. receive a distribution in respect of the Share; and
 - d. exercise the other rights and powers attaching to the Share.

Trust not to be registered or recognised

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

7. Share certificates**Application for Share certificate**

- 7.1 A shareholder may apply to the Company for a certificate relating to some or all of the shareholder's Shares.

Issue of Share certificate

- 7.2 The Company must, within twenty (20) working days after receiving an application for a Share certificate under clause 7.1, send to the shareholder a certificate stating the name of the Company, and the class and number of Shares to which the certificate relates.
- 7.3 If the application relates to some but not all of the applicant's Shares, the Company must separate the Shares shown in the register as owned by the applicant into separate parcels; one parcel being the Shares to which the Share certificate relates, and the other parcel being any remaining Shares.

Transfer to be accompanied by Share certificate

- 7.4 Notwithstanding clause 5.10 and Section 84 of the Act, where a Share certificate has been issued, a transfer of the Shares to which it relates must not be registered by the Company unless the form of transfer is accompanied by the Share certificate relating to the Shares or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board.

Surrendered Share certificate

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

8. Transmission of Shares

- 8.1 In the case of the death of a shareholder, the survivor (where the deceased was a joint holder) or the legal personal representative of the deceased (where the deceased was a sole holder) will be the only person recognised by the Company as having any title to the deceased's interest in the Shares. Nothing contained in this clause 8.1 will release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by the deceased with other persons.
- 8.2 The assignee of the property of a bankrupt shareholder is entitled to be registered as the holder of the Shares held by the bankrupt.

9. Call on Shares

Board may make calls

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

Notice of calls

- 9.2 Subject to the terms of issue of any class of Shares and to clause 9.9, unless all the holders of a class of Shares subject to a call unanimously agree, a call (or the postponement or revocation of a call) will apply to all the holders of Shares of the class equally.
- 9.3 Notice of the call must be given to the shareholder at the time of the call or to a subsequent holder of the Shares. Failure to give notice to a shareholder will not invalidate a call but it will not be payable by that shareholder until the notice has been served on the shareholder.
- 9.4 Notice of a call sent by post to a shareholder to the address recorded in the register as the address of the shareholder will be deemed to have been received by the shareholder the day after it was posted.

Liability for calls

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

Agreement to differentiate between calls

- 9.9 The Board may, on the issue of Shares, by agreement with the shareholders concerned, differentiate between the holders of the same class as to the amount to be paid on the Shares and the times for payment.

10. Suspension of right to dividends, forfeiture and lien**Notice of suspension of right to dividends**

- 10.1 If a shareholder fails to pay any call (or instalment of a call) on the day appointed for payment, the Board may at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, suspend payment of any dividends or other distributions payable to the shareholder until so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment have been paid to the Company in full.

Application of suspended dividends

- 10.2 All dividends and other distributions which would have been payable in respect of Shares which are subject to a suspension of the right to dividends or distributions must be withheld and applied by the Company to reduce the amount owing under the call, including amounts owing under clause 10.4.

Lifting suspension of right to dividends

- 10.3 When the total dividends and distributions withheld and applied under clause 10.2 equal the total amount owing under the call, the suspension of the right to dividends and distributions will be lifted, and all rights to be paid dividends and distributions on the Shares will resume.
- 10.4 The amount owing under the call for the purposes of clauses 10.2 to 10.4 may include any interest which may have accrued and all expenses which may have been incurred by the Company by reason of non-payment by the shareholder of the amount owing under the call.

Forfeiture

- 10.5 If a shareholder fails to pay any call or instalment of a call on the day appointed for payment of it the Board may, while any part of the call or instalment remains unpaid, serve a notice on him or her requiring payment of so much of the call or instalment as is unpaid together with any interest, which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.
- 10.6 The notice shall name a further day (not earlier than the expiration of fourteen (14) working days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the call was made will be liable to be forfeited.
- 10.7 If the requirements of the notice are not complied with, any Share in respect of which the notice has been given may, at any time after the date for payment given in notice and before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all dividends and any other distributions in respect of the forfeited Shares not actually paid before the forfeiture.

Disposal of forfeited shares

- 10.8 A forfeited Share may be sold, or otherwise disposed of, on whatever terms and in whatever manner the Board resolves.
- 10.9 At any time before a sale or disposition forfeiture may be cancelled on whatever terms the Board resolves.

Liability in respect of forfeited shares

- 10.10 A person whose Shares have been forfeited ceases to be a shareholder in respect of the forfeited Shares, but remains liable to pay to the Company:
- a. all money which, at the date of forfeiture, was payable by him or her to the Company in respect of the Shares; and
 - b. costs and expenses incurred by the Company:
 - i. in connection with the forfeiture of the Shares; and
 - ii. in connection with the attempts to enforce payment of the calls or instalments.
 - c. The Board may waive all or part of the payment of the costs and expenses.
 - d. His or her liability ceases if and when the Company receives payment in full of all the money which is specified in this clause 10.10 in respect of the Shares.

