

COUNCIL 22. 3. 2012

18. VBASE LIMITED – SUPPLEMENTARY REPORT

General Manager responsible:	General Manager Corporate Services, DDI 941-8528
Officer responsible:	Corporate Finance Manager
Author:	Ian Thomson, Solicitor

PURPOSE OF REPORT

1. To provide further information sought with regard to Vbase Limited (Vbase).

EXECUTIVE SUMMARY

2. A report on several matters relating to Vbase was included in the agenda for the Council meeting on 9 February 2012.
3. A number of issues had been raised with regard to the report prior to the meeting. The Council resolved to defer the matter until these were dealt with.
4. Those issues are referred to in this report.

FINANCIAL IMPLICATIONS

5. There are no financial implications arising from the further information contained in this report.

LEGAL CONSIDERATIONS

6. The changes proposed to be made to the Vbase Constitution are set out in the report to the 9 February 2012 meeting. A copy of that report is included as the Background in this report.
7. "Tracked" and "clean" copies of the Constitution are also attached (**Attachments 3 and 4**).
8. For the purposes of a vote on whether or not to revoke the current Constitution and adopt the new one, a majority of 75 percent of Councillors present at the meeting and voting is required.
9. Prior to the 9 February meeting the Legal Services Unit obtained external advice from Simpson Grierson on whether or not the Vbase directors could take part in any discussion and voting. A copy of that advice is attached (**Attachment 1**).
10. It is Simpson Grierson's view that the directors may take part in the decision making on the proposed amendments to the Company's Constitution. They may also may participate in the decision making on the approval of other Vbase matters, provided that they are satisfied there is no risk of predetermination in the particular circumstances.
11. External advice was also obtained with regard to the matter of the appointment of directors in breach of the Constitution. This was that the practical implications (given that the Council is the sole shareholder of Vbase) are limited. A copy of the advice is attached (**Attachment 2**).
12. If the staff recommendations in this report are adopted the directors will validate decisions made by them in December 2011.
13. Council staff are now managing Vbase. Effectively this means that whilst the Company still exists the directors will take advice from staff before making any decisions.
14. Further, if the changes to the Constitution are adopted, certain decisions will require the approval of the Council before they can be made. For example, the Council is to approve the application of insurance proceeds in the rebuild or repair of the Company's assets.
15. The result is that normal commercial principles will not always be applicable to the Vbase situation. It is incorporated as a Council Controlled Organisation but, as indicated earlier, its affairs are being managed by the Council. At some point in the future, once the Company's business has recovered from the effects of the earthquakes, the Council will have the opportunity to determine whether or not Vbase is restored to its previous operational state.

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STAFF RECOMMENDATION

Staff do not recommend that any changes be made to the resolutions contained in the report dated 9 February 2012. It is therefore recommended that the Council:

- (a) Defers the requirement that Vbase Limited repays an advance of \$4.5 million to the Council to 20 April 2030 or earlier upon sale of the asset in respect of which the advance was made.
- (b) Authorises the Chairperson of the Audit and Risk Management Subcommittee to provide a letter of comfort to the Board of Vbase Limited.
- (c) Revokes the Constitution of Vbase Limited current at the date of this resolution and adopts a new Constitution amended as set out in the staff report considered by the Council at this meeting.

BACKGROUND

REPORT FROM COUNCIL MEETING OF 9 FEBRUARY 2012

PURPOSE OF REPORT

1. To deal with several matters with regard to Vbase Ltd.

EXECUTIVE SUMMARY

2. Since June 2011 the Council has assumed responsibility for the operation of Vbase Ltd, a Council controlled organisation.
3. Arising from that are a number of administrative matters for which resolutions of the Council are required.
4. These include deferring the repayment of an advance to Vbase and amendments to the company's constitution.
5. Details are set out in this report.

FINANCIAL IMPLICATIONS

6. The Council advanced funds to Vbase over a number of years. At 30 June 2011 these comprised:
 - (a) a current liability of \$4.5m repayable in full on 30 June 2012;
 - (b) a non-current liability of \$29.723m scheduled to be repaid in annual amounts commencing in April 2024, with repayment in full completed by 20 April 2030.
7. It is proposed that the Council resolves to waive the obligation to repay the sum of \$4.5m due on 30 June 2012.
8. At the time the funds were advanced, it was expected that the proposed extension of the convention centre would proceed. A decision on the rebuild of the convention centre will be made by Council during the 2012/13 Annual Plan deliberations in the context of the Central City Plan. In addition the company's financial position is such that repayment on the due date would cause some difficulty.
9. An audit requirement is that the chairperson of the Council's audit and risk management subcommittee provides a letter of comfort to the directors of Vbase advising that repayment will be deferred to 20 April 2030 or earlier, upon sale of the asset in respect of which the advance was made.

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LEGAL CONSIDERATIONS

10. Since June 2011 Council staff have carried out a review of the Vbase business and prepared a facilities management agreement that will be signed shortly.
11. This work also included a review of the company's constitution. As a result it is proposed that a number of changes be made to reflect the new environment that Vbase is now operating in.
12. The changes are:

- (a) clause 14.1

"the number of directors shall be determined by the major holder from time to time."

The words "until otherwise so determined, the minimum number of directors (other than alternates) shall be five" have been deleted.

The "major holder" is the Council as the owner of all the shares in Vbase;

- (b) clause 14.2.3

This clause (set out below) has been deleted;

"Notwithstanding any provision to the contrary herein contained at least two of the directors shall not be members or employees of the local authority who is a share holder. If a person who is a director becomes a member or employee of a local authority who is a shareholder in breach of this provision such person shall forthwith resign as a director of the company."

The removal of this clause flows from the deletion of 14.2.3.

- (c) clause 14.4.3

This clause (set out below) has been deleted:

"If that director is appointed in breach of provisions of clause 14.2.3 so that more than the maximum allowable number of directors are members or employees of a local authority. Unless the major holder directs to the contrary the last appointed director who breaches this provision shall retire from office."

- (d) clause 14.8

This is a new clause (set out below):

"If the company is a wholly owned subsidiary, a director may (when exercising powers or performing duties as a director) act in a manner which he or she believes is in the best interests of the company's holding company even though it might not be in the best interests of the company."

A "holding company" is a body corporate. The Council is a body corporate established under the Local Government Act 2002 and therefore is included in the definition of "holding company".

- (e) clause 18.5.1 has been amended as set out below. The words in bold are those added to the clause.

"An obligation which, if entered into by a natural person would, by law, be required to be by deed, maybe entered into on behalf of the company in writing signed under the name of the company by:

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- (i) two or more directors; or
 - (ii) one or more attorneys appointed by the company in accordance with clause 18.1; or
 - (iii) **one or more persons or class of persons** expressly authorised by the board for that purpose in respect of all transactions or particular transactions **provided that where one person is signing that person's signature is witnessed;**
- (f) clause 18.6

This is a new clause (as set out below):

"The board has responsibility for the management of the company and its business but the following matters shall require the approval of the shareholder:

- 18.6.1 application of insurance proceeds in the rebuild or repair of the company's assets;
- 18.6.2 entry into any arrangement, contract or transaction outside the ordinary course of the company's business or otherwise than on arm's length terms;
- 18.6.3 entry into any arrangement, contract or transaction for the purchase of materials, works and/or services for an amount exceeding \$500,000 where such materials, works and/or services are not budgeted for in the company's annual budget; and
- 18.6.4 the giving of notice of termination of any arrangements, contracts or transactions which are material to the company's business, or materially vary in any such arrangements, contracts or transactions".