Notice of forfeiture

- 10.11 On the forfeiture of any Share the Board:
- a. must cause a note of the forfeiture and of the date of the forfeiture to be entered on the Share register; and
 - b. must cause notice of the forfeiture and of the date of the forfeiture to be given to the shareholder in whose name the Share stood in the Share register immediately before the forfeiture; and
 - c. must (upon the disposal of any forfeited Share) cause a note of the manner and of the date of the disposal to be similarly entered.

Declaration of forfeiture

- 10.12 A statutory declaration in writing that:
- a. the declarant is a director of the Company; and
 - b. a Share in the Company has been duly forfeited on a date stated in the declaration;

is conclusive evidence of the facts stated in the declaration as against all persons who claim to be entitled to the Share.

Consideration for and transfer of forfeited shares

- 10.13 The Company may receive the consideration, if any, which is given for a forfeited Share on any sale or other disposition of the Share.
- 10.14 The Company may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of.

10.15 The Company must thereupon register the transferees as the holder of the Share.

10.16 The transferee need not see the application of the purchase money, if any.

10.17 The transferee's title to the Share is not affected by an irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the Share.

Sums due other than calls

10.18 These clauses as to forfeiture 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 sum had been payable by virtue of a call duly made and notified.

Surrender of Shares

10.19 The Board may accept a surrender of any Shares that are liable to forfeiture, or any part of those Shares, upon whatever terms are agreed by the shareholder and the Board.

Non-Payment

10.20 The forfeiture provisions contained in clauses 10.5 to 10.19 shall apply equally as the context requires to the non-payment by a shareholder of any monies due to the Company by the shareholder in respect of water charges or otherwise.

Lien

10.21 The Company has a first and paramount lien upon every Share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those Shares. This lien is for:

- a. all money payable (whether presently or not) in respect of Shares held by the shareholder;
- b. all other money presently payable by the shareholder to the Company on any account whatever; and
- c. any amount the Company may be called upon to pay under any statute or regulation in respect of Shares of a deceased shareholder or other shareholder (whether or not the period for the payment, fulfilment or discharge has actually arrived).

10.22 The lien extends to all dividends from time to time declared in respect of the Shares.

Sale on exercise of forfeiture or lien

10.23 Subject to this clause 10.23 a forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board thinks fit.

10.24 Subject to this clause 10.24, the Company may sell, in such a manner as the Board thinks fit, any Shares on which the Company has a lien. No sale may be made until:

- a. a sum in respect of which the lien exists is due and payable;
- b. a notice in writing stating, and demanding payment of, the amount due and payable (in respect of which the lien exists) has been given to the current registered holder of the Share (or the person entitled to that Share by reason of the registered holder's death or bankruptcy); and
- c. fourteen (14) working days have expired since the giving of that notice.

- 10.25 The net proceeds of the sale of any forfeited Share or any Shares sold for the purpose of enforcing a lien are to be applied in or towards satisfaction of any unpaid calls, instalments (in the case of a lien) or any other money in respect of which the lien existed. The residue, if any, shall be paid to the former holder of the Shares.
- 10.26 A certificate signed by a director stating that the power of sale provided in this clause 10.26 has arisen, and is exercisable by the Company under this Constitution, or that a Share in the Company has been duly forfeited on the date stated, will be conclusive evidence of the facts stated in the certificate.
- 10.27 For giving effect to any sale after forfeiture or for enforcing a lien in purported exercise of the powers given in this Constitution, the Board may authorise some person to transfer the Shares sold to the purchaser. The purchaser will be registered as the holder of the Shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the Shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only and against the Company exclusively. If the Share certificate for the forfeited Shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the Share certificate not delivered up.

11. Distributions

Solvency test

- 11.1 Subject to clauses 11.3 to 11.5, the Board may, if it is satisfied on reasonable grounds that the Company will satisfy the solvency test immediately after the distribution, authorise a distribution by the Company to shareholders of any amount and to any shareholders as it thinks fit.
- 11.2 The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the Company will satisfy the solvency test immediately after the distribution. The grounds for that opinion must also be stated in that certificate.

Dividends payable *pari passu*

11.3

- a. Subject to clause 11.3b, the Board may not authorise a dividend:
- i. in respect of some but not all the Shares in a class; or
 - ii. that is of a greater value per Share in respect of some Shares of a class than in respect of other Shares of that class.
- b. Unless the amount of the dividend in respect of a Share of that class is in proportion to the amount paid to the Company in satisfaction of the shareholder's liability under this Constitution or under the terms of issue of the Share.

- 11.4 A shareholder may waive his or her entitlement to receive a dividend by giving a notice in writing, signed by or on behalf of the shareholder, to the Company.

- 11.5 If all the shareholders of the same class concur in writing in respect of each proposed dividend, the Company may pay a dividend which is distributed other than in accordance with clause 11.3.

Bonus Shares in lieu of dividend

- 11.6 The Board may issue Shares to any shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if:
- a. the right to receive Shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends, has been offered to all shareholders of the same class on the same terms; and
 - b. relative voting or distribution rights, or both, would be maintained if all shareholders elected to receive the Shares in lieu of the proposed dividend; and
 - c. the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
 - d. the Shares issued to each shareholder are issued on the same terms and subject to the same rights as the Shares issued to all shareholders in that class who agree to receive the Shares; and
 - e. the provisions of section 47 of the Act are complied with by the Board.

Discounts to shareholders

- 11.7 The Board may, pursuant to a discount scheme, resolve that the Company offer shareholders discounts in respect of some or all of the goods sold or services provided by the Company.
- 11.8 Subject to clause 11.10, the discount scheme must be one where the Board has previously resolved that the proposed discounts:
- a. are fair and reasonable to the Company and all shareholders; and
 - b. will be available to all shareholders or to all shareholders of the same class on the same terms.
- 11.9 The discount scheme may not be approved or continued by the Board unless the Board is satisfied on reasonable grounds that the Company will satisfy, or is satisfying, the solvency test.
- 11.10 If all shareholders of the class of Shares to which a proposed discount scheme would apply, agree in writing, the Scheme may be put into effect notwithstanding that it does not comply with clause 11.8.

Financial assistance on acquisition of Shares

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

12. Shareholder's rights**Issue of statement of rights to shareholder**

- 12.1 The Company must issue to any shareholder, on request, a statement that sets out:
- a. the class of Shares held by the shareholder, the total number of Shares of that class issued by the Company, and the number of Shares of that class held by the shareholder;

- b. the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the Shares held by the shareholder; and
 - c. the relationship of the Shares held by the shareholder to other classes of Shares.
- 12.2 The Company is not obliged to provide a shareholder with a statement under clause 12.1, if:
- a. a statement that complies with clause 12.1a to 12.1c has been provided within the previous six (6) months;
 - b. the shareholder has not acquired or disposed of Shares since the previous statement was provided;
 - c. the rights attached to the Shares have not been altered since the previous statement was provided; and
 - d. there are special circumstances which would make it reasonable for the Company to refuse the request.
- 12.3 A statement issued pursuant to clause 12.1 must state in a prominent place that it is not evidence of title to the Shares or of the matters set out in it.

13. Exercise of powers reserved to shareholders

Powers reserved to shareholders

- 13.1 Powers reserved to shareholders by the Act or by this Constitution may be exercised at an annual meeting or a special meeting.
- 13.2 Unless otherwise specified in the Act or this Constitution, a power reserved to shareholders may be exercised by an ordinary resolution.

Special resolutions

- 13.3 When shareholders exercise a power to approve any of the following, that power may only be exercised by a special resolution:
- a. an alteration to or revocation of this Constitution or the adoption of a new constitution;
 - b. a major transaction;
 - c. an amalgamation; or
 - d. the liquidation of the Company.
- 13.4 Any decision made by special resolution pursuant to this clause may be rescinded only by a special resolution, provided that a resolution to put the Company into liquidation cannot be rescinded.

Management review by shareholders

- 13.5 A shareholder may question, discuss, and comment on the management of the Company at a meeting of shareholders.
- 13.6 A meeting of shareholders may pass a resolution relating to the management of the Company.

13.7 Notwithstanding section 128 of the Act or any other clause of this Constitution, a resolution relating to the management of the Company passed at a meeting of shareholders (in accordance with clause 13.6) is not binding on the Board.

Dissenting shareholder may require Company to purchase Shares

13.8 Where:

- a. a shareholder is entitled to vote on the exercise of one or more of the powers set out in:
 - i. clause 13.3a and the proposed alteration imposes or removes a restriction on the activities of the Company; or
 - ii. clause 13.3b or 13.3c; and
- b. the shareholders resolved, pursuant to the relevant clause to exercise the power; and
- c. the shareholder casts all the votes attached to Shares registered in the shareholder's name and having the same beneficial owner against the exercise of the power; or
- d. where the resolution to exercise the power was passed under Section 122 of the Act and the shareholder did not sign the resolution,

that shareholder is entitled to require the Company to purchase those Shares in accordance with section 111 of the Act.