13. A resolution to amend the Vbase constitution requires the support of at least 75% of Councillors.

CONSULTATION FULFILMENT

14. There is no requirement to consult in respect of the matters referred to in this report.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Defers the requirement that Vbase Ltd repays an advance of \$4.5m to the Council to 20 April 2030 or earlier upon sale of the asset in respect of which the advance was made.
- (b) Authorises the chairperson of the audit and risk management subcommittee to provide a letter of comfort to the board of Vbase Ltd.
- (c) Revokes the constitution of Vbase Ltd current at the date of this resolution and adopts a new constitution amended as set out in the staff report considered by the Council at this meeting.



8 February 2012

Partner Reference
Jonathan Salter - Wellington

Ian Thomson
Senior Solicitor
Christchurch City Council
PO Box 73013
CHRISTCHURCH 8154

Writer's Details
Direct Dial: +64-4-924 3504
Fax: +64-4-472 6986
Email: kathryn.mclean@simpsongrierson.com

Dear Ian

Elected members serving as directors of Vbase Ltd and voting on Council matters

1. You have asked for advice on whether the three elected members who have been appointed as directors of Vbase Ltd, a council controlled organisation, can take part in certain Council decision-making. The decisions include:
 - deciding whether to amend Vbase's constitution in line with recommendations put forward by staff; and
 - deciding whether to approve certain matters that require shareholder approval under the terms of Vbase's constitution.
2. The law on bias and predetermination is relevant to determining whether the elected members can be involved in this decision-making. For background information, we set out a brief overview of bias and predetermination in an appendix to this letter, as well as related comments by the Auditor-General.

Summary of advice

3. The elected members concerned may take part in the Council's decision-making on the proposed amendments to Vbase's constitution. They may also take part in the Council's decision-making on approvals of certain Vbase matters, provided that they are satisfied there is no risk of predetermination in the particular circumstances.

Council decision-making on amendments to Vbase's constitution

4. In our opinion, it is permissible for the elected members who are also directors of Vbase to take part in the Council's decision-making on the proposed amendments to Vbase's constitution.
5. We are satisfied that the three elected members do not have any pecuniary interest in terms of the Local Authorities (Members' Interests) Act 1968 (**Members' Interests Act**). Also, we are not aware of any suggestion that the elected members suffer from actual bias on this matter. We have, therefore, discounted actual and presumptive bias as possible risks.
6. We have also considered whether the dual roles of Vbase director and elected member give rise to apparent bias. In our opinion, it is unlikely that a court would be persuaded that a fair minded lay observer might reasonably apprehend that the elected members

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AUCKLAND: Lumley Centre, 88 Shortland Street, Private Bag 92518, Auckland 1141, New Zealand. T +64 9 358 2222

WELLINGTON: HSBC Tower, 195 Lambton Quay, PO Box 2402, Wellington 6140, New Zealand. T +64 4 499 4599

CHRISTCHURCH: 28 Hereford Street, PO Box 874, Christchurch 8140, New Zealand. T +64 3 365 9914

www.simpsongrierson.com

will not bring impartial minds to the proposals to amend Vbase's constitution. This view is based on the following factors, which are particular to this case:

- the directors receive no remuneration (other than what they already receive as an elected member or chief executive);
- the directors were appointed only because they were already elected members (ie the appointments were not particular to these individuals before they became elected members) or the chief executive;
- elected members (and the chief executive) were appointed as directors because there was a desire to bring the management of Vbase closer to the Council following the significant damage to the Council assets managed by Vbase as a result of the Canterbury earthquakes; and
- an amendment to Vbase's constitution will enable the directors (in their role as directors, not elected members) to act in the best interests of the Council; such a provision indicates that the director role is less likely to influence an elected member against acting in the Council's best interests.

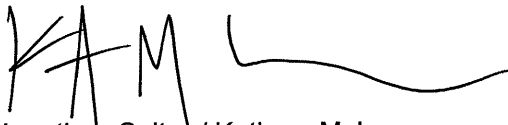
7. We assume that there is no suggestion of predetermination by the elected members about the amendments to the constitution. Our understanding is that these amendments are being put forward by Council staff and were not in any way formulated or driven by the elected members concerned.
8. Accordingly, we consider there is little risk of bias or predetermination claims being successful if elected members choose to take part in the upcoming Council decision-making about amending Vbase's constitution.

Council decision-making on Vbase matters that require Council approval

9. We understand that the Council intends to amend Vbase's constitution to provide that certain matters will require shareholder approval, ie Council's approval. These matters include the application of insurance proceeds, entry into certain contracts and arrangements, and terminating material contracts and arrangements.
10. In our opinion, the three elected members concerned will be able to take part in the Council's decision-making on such approvals, subject to satisfying themselves that there is no risk of predetermination in each particular case.
11. As above, we are satisfied that the elected members will not have a pecuniary interest in terms of the Members' Interests Act. In addition, we assume also that there will be no issue with the elected members having any actual bias in relation to these types of decisions.
12. It is unlikely that the dual roles of director and elected member will create a risk of apparent bias in relation to Council approvals. However, this will depend on the factors mentioned in paragraph 6 above continuing, and there being no additional factors that would lead a fair minded lay observer to reasonably apprehend that the elected members might not be impartial. It would be prudent for the elected members (and the Council itself) to consider in any particular case whether there are any additional factors that might reasonably lead others to perceive a real possibility of bias.

13. The other matter that will need to be considered on a case by case basis is predetermination. Indeed, it is likely that any factors relevant to apparent bias will also be relevant to whether there is a risk of predetermination in a particular case.
14. It is possible that predetermination risks will arise about matters that require Council approval, but that this will largely depend on the elected members' prior involvement in the matters in their role as directors. If elected members' actions or statements indicate they cannot consider the matter before the Council with an open mind (ie they are already committed to a certain proposal or outcome), this would create a risk of predetermination claims being made about the Council's decision-making.
15. For example, if any of the elected members concerned had been heavily involved in negotiations and meetings about a matter coming before the Council for its approval, this might create a risk of predetermination. Similarly, it would not be appropriate for any of the elected members to appear before the Council on behalf of Vbase to advocate for approval of a certain proposal if they also proposed to discuss and vote on the matter.
16. In order to minimise any risk of predetermination, it would be prudent for the elected members concerned to, where possible, limit their involvement in the matters that are likely to come before the Council for approval and to refrain from public comments on the matters before they go to the Council for consideration.
17. Predetermination will not, however, prevent the elected members from having prior knowledge about these types of matters, or even having preliminary views on them. It will be appropriate for the elected members to share such information and any views they have during Council deliberations.
18. Please call if you would like to discuss.