13.9 Within twenty (20) working days of receiving a notice from a shareholder given under clause 13.8 the Board must:

- a. agree to buy the Shares of the shareholder giving the notice; or
- b. arrange for some other person to buy the Shares; or
- c. apply to the Court under sections 114 or 115 of the Act; or
- d. arrange, before taking the action concerned, for the special resolution entitling the shareholder to give the notice to be rescinded by a special resolution, or decide in the appropriate manner not to take the action concerned; and
- e. give written notice to the shareholder of the Board's decision under this clause 13.9.

13.10 Where the Board agrees, pursuant to clause 13.9a, to purchase the Shares it must comply with Section 112 of the Act.

Shareholder proposals

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

13.12 If the notice is received by the Board not less than twenty (20) working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must (at the expense of the Company) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

- 13.13 If the notice is received by the Board not less than five (5) working days and not more than twenty (20) working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must (at the expense of the shareholder) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 13.14 If the notice is received by the Board less than five (5) working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, if practicable and (at the expense of the shareholder) give notice of the shareholder's proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting. If not practicable, the Board may require the shareholder to give proper notice (in accordance with clauses 13.12 or 13.13) prior to the next meeting.
- 13.15 If the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- 13.16 The Board is not required to include in or with the notice given by the Board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous, or vexatious.
- 13.17 Where the costs of giving notice of the shareholder's proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must (on giving notice to the Board) deposit with the Company or tender to the Company a sum sufficient to meet those costs.

14. Meetings of shareholders

Annual meeting

- 14.1 The Board must, in accordance with section 120 of the Act, call an annual meeting of shareholders to be held:
- a. one in each calendar year; and
 - b. not later than six (6) months after the balance date of the Company; and
 - c. not later than fifteen (15) months after the previous annual meeting or, in respect of the first annual meeting, not later than eighteen (18) months after the date of the Company's incorporation.
- 14.2 The Company must hold the annual meeting on the date on which it is called to be held.

Special meetings.

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

Chairperson of meetings of shareholders

- 14.4 If the directors have elected a chairperson, and that chairperson is present at a meeting of shareholders, he or she must chair the meeting.

- 14.5 If no chairperson has been elected or if, at any meeting of shareholders, the chairperson is not present within fifteen (15) minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to chair the meeting.

Shareholders entitled to notice of meeting

- 14.6 The shareholders entitled to receive notice of a meeting of shareholders are those shareholders of the relevant class:
- a. if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of meeting, whose names are registered on the register on that date; or
 - b. if the Board does not fix a date for the purpose of establishing an entitlement to receive the notice of meeting, whose names are registered on the register at the close of business on the day immediately preceding the day on which the notice is given.
- 14.7 A date fixed by the Board under clause 14.6a must not precede by more than thirty (30) working days nor less than ten (10) working days the date on which the meeting is to be held.

Notice of meeting

- 14.8 Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting, and to every director and the auditor of the Company, not less than ten (10) working days before the meeting.

Contents of notice

- 14.9 The notice referred to in clause 14.8 must state:
- a. the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it;
 - b. the text of any special resolution to be submitted to the meeting;
 - c. the postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
 - d. that the postal vote must be received by the person referred to in paragraph (c) at least forty eight (48) hours prior to the start of the meeting.

Irregularities in notice

- 14.10 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.

Method of holding meeting

- 14.11 A meeting of shareholders may be held by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting.

Adjournments

- 14.12 If a meeting of shareholders is adjourned for less than thirty (30) days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

Minutes

- 14.13 The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of shareholders.
- 14.14 Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

15. Voting at meetings**Quorum**

- 15.1 A quorum is a meeting of not less than five (5) shareholders entitled to vote present in person or by attorney or proxy.
- 15.2 No business may be transacted at a meeting of shareholders if a quorum is not present.
- 15.3 If a quorum is not present within thirty (30) minutes after the time appointed for the meeting:
- a. in the case of a meeting called pursuant to a requisition of shareholders under clause 14.3b, 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.

Voting

- 15.4 Unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- a. voting by voice; or
 - b. voting by show of hands.
- 15.5 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 15.6.
- 15.6 At a meeting of shareholders a poll may be demanded by:
- a. not less than five (5) shareholders having the right to vote at the meeting; or
 - b. a shareholder or shareholders representing not less than ten percent (10%) of the total voting rights of all shareholders having the right to vote at the meeting; or
 - c. by 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 ten percent (10%) of the total amount paid up on all shares that confer that right.
- 15.7 A poll may be demanded either before or after the vote is taken on a resolution.
- 15.8 If a poll is taken, votes must be counted according to the votes attached to the Shares of each shareholder present in person or by proxy and voting.
- 15.9 The chairperson of a shareholders' meeting is not entitled to a casting vote.
- 15.10 The holders of A shares shall be entitled to one (1) vote per Share provided that no one shareholder or group of shareholders that are associated persons shall be entitled to

exercise a number of votes that exceeds ten (10%) percent of the voting capital of the Company.

15.11 The holders of D shares shall have no votes.

Proxies and representatives

15.12 A shareholder may exercise the right to vote either by being present or by proxy.

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

15.14 A proxy must be appointed by notice in writing signed by the shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding twelve (12) months.

15.15 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is deposited at the registered office of the Company not less than forty eight (48) hours before the time of holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in the event of default the instrument of proxy shall be treated as invalid.

15.16 An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

AMURI IRRIGATION COMPANY LIMITED

I/We [Name/s], of [Address] being a member/members of the abovenamed Company, hereby appoint [Name] of [Address], or failing him [Name] of [Address], as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary as the case may be) general meeting of the Company to be held on the [day] day of [month] [year], and at any adjournment thereof.

Signed this [day] day of [month] [year].

Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form as near thereto as circumstances admit:

AMURI IRRIGATION COMPANY LIMITED

I/We [Name/s], of [Address] being a member/members of the abovenamed Company, hereby appoint [Name] of [Address], or failing him [Name] of [Address], as my/our proxy to vote for me/us on my/our behalf at the (annual or extraordinary as the case may be) general meeting of the Company to be held on the [day] day of [month] [year], and at any adjournment thereof.

Signed this [day] day of [month] [year].

* This form is to be used in favour/against the resolution.

* Unless otherwise instructed, the proxy will vote as he thinks fit.

[Strike out whichever is not desired]

15.17 The Company shall not issue a form of proxy in which the name or office of the proxy is filled in.

15.18 The instrument appointing a proxy shall be deemed to confer authority to demand or joint in demanding a poll.

- 15.19 A vote given in accordance with the terms of an instrument 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 was executed, 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 as foresaid has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 15.20 Any corporation which is a member of the Company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any class of members of the Company, and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Company and a corporation so represented at any meeting of the Company shall be deemed to be a shareholder personally present within the meaning of that term as used in this Constitution. Any such person attending a meeting shall, if requested, produce a copy of the resolution authorising his attendance duly certified as such by the secretary or a director of the corporation which he represents.

Postal votes

- 15.21 A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause 15.21 provided that this clause is subject to clause 16.30 in respect of postal voting for the nomination of directors.
- 15.22 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting.
- 15.23 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- 15.24 A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting, by sending a notice of the manner in which his or her Shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than forty eight (48) hours before the start of the meeting.
- 15.25 It is the duty of the person authorised to receive and count postal votes at a meeting:
- a. to collect together all postal votes received by him or her, or by any other authorised person, or by the Company; and
 - b. in relation to each resolution to be voted on at the meeting, to count:
 - i. the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
 - ii. the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution;
 - c. to sign a certificate stating that he or she has carried out the duties set out in paragraphs 15.25b.i and ii of this clause and which sets out the results of the counts required by paragraphs 15.25bi and ii of this clause; and
 - d. to ensure that the certificate required by paragraph 15.25c of this clause is presented to the chairperson of the meeting.

- 15.26 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
- a. on a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;
 - b. on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.
- 15.27 The chairperson of a meeting must call for a poll on a resolution on which the chairperson holds sufficient postal votes that if a poll were taken the result could differ from that obtained on a show of hands.
- 15.28 The chairperson of a meeting must ensure that a certificate of postal votes held by the chairperson is annexed to the minutes of the meeting.

Votes of joint holders

- 15.29 Where 2 or more persons are recorded in the register as the holders of a Share, the vote of the person named first in the register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.

Unpaid sums

- 15.30 If a sum due to the Company in respect of a Share has not been paid, that Share may not be voted at a shareholders' meeting other than at a meeting of an interest group.

16. Appointment and removal

Number of Directors

- 16.1 Subject to clause 19.25 the number of directors may not be fewer than five (5) or more than eight (8). Of the maximum of eight (8) directors no more than six (6) directors shall be shareholders with any directors over and above that number being non shareholder independent directors.

Directors

- 16.2 The directors are the persons named as directors in the Application for Re-registration of the Company or, if no persons are so named the directors are the directors appointed under clause 16.7.

Appointment and removal by notice

- 16.3 Subject to clauses 16.7 to 16.9 the directors are the persons appointed from time to time as directors by a notice in writing signed by the holders of the majority of the votes of the ordinary Shares and who have not been removed, or resigned, or disqualified from office under this Constitution.
- 16.4 A director may be removed from office at any time by a notice in writing signed by the holders of the majority of the votes of the ordinary Shares.
- 16.5 A notice given under clauses 16.3 or 16.4 takes effect upon receipt of it at the registered office of the Company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by the shareholders giving the notice.
- 16.6 A director holds office until his or her retirement, disqualification, or removal in accordance with this Constitution.