Yours sincerely



Jonathan Salter / Kathryn McLean
Partner / Senior Associate
SIMPSON GRIERSON

Appendix

Overview of bias and predetermination

1. There are three general categories of bias:
 - Actual bias – where the decision-maker can be shown to have actually been biased, ie predisposed to make a particular decision in a particular way
 - Presumptive bias – where bias or predetermination is presumed to exist by virtue of the fact that a decision-maker has a pecuniary interest. For elected members, these types of situations are generally caught under the Members' Interests Act.
 - Apparent bias – where a third party would perceive that the decision-maker is predisposed to make a decision in a particular way, irrespective of whether the decision-maker was in fact predisposed to. The test for apparent bias has been expressed by our Supreme Court whether a fair minded lay observer might reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the matter concerned.¹
2. Predetermination occurs where a decision-maker has made up his or her mind on a matter before the appropriate time in the decision-making process. It is closely related to bias, and is regarded by some as a form of apparent bias.
3. Case law on predetermination for elected members generally indicates that they must approach a matter with an open mind. As evidenced by the recent case of *Howe v Keown*,² it is permissible for an elected member to come to a matter with knowledge and views; what they must not do is come to the matter with their mind already made up.
4. Bias or predetermination by one or more elected members in the Council's decision-making could provide a basis for a unhappy member of the public to seek judicial review of the decision concerned.

Auditor-General's comments

5. In the good practice guide *Guidance for Members of Local Authorities about the Local Authorities (Members' Interests) Act 1968*, the Auditor-General comments on the law of bias and predetermination in the situation where elected members have been appointed as directors of a council-controlled organisation:

Appointment as the Local Authority's Representative on Another Organisation

5.47 *You may have been appointed as the authority's representative on the governing body of a council-controlled organisation or another body (for example, a community-based trust).*

5.48 *That role will not usually prevent you from participating in authority matters concerning the other organisation – especially if the role gives you specialised knowledge that it would be valuable to contribute.*

¹ *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2010] 1 NZLR 35

² *Howe v Keown* (High Court, Christchurch, Fogarty J, 2 September 2011, CIV-2011-409-001493)

- 5.49 *However you could create legal risks to the decision if your participation in that decision raises a conflict between your duty as a member of the local authority and any duty to act in the interests of the other organisation. These situations are not clear-cut and will often require careful consideration and specific legal advice.*
- 5.50 *Similarly, if your involvement with the other organisation raises a risk of predetermination, the legal risks to the decision of the authority as a result of your participation may be higher – for example, if the other organisation has made a formal submission to the authority as part of a public submissions process.*

BUDDLE FINDLAY

To
Christchurch City Council
P O Box 237
Christchurch 8140

For
Adela Kardos

From
Mark Odlin
Bassam Maghzal

By
Email: adela.kardos@ccc.govt.nz

Date
28 October 2011

Dear Adela

LSU LEX 10299 - WBS No. 263/110/3/2 - VBase Limited – Constitution – Directors' resolution

1. We refer to our various recent email correspondence regarding this matter.

2. Please find **attached**:

- (a) revised draft Vbase constitution (marked up and clean copy); and
- (b) directors' resolution in respect of the execution of the directors' deeds of indemnity.

LAWYERS

CHRISTCHURCH
245 St Asaph Street
PO Box 322
Christchurch 8140
New Zealand
DX WP20307
Tel 64-3-379 1747
Fax 64-3-379 5659

3. We have already provided you with the form of Council minute to be voted on at the Council's meeting to effect the amendments to VBase's constitution. This will not change in light of the matters addressed in this letter.

Constitution

AUCKLAND
PricewaterhouseCoopers Tower
188 Quay Street
PO Box 1433
Auckland 1140
New Zealand
DX CP24024
Tel 64-9-358 2555
Fax 64-9-358 2055

4. We have amended Vbase's constitution as follows:

(a) Clause 14.1 now provides:

The number of Directors shall be as determined by the Major Holder from time to time. ~~Until otherwise so determined the minimum number of Directors (other than alternate Directors) shall be five.~~

(b) We have deleted clauses 14.2.3 and 14.4.3 to remove the limitation on the number of local authority employees and members that maybe appointed directors of Vbase, as requested. The company has been in breach of its constitution in this respect but we think that the practical implications of this (given that the Council is the sole shareholder) are limited.

WELLINGTON
State Insurance Tower
1 Willis Street
PO Box 2694
Wellington 6140
New Zealand
DX SP20201
Tel 64-4-499 4242
Fax 64-4-499 4141

- (c) We have amended clause 18.5.1(c) to ensure that the Council delegates set out in the management agreement have the authority in Vbase's constitution to enter into a transaction on Vbase's behalf provided where a single delegatee is signing his or her signature is witnessed. Clause 18.5.1(c) now provides:

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

18.5.1 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:

...

- (c) *One ~~two~~ or more persons or class of persons expressly authorised by the Board for that purpose in respect of all transactions or particular transactions provided that where one person is signing that person's signature is witnessed;*

- (d) We have deleted the requirement for the reserve matters to be approved by a *Special Resolution*. Clause 18.6 now provides:

The Board has responsibility for the management of the Company and its business but the following matters shall require the approval of ~~an Ordinary Resolution of the Shareholder~~ a ~~Special Resolution~~...

The facilities management agreement and the statement of intent require the approval of the Council (only) and do not refer to a *special resolution*.

Therefore, we have not amended those documents.

Directors' resolution regarding deed of indemnity

5. We have prepared a full form of directors' resolution pursuant to which the Company resolves to enter into the deeds of indemnity in respect of its directors. You will see that under this resolution any two directors can sign the deeds of indemnity, in accordance with clause 18.5.1(a) of Vbase's constitution.
6. We trust the above is of assistance. Please call if you have any questions.

Yours sincerely



Mark Odlin / Bassam Maghzal
Partner / Senior Solicitor

Direct dial: +64-3-371 35 25 / +64-3-353 5884

Email: mark.odlin@buddlefindlay.com / bassam.maghzal@buddlefindlay.com

Constitution

VBASE LIMITED



Lane Neave LAWYERS

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Field Code Changed

DATE

~~2011~~

Deleted: 2008

Constitution of Vbase Limited

1. Constitution

- 1.1 **Purpose:** This Constitution sets out the rights, powers, duties and obligations of the Company, the Board, the Shareholders and each Director and Shareholder except to the extent that the provisions of the Act prevail. Where the Act permits a provision to be negated, altered, added to or adopted by a constitution then to the extent that this Constitution negates, alters, adds to or adopts provisions as permitted by the Act they shall apply to the Company.