Appointment and removal of directors by resolution

- 16.7 In addition to the appointment or removal of directors under clauses 16.3 and 16.4 a director may be appointed or removed from office by an ordinary resolution.
- 16.8 A resolution to appoint two (2) or more directors may be voted on as one resolution without each appointment being voted individually.
- 16.9 A notice of meeting at which the removal of a director will be considered must state that the purpose of the meeting is the removal of the director.

Disqualification and removal

- 16.10 A person will be disqualified from holding the office of director if he or she:
- a. is removed under clauses 16.3 to 16.9; or
 - b. resigns in writing; or
 - c. becomes disqualified from being a director pursuant to section 151 of the Act; or
 - d. is prohibited from being a director or promoter of or being concerned with or taking part in the management of a company under sections 382, 383 or 385 of the Act; or
 - e. dies; or
 - f. becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
 - g. is under 18 years of age; or
 - h. is an undischarged bankrupt; or
 - i. is prohibited by the Companies Act 1955 from being a director or would be so prohibited but for the repeal of that statute.

Shareholding qualification

- 16.11 A director is not required to hold Shares.

Alternate Directors

- 16.12 Every director may, by notice given in writing to the Company, appoint any person (including any other director) to act as an alternate director in the director's place, either generally, or in respect of a specified meeting or meetings during the director's absence from a meeting.
- 16.13 At the director's discretion, by notice in writing to the Company, the appointing director may remove the director's alternate director.
- 16.14 An alternate director may, while acting in the place of the appointing director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson and signing Board resolutions) of the appointing director. The alternate director is subject in all respects to the same terms and provisions as the appointing director, except as regards remuneration, and except as regards the power to appoint an alternate director under this Constitution.

- 16.15 For the purpose of establishing a quorum of the Board, an alternate director is deemed to be the director appointing him or her, and if the alternate director is a director he or she can count separately in both capacities.
- 16.16 The notice of appointment of an alternate director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the alternate director until an address is provided to the Company.

Rotation and retirement of Directors

- 16.17 The term of office to which a director is elected shall be four (4) years and every director appointed shall resign and be eligible for re-election at the end of that four (4) year term.
- 16.18 At the annual meeting and every year a minimum of one (1) director if the Board has six (6) or less directors and two (2) directors if the Board has seven (7) or more directors, must retire from office.
- 16.19 The directors to retire at the annual meeting will be:
- a. firstly, any directors who wish to retire or are retiring in accordance with clause 16.18; and
 - b. secondly, if those retiring pursuant to clause 16.19a do not constitute the number of directors required to retire from office in accordance with clause 16.18, those of the other directors who have been longest serving in office since their last election (if any). Persons who became directors on the same day must retire in alphabetical order by reference to their surname.
- 16.20 Each retiring director shall retain office until:
- a. he or she is re-elected; or
 - b. if he or she is not re-elected, until the shareholders at the meeting at which he or she retires (or any adjournment of that meeting) elects someone in his or her place; or
 - c. if the meeting does not elect someone in his or her place, until the end of the meeting or an adjournment of the meeting.

Nomination of Directors

- 16.21 No person other than a director retiring at the meeting shall be eligible for election to the office of director at any general meeting unless he has been either:
- a. recommended by the directors for election; or
 - b. nominated in writing by a shareholder qualified to attend and vote at the meeting at which the notice is given.
- 16.22 Every such nomination must be made and signed by two (2) members (other than the person nominated) as nominator and seconder and must be signed by the person being nominated signifying acceptance of nomination. Every nomination paper must be left at the registered office of the Company addressed to the Company accountant no later than twenty one (21) clear days before the meeting. The Board may recommend further nominations if the minimum number requirements at clause 16.1 are not going to be met due to retirements.

- 16.23 If the number of nominations for directors exceeds the number of vacancies the secretary will appoint the Company's accountants or two (2) other independent persons to be scrutineers and the scrutineers shall conduct a postal ballot for such vacancies. The ballot shall be conducted on the basis of it being a poll of members with every member having one (1) vote for each A Share of which it is the holder.
- 16.24 The scrutineers shall not later than fourteen (14) clear days before the General Meeting post ballot papers to members for completion and return.
- 16.25 The ballot papers shall be sent by ordinary post or email to the last known address for the members.
- 16.26 The ballot papers shall at all times remain the property of the Company and shall be numbered and have on them the name of the members to whom they are sent and the number of votes to which the member is entitled. Removal of either the number or the name from the ballot paper shall render the ballot paper invalid.
- 16.27 The ballot paper shall state:
- a. the number of directors required to be elected;
 - b. the names of the candidates in alphabetical order;
 - c. the method of voting;
 - d. the address to which the ballot paper will be returnable and the date by which it must be received.
- 16.28 The ballot paper may contain further information about the candidates for election or otherwise.
- 16.29 The omission to send a ballot paper to any member or the non receipt or loss of a ballot paper by any member shall not invalidate an election. The scrutineers may, on sufficient proof of loss or destruction, issue a replacement ballot paper to a member.
- 16.30 The scrutineers shall advise the Chairman of directors of the result of the postal ballot and the announcement at the annual meeting of the result of such postal ballot shall constitute the valid election of those persons elected as directors:
- a. if any two (2) or more candidates secure the same number of votes their election shall be determined by lot in the manner determined by the Chairman of the General Meeting;
 - b. the scrutineer's decision on the number of votes cast for each candidate on a postal ballot and whether any vote is invalid or informal shall be final and binding on the Company and the members;
 - c. following the announcement of the result of the postal ballot at the annual meeting or the determination in the case of a tie, the scrutineers shall destroy all ballot papers at the earliest possible opportunity.

Additional Directors

- 16.31 The directors shall have the power at any time and from time to time to appoint any person to be a director as an addition to the existing directors (whether a shareholder director or independent), but so the total number of directors shall not at any time exceed the number fixed in accordance with this Constitution. Any director so appointed shall hold office only until the next annual meeting and shall then be eligible for re-election but shall not be

taken into account in determining the directors who are to retire by rotation at that meeting.

17. Indemnity and insurance

Indemnity of Directors and employees

- 17.1 The Board may cause the Company to indemnify a director or employee of the Company or a related company for costs incurred by him or her in any proceeding:
- a. that relates to liability for any act or omission in his or her capacity as a director or employee; and
 - b. in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- 17.2 The Board shall cause the Company to indemnify a director or an employee of the Company or a related company in respect of:
- a. liability to any person other than the Company or a related company for any act or omission in his or her capacity as a director or employee; or
 - b. costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;
- not being:
- c. criminal liability; or
 - d. liability for the breach of section 131 of the Act; or
 - e. liability for breach of any fiduciary duty owed to the Company or related company.
- 17.3 The Board must ensure that particulars of any indemnity given to any director or employee of the Company or related company are forthwith entered in the interests register.

Insurance of Directors and employees

- 17.4 The Board may, subject to section 162 of the Act, cause the Company to effect insurance for directors and employees of the Company or a related company in respect of:
- a. liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
 - b. costs incurred by such directors or employees in defending or settling any claim or proceeding relating to any such liability; or
 - c. costs incurred by a director or employee in defending any criminal proceedings that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee and in which he or she is acquitted.
- 17.5 The directors who vote in favour of authorising the effecting of insurance under clause 17.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.
- 17.6 The Board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the Company or related company are forthwith entered in the interests register.

Definitions

- 17.7 For the purpose of clause 17.4, “director” includes a former director and “employee” includes a former employee.

18. Powers and duties of the Board

Powers of the Board

- 18.1 Subject to clause 18.2 and any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- 18.2 The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the shareholders or any other person.

Delegation by Board

- 18.3 The Board may delegate to a committee of directors, a director, an employee of the Company, or any other person any one or more of its powers, other than the powers referred to in the following sections of the Act:
- a. section 23(1)(c) (change of company name);
 - b. section 42 (issue of other Shares);
 - c. section 44 (shareholder approval for the issue of Shares);
 - d. section 47 (consideration for the issue of Shares);
 - e. section 52 (distributions);
 - f. section 54 (Shares in lieu of dividends);
 - g. section 55 (shareholder discounts);
 - h. section 60 (offers to acquire Shares);
 - i. section 61 (special offers to acquire Shares);
 - j. section 63 (stock exchange acquisitions subject to prior notice to shareholders);
 - k. section 65 (stock exchange acquisitions not subject to prior notice to shareholders);
 - l. section 69 (redemption of Shares at the option of the Company);
 - m. section 71 (special redemptions of Shares);
 - n. section 76 (provision of financial assistance);
 - o. section 78 (special financial assistance);
 - p. section 80 (financial assistance not exceeding 5 per cent of shareholders’ funds);
 - q. section 84(4) (transfer of Shares);
 - r. section 187 (change of registered office);
 - s. section 193 (change of address for service);

- t. section 221 (manner of approving an amalgamation proposal); and
- u. section 222 (short form amalgamations).