2. Interpretation

- 2.1 **Definitions:** In this Constitution unless the context otherwise requires:

“Act means the Companies Act 1993;

Articles means the Articles of Association of the Company applying immediately preceding the adoption of this Constitution;

Auditor means the auditors of the Company;

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

Company means Vbase Limited;

Constitution means this constitution together with any amendments made to it from time to time;

Director means a director of the Company;

Equity Right means a right to acquire an Equity Security;

Equity Security means a security which confers:

2.1.1 a present or future right to participate in the control of the Company by voting at general meetings of the Company; or

2.1.2 a present or future right to participate in the profits of the Company (other than at a fixed rate or rates fixed by reference to indicators outside the Company);

and includes an Equity Right;

Holder means a person holding securities in the Company;

Local Authority has the meaning ascribed to it in the Local Government Act 1974;

Major Holder means a Holder holding a majority of the Equity Securities having the right to vote;

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;

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person includes any society, firm, company, individual, body corporate, or any other legal entity;

Representative means a person authorised to act as the representative of a Shareholder at a meeting of Shareholders;

security means an Equity Security and any other securities having a right to any assets of the Company;

share means a share in the Company;

Shareholder means a person holding shares in the Company;

Special Resolution means a resolution approved by a majority of 75 percent or, if a higher majority is required by this Constitution, that higher majority, of the votes of those Shareholders entitled to vote and voting on the question;

Treasury Stock means the shares in the Company acquired by the Company and held in accordance with the provisions of the Act;

Working Day [Section 2(1) of Act] means a day of the week other than:

2.1.1 Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and

2.1.2 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; and

2.1.3 if the 1st day of January in any year falls on a Friday, the following Monday; and

2.1.4 if the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

2.2 **Definitions in the Act:** An expression not defined in this Constitution but defined in the Act shall have the same meaning in this Constitution as in the Act.

2.3 **Construction:** In this Constitution:

2.3.1 References to sections are to sections of the Act and references to clauses are to clauses of this Constitution;

2.3.2 Unless the context requires otherwise:

(a) Words importing the singular include the plural and vice versa, and a gender includes all other genders; and

(b) Words importing persons include firms, corporations, unincorporated associations and authorities and firm includes partnership;

2.3.3 Powers conferred on the Company, the Directors, a Director or a Shareholder may be exercised at any time and from time to time;

2.3.4 References to any legislation or provision of any legislation are deemed to be references to that legislation or provision as amended, substituted or re-enacted and unless the context requires otherwise include any statutory instruments issued under that legislation or provision;

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- 2.3.5 Clause headings and other headings are for ease of reference only and shall be deemed not to form part of this Constitution nor to affect the construction of this Constitution.

3. Securities

- 3.1 **Types of securities available for issue:** Subject to the provisions of Clause 4 the Board may issue:
- 3.1.1 Ordinary shares;
 - 3.1.2 Preference shares;
 - 3.1.3 Convertible securities;
 - 3.1.4 Options;
 - 3.1.5 Such other types and classes of securities that the Board considers appropriate.
- 3.2 **Participation as to votes and other rights:** Any securities issued by the Board:
- 3.2.1 May confer on the Holder of that security special or limited rights to votes, distributions (of capital or income) transferability or otherwise;
 - 3.2.2 If they are options shall not confer on the Holders a right to vote except at a meeting of option holders.
- 3.3 **Board may issue redeemable shares:** The Board may issue shares that are redeemable by the Company:
- 3.3.1 At the option of the Company; or
 - 3.3.2 At the option of the Holder of the shares; or
 - 3.3.3 On a date specified or determined by the Board;
- for a consideration that is:
- 3.3.4 Specified or otherwise determined by the Board; or
 - 3.3.5 To be calculated by reference to a formula; or
 - 3.3.6 Required to be fixed by a suitably qualified person who is not associated with or interested in the Company.
- 3.4 **Convertible securities:** The Board may issue convertible securities upon such terms and conditions as it thinks fit including the right for the Holders of convertible securities to participate, in the same manner and to the same extent as the Holders of the Class into which the convertible securities are to be converted, in any issue of securities offered to the Holders of such Class.
- 3.5 **Options:** The Board may issue options on such terms and conditions as shall be determined by the Board. No options may be issued which confer the right on Holders to vote other than at meetings of option Holders.
- 3.6 **Consolidation or subdivision of shares:**
- 3.6.1 The Board may consolidate shares so that each Shareholder holds, as near as is mathematically possible, a proportionately smaller number of shares.

Field Code Changed

3.6.2 The Board may subdivide shares so that each Shareholder holds, as near as is mathematically possible, a proportionately greater number of shares.

3.7 **Bonus shares:** The Board may issue any Equity Securities as fully paid securities to Shareholders of such classes of Equity Securities in such proportions as the Board may determine.

3.8 **Allocation of Class rights:** If the Equity Securities on issue are divided into different classes then the Board may implement any proposal and issue any further Equity Securities that:

3.8.1 Rank in any respect in priority to any existing Equity Securities then on issue;

3.8.2 Modify, abrogate or alter the rights attaching to any existing Equity Securities on issue with the prior sanction of a Special Resolution passed by the vote in person or by proxy of the Holders of the Equity Securities affected by the proposal.

3.9 **Shares ranking ahead can be issued:** Notwithstanding Section 117 of the Act the issue of further Equity Securities ranking equally with, in priority to or ranking behind existing Equity Securities, whether as to voting, and distributions or otherwise is expressly permitted and shall not affect the rights which may attach to Equity Securities on issue from time to time.

4. **Capital and Issue of Equity Securities**

4.1 **Special Resolution for issue of Equity Securities:** The Board may only issue Equity Securities after obtaining the prior consent of Shareholders by a Special Resolution. Any such resolution shall set out the terms, conditions and price for the issue of such Equity Securities.

4.2 **Issue with unanimous shareholder approval:** Notwithstanding the provisions of clause 4.1 the Holders of all Equity Securities having the right to vote may by unanimous consent agree to the issue of Equity Securities by the Board.

4.3 **Participation in issues of Equity Securities:** After compliance with the procedures set out in clause 4.1 the Board may issue Equity Securities provided that:

4.3.1 Those Equity Securities are offered to Holders of existing Equity Securities of the Company entitled to participate in such issue on a basis which, if the offer were accepted by all such Holders, would maintain the existing proportionate rights of each existing Holder (relative to other Holders of Equity Securities) to votes and distribution rights; or

4.3.2 Those Equity Securities are issued to Holders of existing Equity Securities of the Company as fully paid securities on a basis which maintains the existing proportionate rights of each existing Holder (relative to other Holders of Equity Securities) to votes and to distribution rights; or

4.3.3 Notwithstanding sub-clause 4.3.1 and 4.3.2 the Shareholders may by Special Resolution authorise the Board to issue Equity Securities to such persons and on such terms as specified in that resolution.

4.4 **Written offers of Equity Securities to be made:** Where any offer of Equity Securities is made to the existing Holders of Equity Securities under the provisions of clause 4.3 offers shall be made by notice to each Holder of Equity Securities specifying the numbers of Equity Securities and if there are different classes of Equity Securities being offered the Class of Equity Securities which that Holder of Equity Securities is entitled to take up and limiting a time period (being not less than 20 Working Days from the date of the offer or such shorter period as may be agreed to by the Major Holder) within which the offer, if not accepted, or in respect of the number of Equity Securities not accepted, will be deemed to be declined. After the expiration of such time and such further period if any specified, if applications shall not

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have been received from the person having the right to subscribe for the Equity Securities so offered, or on receipt of an intimation from any Holder of Equity Securities to whom such notice is given that such Holder of Equity Securities declines to accept the Equity Securities offered, the Board may dispose of the same, by reoffering those Equity Securities to the Holders of the same Class of securities, who have accepted the offer, such offer to be made in proportion to the securities of that Class held by them. The period for which that offer shall remain open shall be determined by the Board. No offer of Equity Securities shall be made other than to any existing Holder of Equity Securities unless the Board is authorised by an Ordinary Resolution to make an offer to persons who are not existing Holders.

4.5 **Board may issue Equity Securities to satisfy obligations:** The Board shall be entitled to issue Equity Securities without complying with the provisions of clauses 4.1 to 4.3 if:

- 4.5.1 The terms of issue of any Equity Securities expressly reserved the right to make the issue of Equity Securities and the issue is being made in accordance with the terms of that reservation; or
- 4.5.2 The terms and conditions of a proposal to issue Equity Securities has been approved by a Special Resolution; or
- 4.5.3 The issue is made to an existing Shareholder as a bonus issue of fully paid Equity Securities on the basis that such issue maintains the proportionate rights of those Shareholders entitled to participate in bonus issues of Equity Securities; or
- 4.5.4 The issue is made to any Holder of securities to satisfy any rights of conversion attached to those securities; or
- 4.5.5 The issue is made in terms of a plan to issue Equity Securities in lieu of dividend and that plan has been approved by a Special Resolution of the holders of each Class of Equity Securities.

4.6 **Alteration of Shareholders' rights:** If the share capital is divided into different Classes of Equity Securities and any proposal is made under which:

- 4.6.1 All or any of the rights and privileges attached to existing Equity Securities may be modified, abrogated or altered; or
- 4.6.2 The interest of the Holders of existing Equity Securities may be adversely affected by a modification, abrogation or alteration to any other Class of Equity Securities; or
- 4.6.3 The capital thereof may, subject to the Act, be repaid otherwise than on liquidation or in accordance with the terms of the issue thereof,

then such proposal may only be implemented with the sanction of a Special Resolution passed by the vote in person or by proxy of the Holders of Equity Securities of the Interest Groups affected by such proposal.

4.7 **Deemed modifications of existing rights:** The following propositions shall be deemed to be modifications of the rights of existing Equity Securities to which the provisions of clause 4.6 shall apply:

- 4.7.1 To create Equity Securities ranking for repayment of capital and/or payment of dividend in priority to existing Equity Securities of the Company; or
- 4.7.2 To modify the conditions of issue of any options to subscribe for Equity Securities; or
- 4.7.3 To create any additional Equity Securities ranking equally for repayment of capital and/or payment of dividend with existing Equity Securities (unless the right to create and issue such additional Equity Securities was reserved as part of the terms of issue of those existing Equity Securities); or

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- 4.7.4 To create any further Equity Securities without expressly stating their priority as to repayment of capital and/or payment of dividend in relation to existing Equity Securities.

5. Company may acquire its own Shares

- 5.1 **Authorisation:** In accordance with the Act and subject to clause 5.2 the Company is permitted to:
- 5.1.1 Purchase or otherwise acquire its own shares;
 - 5.1.2 Purchase or make an offer to purchase shares from one or more Shareholders;
 - 5.1.3 Hold as Treasury Stock and re-offer shares so acquired by the Company.
- 5.2 **Offers and Treasury Stock:** In exercising the above power the Board shall comply with any restrictions and provisions set out in the Act and may:
- 5.2.1 Make an offer to all Shareholders in proportion to the shares held by them; or
 - 5.2.2 Make an offer to one or more Shareholders to acquire all or part of a Shareholder's or Shareholders' shares; and
 - 5.2.3 Hold for re-offer as Treasury Stock in accordance with the Act any shares purchased or otherwise acquired subject to the restrictions contained in the Act.
- 5.3 **Share cancelled on repurchase:** Any shares repurchased by the Company, and not set aside as Treasury Stock in accordance with, and as limited by, the Act shall be deemed to be cancelled on acquisition.
- 5.4 **Pre-emptive rights on offers of Treasury Stock:** The Board in reoffering any shares under sub-clause 5.2.3 above shall, subject to the Class provisions hereinafter set out, offer those shares first to all of the Shareholders pro-rata according to their existing shareholding in the Company provided that if any Shareholder does not wish to purchase those shares the Board may re-offer those shares to such person or persons as the Board selects in the same manner as if the offer was an offer of new shares as set out in clause 4.4. If there are different Classes of shares any offer shall be made pro-rata within that Class so that members of that Class have the first opportunity to purchase those shares. Thereafter the shares shall be offered to the Holders of any other Classes of shares.

6. Redeemable Securities and Redemption of Securities

- 6.1 **Board may issue redeemable shares:** The Board may issue shares that are redeemable by the Company as set out in clause 3.3. All Redeemable Shares shall be issued in accordance with the provisions of clauses 3.3, 4, 6.2 and 6.3.
- 6.2 **Board may redeem shares:** Subject to the Act the Company may redeem any shares which, by their terms of issue, are redeemable and such redemption may be exercised in respect of one or more Shareholders or in respect of part of the shares held by any Shareholder.
- 6.3 **Approval by Special Resolution:** The Company may redeem shares, where the precise terms and conditions of the specific proposal to redeem those shares has been approved by Special Resolution of each class of Equity Security whose rights of entitlement are affected by that redemption.

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7. Dividends

- 7.1 **Power to pay a dividend:** Subject to the Board being satisfied that the Company will meet the Solvency Test after the Dividend being authorised by the Board is made the Board may pay a Dividend to any Shareholder or other persons entitled thereto. Dividends shall be paid in accordance with the terms of issue of the securities then on issue.
- 7.2 **Persons to whom dividend payable:** A Dividend shall be paid to the person or persons who are the registered Holder or Holders of the shares in respect of which the Dividend is authorised at the time of the authorisation of the Dividend (or, if the terms on which the Dividend was authorised so provide, at the time when the Dividend is authorised to be paid).
- 7.3 **Dividend to joint Holders:** If several persons are registered as joint Holders of any shares, and such persons are entitled to receive Dividends in respect of the shares, any one of them may give effectual receipts for any Dividend in respect of the share.
- 7.4 **Manner of payment:** A Dividend payable in cash may be paid in any manner (whether by direct credit or otherwise) directed by the person entitled to it. Failing any direction, payment may be made by cheque sent by post:
- 7.4.1 To the registered address of the Shareholder or person entitled thereto; or
- 7.4.2 In the case joint Holders to any one of the joint Holders at his or her registered address; or
- 7.4.3 To such persons and to such address as the Shareholder or person entitled or such joint Holder as the case may be, may direct,
- and the Company shall not be responsible for any loss arising from such mode of transmission.
- 7.5 **No interest:** No Dividend shall bear interest against the Company.
- 7.6 **Deductions from Dividend:** The Directors may deduct from any Dividend to any Shareholder entitled to receive Dividends all such sums of money as may be due from him or her to the Company on account of any or all of the following:
- 7.6.1 Calls or instalments or any debt or liability; and
- 7.6.2 Debts, liabilities or obligations in respect of which the Company has a lien over specific shares in respect of which the Dividend is paid; and
- 7.6.3 Such amounts as the Company may be called upon to pay under any legislative enactment in respect of the shares of a deceased or other Shareholder.
- 7.7 **Right not transferred:** A transfer of any share shall not pass the right to any Dividend authorised for payment thereon where the date for payment of that Dividend attached to those shares has passed before the date of registration of the transfer.
- 7.8 **Dividend by way of distribution of assets:** Without limiting Section 52, the Directors may distribute in kind among the Shareholders by way of Dividend any of the assets of the Company, and in particular any shares or securities of other companies to which the Company is entitled.
- 7.9 **Unclaimed Dividends:** All Dividends unclaimed for one year after having been authorised may be intermingled with the other money held by the Company and may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed. All Dividends unclaimed for five years after having been authorised may be forfeited by the Directors for the benefit of the Company. The Directors may at any time after such forfeiture

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annul the same and pay the Dividend so forfeited to any person producing evidence that such person is entitled to the Dividend and shall do so unless in the opinion of the Board the payment of that dividend cannot be made under the Act or there are no available funds for that purpose.