18.4 The Board is responsible for the exercise of a power by any delegate (where that power is delegated under clauses 18.3 and 18.4) as if the power had been exercised by the Board, unless the Board:

- a. believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this Constitution; and
- b. has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

Directors to act in good faith

18.5 A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the Company.

18.6 Nothing in this clause 18.6 limits the power of a director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.

Major transactions

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

- a. approved by a special resolution; or
- b. made contingent on approval by a special resolution.

19. Proceedings of the Board

Third Schedule

19.1 The provisions of the Third Schedule to the Act do not apply and are replaced by this clause 19.

Chairperson

19.2 The directors may elect one of their number as a chairperson of the Board.

19.3 The director elected as chairperson holds that office until he or she dies or resigns or the directors elect a chairperson in his or her place.

19.4 If no chairperson is elected or if at a meeting of the Board the chairperson is not present within five (5) minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

Notice of meeting

19.5 A director or, if requested by a director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with clauses 19.5 to 19.9.

19.6 Not less than two (2) working days' notice of a meeting of the Board must be given to every director who is in New Zealand. The notice must include the date, time and place of the meeting and the matters to be discussed.

- 19.7 The giving of a notice of a meeting or an irregularity in the notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.
- 19.8 Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.
- 19.9 It is not necessary to give notice of a meeting of the Board to any director for the time being absent from New Zealand but if a director is resident outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand, and the director has appointed an alternate director under the provisions of this Constitution, notice must (subject to clause 16.16) be given to the alternate director.

Method of holding meetings

- 19.10 A meeting of the Board may be held either:
- a. by a number of directors sufficient to form 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 in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.

Quorum

- 19.11 A quorum for a meeting of the Board is a majority of the directors.
- 19.12 No business may be transacted at a meeting of directors if a quorum is not present.
- 19.13 In accordance with clauses 16.12 to 16.16, an alternate director present at a meeting may be included for the purpose of establishing a quorum.

Voting

- 19.14 Every director has one vote.
- 19.15 The chairperson shall not have a casting vote.
- 19.16 A resolution of the Board is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast are in favour of it.
- 19.17 A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board, unless he or she expressly dissents from (or votes against) the resolution at the meeting.
- 19.18 A director may vote in respect of any transaction in which the director is interested and if the director does so the director's vote will be counted and the director will be counted in the quorum present at the meeting.
- 19.19 An alternate director may attend and vote at meetings of the Board in accordance with and subject to clauses 16.12 to 16.16 if the director that has appointed the alternate director is absent from the meeting.

Minutes

- 19.20 The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.

Unanimous resolution

- 19.21 A resolution in writing, signed or assented to by all directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 19.22 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.
- 19.23 A copy of any such resolution must be entered in the minute book of Board proceedings.

Other proceedings

- 19.24 Except as provided in this clause 19 the Board may regulate its own procedure.

Continuing Directors

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

Alternate Directors

- 19.26 It is not necessary to give notice of a meeting of the Board to any director for the time being absent from New Zealand but if a director is resident outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand and the director has appointed an alternate director under the provisions of this Constitution, notice must (subject to clause 16.16) be given to the alternate director

20. Interested Directors**Authority to remunerate Directors**

- 20.1 The Board may authorise:
- a. the payment of remuneration (or the provision of other benefits) by the Company to a director for his or her services as a director (or in any other capacity), if the Board is satisfied that to do so is fair to the Company;
 - b. the directors who vote in favour of authorising a payment under clauses 20.1 and 20.2 must sign a certificate stating that, in their opinion, the making of a payment is fair to the Company and the reasons for that opinion.
- 20.2 The directors of the Company shall also be entitled to reasonable travelling expenses and such other expenses incurred by them in carrying out the business of the Company.

Other offices with Company held by Director

- 20.3 Any director may act by himself or herself, or by the director's firm in a professional capacity for the Company; and the director or the director's firm will be entitled to remuneration for professional services as if the director were not a director. Nothing in this clause authorises a director or the director's firm to act as auditor for the Company.
- 20.4 A director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the director's office of director, for such period and on such terms (as to remuneration and otherwise) as the Board may determine.

20.5 Other than as provided in clauses 20.6 and 20.7, a director is not disqualified by virtue of his or her office from entering into any transaction with the Company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a director and not in a fiduciary relationship with the Company.

Notice of interest to be given

20.6 Subject to the unanimous agreement or concurrence of all entitled persons to the contrary, a director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register, and, if the Company has more than one director, disclose to the Board of the Company:

- a. if the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
- b. if the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

20.7 For the purposes of clause 20.6, a general notice entered in the interests register or disclosed to the Board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

21. Audit

21.1 Auditors shall be appointed and their duties regulated in accordance with sections 196 to 207 of the Act.