- 7.10 **Dividend includes distributions:** For the purpose of this clause 7 the term Dividend includes any distribution by the Company.

8. Call on Shares

- 8.1 **Power to call:** Subject to clause 8.2, the Board or any person authorised by the Board may make such calls as they think fit upon the Shareholders in respect of moneys unpaid on the shares held by them respectively and not paid in accordance with the conditions of the issue of the shares. Each Shareholder shall 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. A call may be made payable by instalments and may be revoked or postponed as the Board may determine.
- 8.2 **Prior Holders not liable for calls:** Where a share renders its Holder liable for calls, or otherwise imposes a liability on its Holder, that liability attaches to the Holder of the share for the time being, and not to a prior Holder of the share, whether or not the liability became enforceable before the share was registered in the name of the current Holder.
- 8.3 **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.
- 8.4 **Joint Holders:** Joint Holders of a share shall be jointly and severally liable to pay all calls in respect of that share.
- 8.5 **Interest:** If a sum called in respect of a share is not paid before or on the day appointed for payment the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the Board may determine. The Board may, however, waive payment of that interest wholly or in part.
- 8.6 **When payable:** Any sum which by the terms of issue of a share becomes payable on issue or at any fixed date 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 sum becomes payable. In the case of non-payment all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.
- 8.7 **Proof of liability:** The amount of any unpaid call or instalment may be recovered as a debt due from the Shareholder to the Company by proceedings commenced at any time after the call became payable. In any such proceedings it shall be sufficient to prove that:
- 8.7.1 The name of the Shareholder sued is entered in the Register as the Holder or one of the Holders of the shares in respect of which such debt accrued;
- 8.7.2 The resolution making the call is duly recorded in the minute book of the Company; and
- 8.7.3 Notice of such call was duly given to the Shareholder,
- and it shall not be necessary to prove any other matter and the proof of the matters referred to in this clause 8.7 shall be conclusive evidence of the debt.

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9. Forfeiture and Lien

- 9.1 **Failure to pay:** If a Shareholder fails to pay any call or instalment of a call on the day appointed for payment, the Board may serve a notice on the Shareholder requiring payment of the unpaid call or instalment 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.
- 9.2 **Notice:** The notice shall name a further day (not earlier than the expiration of 10 Working Days from the date of service of the notice) on or before which the payment required by the notice is to be made. The notice shall state that in the event of non-payment by the time appointed the shares in respect of which the call was made will be liable to be forfeited. The notice shall also state the place at which payment is to be made.
- 9.3 **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, 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 distributions authorised in respect of the forfeited shares and not actually paid or made before the forfeiture.
- 9.4 **Entry of forfeiture:** When any share is so forfeited:
- 9.4.1 Notice of the resolution shall be given to the Shareholder in whose name it stood immediately prior to the forfeiture;
- 9.4.2 An entry of the forfeiture, with the date thereof, shall forthwith be made in the register;
- 9.4.3 The share certificate of any such shares shall be immediately cancelled by the Company and the Shareholder in whose name such cancelled share stood immediately prior to such cancellation shall return such share certificate to the Company within 10 Working Days of receiving notice of such resolution; and
- 9.4.4 As soon as it is sold or disposed of, an entry of the date and manner of the sale or disposition, shall be made in the register.
- 9.5 **Forfeited share:** A forfeited share 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. The Board may, at any time before a sale or disposition, annul the forfeiture on such terms as the Board thinks fit.
- 9.6 **Ceasing to be a Shareholder:** A person whose shares have been forfeited shall cease to be a Shareholder in respect of the forfeited shares, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable by the Shareholder to the Company in respect of the shares. The Shareholder's liability shall cease if and when the Company receives payment in full of all such money in respect of the shares.
- 9.7 **Fixed time payments:** The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.
- 9.8 **Restriction on forfeiture:** Shares shall not be liable to forfeiture for the failure of persons entitled thereto (by transmission or otherwise) to submit evidence of title within a specified time.
- 9.9 **Lien on shares:** The Company shall have a first lien upon all of the shares registered in the name of each Shareholder (whether solely or jointly) and upon the proceeds of sale of such shares for:
- 9.9.1 Unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the shares; and

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9.9.2 Such amounts as the Company may be called upon to pay under any legislation in respect of the shares.

9.10 **Distributions:** The lien shall extend to all distributions from time to time authorised in respect of the shares.

9.11 **Sale of shares:** The Board, on behalf of the Company, may sell any shares on which the Company has a lien if:

9.11.1 A sum in respect of which the lien exists is presently payable; and

9.11.2 10 Working Days' notice in writing demanding payment of such sum has been given to the Shareholder or to the person entitled by reason of the Shareholder's death or bankruptcy.

9.12 **Execution:** To give effect to any sale or disposition pursuant to clause 9.5 or 9.11 a Director, on behalf of the Company, may execute a transfer of the shares to the purchaser.

9.13 **Discharge from calls:** Upon registration of the transfer to the purchaser of shares sold or disposed of by the Company pursuant to clause 9.5 or 9.11 (in this clause 9 the **Transferee**) the Transferee shall hold such shares free from all calls due prior to such purchase.

9.14 **Purchase money:** The Transferee shall not be bound to see to the application of the purchase money nor shall the Transferee's title to the shares be affected by any irregularity or invalidity in the sale procedure.

9.15 **Former Shareholder's remedy:** The remedy of the former Shareholder and of any person claiming under or through the former Shareholder shall be against the Company exclusively and in damages only.

9.16 **Proceeds:** The net proceeds of the sale of any forfeited share or of shares sold for the purpose of enforcing the lien shall be applied:

9.16.1 First, in or towards satisfaction of any unpaid calls or instalments and interest thereon;

9.16.2 Secondly, in or towards satisfaction of expenses and any other moneys (if any) in respect of which the lien existed; and

9.16.3 Thirdly, in payment to the previous Holder of the share or to the executors, administrators or assigns of the previous owner.

9.17 **Evidence:** A certificate by a Director and countersigned by a person authorised by the Board that the power of sale 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, shall be conclusive evidence of the facts stated in that certificate.

9.18 **Further powers:** For giving effect to any such sale after forfeiture or for enforcing the lien the Board may authorise some person to transfer the shares sold to the purchaser. If the certificate for any forfeited shares is not delivered up to the Company the Board may issue a new certificate distinguishing it as they think fit from the certificate not delivered up.

10. Transfer of Securities

10.1 **Method of transfer:** A Shareholder may transfer any Equity Securities:

10.1.1 In accordance with or in a manner approved under the Securities Transfer Act 1991; or

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10.1.2 In any manner approved by the Board; and

10.1.3 To such transferees as may be approved by the Major Holder.

10.2 Form of transfer:

10.2.1 Subject to the provisions in clause 10 of this Constitution a Shareholder may transfer any Equity Securities in a form of transfer in common form or any other form approved by the Board.

10.2.2 Every instrument of transfer of Equity Securities not falling within clause 10.2.1 shall:

- (a) Be signed or executed by or on behalf of the transferor; and
- (b) If registration as Holder of the Equity Security imposes a liability to the Company on the transferee, be signed or executed by or on behalf of the transferee.

10.3 Transmission on death of Shareholder: If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the shares of the deceased Shareholder but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any share or constitute a release of any lien which the Company may have in respect of any share.

10.4 Rights of Personal Representatives: A Personal Representative of a Shareholder:

10.4.1 Is entitled to exercise all rights (including without limitation the rights to receive distributions, to receive notices of and attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the shares held by that Shareholder; and

10.4.2 Is entitled to be registered as Holder of those shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative.

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

10.6 Definition of Personal Representative: For the purposes of this clause, "Personal Representative" means:

10.6.1 In relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;

10.6.2 In relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and

10.6.3 In relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed under that Act, and a donee of an enduring power of attorney complying with that Act, or any person in the nature of such persons.

10.7 Restrictions on transfer of securities: The provision of clause 10 shall apply to all transfers of securities with any necessary modifications for securities which are not shares.

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- 10.8 **Board may refuse to register transfers:** The Board may refuse to register the transfer of any Equity Security or delay that registration or decline to recognise any instrument of transfer in any of the following circumstances:
- 10.8.1 Where the Company has a lien on the Equity Securities;
 - 10.8.2 Where it is not proved to the satisfaction of the Board that the proposed transferee is a responsible person;
 - 10.8.3 Where the Board is of the opinion that the proposed transferee is not a person desirable to admit to membership;
 - 10.8.4 Where the proposed transferee is indebted or under any liability to the Company in respect of those Equity Securities or otherwise;
 - 10.8.5 Unless the instrument of transfer is accompanied by the Certificate of the Equity Securities to which it relates (if any has been issued) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;
 - 10.8.6 Unless the instrument of transfer is in respect of only one class of Equity Security;
 - 10.8.7 Unless the transfer is in accordance with the rights of pre-emption hereinafter contained in Clause 10 of this Constitution.
- 10.9 **Major Holder has first right to Equity Securities being sold:** If any Equity Securities in the Company are to be transferred by any Holder other than a Major Holder then such Equity Securities shall only be transferable to the Major Holder or to a transferee approved by the Major Holder and at a price approved by the Major Holder. If the transfer is to the Major Holder and there is a dispute on the transfer price then the dispute in respect of such price shall be determined as follows:
- 10.9.1 The Major Holder and the transferee shall determine if they can agree on one valuer to value the shares.
 - 10.9.2 If agreement on one valuer cannot be reached within 10 Working Days then the Major Holder and the transferee shall each appoint a valuer which valuers shall appoint an umpire before entering into that valuation.
 - 10.9.3 The valuers and umpire shall be working as experts and shall not be subject to the Arbitration Act 1996.
 - 10.9.4 The value as determined by the one valuer (if agreed) or umpire shall be binding on the Major Holder and the transferee.
- 10.10 **Right to repurchase:** In the event that any shares are offered for sale and the Major Holder does not wish to purchase those shares then the Company shall make an offer pursuant to section 59 of the Act to repurchase those shares provided that the approval of the Major Holder shall first be obtained prior to such offer to repurchase being made.
- 10.11 **Declaration of beneficial ownership:** At any time the Directors may by notice in writing require any transferee of Equity Securities or Holder of Equity Securities to lodge with the Company within 10 Working Days of the date of such notice a Statutory Declaration and/or such other written advice or documents as the Directors may require disclosing full details of the beneficial ownership of any Equity Securities:
- 10.11.1 Comprised in any transfer; and/or
 - 10.11.2 Held by that Holder of Equity Securities.

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10.12 Sanction if beneficial rights to Equity Securities not held by registered Holder: If:

10.12.1 A Holder of Equity Securities or transferee fails to provide a statutory declaration or other written advice or documents within the period of 10 Working Days as required by clause 10.11; or

10.12.2 The declaration under clause 10.11 shows that:

- (a) The Equity Securities referred to aforesaid are not held, or will not be held, as required by this Constitution; or
- (b) The beneficial ownership of any Equity Securities or the right to exercise any votes attached to those Equity Securities or any control over those Equity Securities is held other than by the registered Holder,

then the Holder of such Equity Securities shall be deemed to have given an irrevocable sale notice appointing each Director of the Company as the irrevocable attorney of that Holder for the purpose of selling all of the Equity Securities held by that Holder. The said Equity Securities shall be sold at the earliest date at a value determined by an independent valuer appointed by the Board for that purpose and the Company shall account to the Holder for the net proceeds of sale in respect thereof.

11. Statement of Corporate Intent (Section 128)

11.1 **Board must provide Statement of Corporate Intent (SCI):** The provisions of section 128(1) and 128(2) are hereby qualified by the exception hereinafter set out which requires compliance by the Board in providing a statement of corporate intent ("SCI") which SCI is subject to reasonable comment and recommendations by the Shareholders but in respect of which the final management decisions are the prerogative of the Board:

11.1.1 The Board shall deliver to the Shareholders a draft SCI not later than one month after the commencement of each financial year of the Company.

11.1.2 The SCI shall specify for the group comprising the Company and its subsidiaries (if any) ("the Group") and in respect of the financial year in which it is delivered and for each of the immediately following two financial years, the following information:

- (a) The objectives of the Group including details of how the objectives are to be achieved.
- (b) The nature and scope of the activities to be undertaken by the Group.
- (c) The ratio of consolidated shareholders' funds to total assets and definitions of those terms.
- (d) The accounting policies.
- (e) The performance targets and other measures by which the performance of the Group may be judged in relation to its objectives.
- (f) An estimate of the amount or proportion of accumulated profits and capital reserves that it is intended be distributed to the Shareholders.
- (g) The kind of information to be provided to the Shareholders during the course of those financial years, including the information to be included in each half yearly report.

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- (h) The procedure to be followed before any member of the Group subscribes for, purchases, or otherwise acquires securities in any company or other organisation.
 - (i) Any activities for which the Board seek compensation from the Shareholders (whether or not the Shareholders have agreed to provide such compensation).
 - (j) The Board's estimate of the commercial value of the Shareholders investment in the Group and the manner in which, and the times at which, the value is to be reassessed.
 - (k) Such other matters as are agreed by the Shareholders and the Board.
- 11.1.3 The Board shall consider any comments on the draft SCI that are made to it within two months of the commencement of the financial year by any of the Shareholders.
- 11.1.4 The Board shall comply with all provisions of the Local Government Act 1974 and the Local Government Act 2002 in providing or amending any SCI.
- 11.1.5 The Board shall diligently comply with the provisions of the SCI.
- 11.2 **Required modification of SCI:** The Shareholders may from time to time, by Ordinary Resolution, require the Board to modify the SCI by including in or omitting from any of the provisions of sub-clauses 11.1.2(a) to 11.1.2(k) such further matters as the Shareholders deem appropriate.
- 11.3 **Right to limit Board's powers:** The Shareholders may require that there be included in the SCI provisions which may limit the right of the Board to acquire or dispose of material assets of the Company and shares of any subsidiary and to enter into material contracts.
- 11.4 **Delivery of SCI:** The Board shall deliver the completed SCI to the Shareholders within three months of the commencement of each financial year. Every SCI and modification thereto that is adopted by the Company shall be made available to the public as required by law.
- 11.5 **Modification of SCI:** A SCI may be modified at any time by written notice from the Board, so long as the Board has first:
- 11.5.1 Given written notice to the Shareholders of the proposed modification;
 - 11.5.2 Considered any comments made on the proposed modification by the Shareholders within one month after the date on which the notice was given or such shorter period as the Shareholders may agree; and
 - 11.5.3 Complied with any reasonable recommendations made by the Shareholders as set out in sub-clause 11.2.
- 11.6 **SCI subsidiaries to be submitted to Major Holder:** The Company, forthwith after the receipt of the SCI for each subsidiary of the Company, shall submit that SCI to the Major Holder for comment and shall take account in requesting any modification to each such SCI the views of the Major Holder.
- 11.7 **Appointment of directors of subsidiary companies and related companies:** In the event that the Company shall hold any shares in another company which is a subsidiary company or a related company (as defined in the Act) then prior to exercising the right to appoint any directors to any of those subsidiary or related companies the Directors shall:-
- 11.7.1 Consult with the Major Holder as to the director or directors to be appointed to that subsidiary or related company; and

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- 11.7.2 Only appoint as a director of that subsidiary or related company a person or persons approved by the Major Holder.

12. Meetings of Shareholders

- 12.1 **Effective resolution of Shareholders:** If a matter is required by the Act or by this Constitution to be decided at a meeting of Shareholders then a resolution signed as set out below shall be as effective as if passed at a meeting of Shareholders called for that purpose:

12.1.1 If it is a resolution required under Section 196(2) of the Act it shall be signed by all Shareholders;

12.1.2 If it is a resolution in respect of other matters it shall be signed by not less than 75% of the Shareholders entitled to vote on the resolutions who together hold 75% of the votes entitled to be cast on that resolution.

Within five Working Days of a resolution being passed in accordance with (b) above the Company must send a copy of the resolution to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed.

- 12.2 **Unanimous resolution:** If all Shareholders agree then all of the matters set out in Section 107 of the Act can be carried out by a resolution signed by all Shareholders having the right to vote on the matter.

- 12.3 **Annual meetings:** The Company shall not be required to hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution as set out in clause 12.1.

- 12.4 **Annual meeting of Shareholders:** Subject to the provisions of the Act and unless a resolution is passed under section 122 of the Act the Board must call an annual meeting of Shareholders to be held:

12.4.1 Once in each calendar year; and

12.4.2 Not later than 6 months after the balance date of the Company; and

12.4.3 Not later than 15 months after the previous annual meeting.

- 12.5 **Special meetings of Shareholders:** A special meeting of Shareholders entitled to vote on an issue:

12.5.1 May be called at any time by:

12.5.2 The Board; or

12.5.3 A person who is authorised by the Constitution to call the meeting;

12.5.4 Must be called by the Board on the written request of Shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

13. Procedure at Meetings of Shareholders

- 13.1 **First Schedule to Act modified:** The procedures set out in the First Schedule to the Act are modified to the extent permitted by law and shall be as hereinafter set out.

- 13.2 **Vote for each share:** Subject to 13.14 and to any rights or restrictions for the time being attached to any Class of shares every Shareholder shall be entitled:

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13.2.1 On a vote by voices or on a show of hands, to one vote; and

13.2.2 On a poll:

- (a) In respect of each fully paid share held by that Shareholder, to one vote;
- (b) In respect of each share held by that Shareholder which is not fully paid, to a proportion of the vote or votes which would be exercisable if that share were fully paid equivalent to the proportion of the total issue price of that share which has been paid (disregarding any payment in advance).

13.3 Notice of meetings generally:

13.3.1 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 auditor of the Company not less than 10 Working Days before the meeting.

13.3.2 The notice must state:

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

13.3.3 Without limiting 13.3(b)(i) notices in respect of proposed changes to this Constitution shall be sufficiently explicit to enable the effect of such changes to be understood without reference to the existing or proposed Constitution.

13.3.4 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.

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

13.3.6 If a meeting of Shareholders is adjourned for less than 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. 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.

13.3.7 If the provisions of Section 110 or Section 118 of the Act (which give the right of a Shareholder to require the repurchase of that Shareholder's shares if the resolution is passed) apply in respect of a resolution which is to be proposed at a meeting of Shareholders then the notice of meeting to consider that resolution shall contain a prominent statement of the rights under those Sections.

13.3.8 A resolution signed by all Shareholders entitled to vote on the matter to be determined shall be valid notwithstanding the failure to comply with any of the aforesaid provisions.

13.4 Methods of giving notice:

13.4.1 A notice, statement, report, accounts or other document required to be sent to a Shareholder shall be sent in the manner provided in Sections 388, 390 and 391 of the Act.

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13.4.2 Equity Security Holders of all Classes 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.

13.4.3 Subject to Section 212, a Shareholder may, by written notice to the Company, waive the right to receive all or any documents from the Company and may revoke the waiver in the same manner. While the waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

13.5 **Methods of holding meetings:** A meeting of Shareholders may be held either:

13.5.1 By a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

13.5.2 By means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

13.6 **Chairperson:**

13.6.1 The chairperson of the Board shall chair a meeting of Shareholders. If there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling or considers it inappropriate to act (either in relation to the entire meeting or in relation to any particular business to be considered at the meeting), the Directors present shall elect one of their number to be chairperson of the meeting (or for that part of the meeting which relates to the particular business).

13.6.2 If at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes after the time appointed for holding the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.

13.7 **Quorum:**

13.7.1 A quorum for a meeting of Shareholders is present if a Major Holder able to exercise votes on a majority of the shares on issue is present.

13.7.2 Subject to clause 13.7.3 no business may be transacted at a meeting of Shareholders if a quorum is not present.

13.7.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) In the case of a meeting called under Section 121(b) the meeting is dissolved;
- (b) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Board may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.

13.8 **Proxies:**

13.8.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.

13.8.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

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13.8.3 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 12 months.

13.8.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company not less than 48 hours before the start of the meeting.

13.8.5 A proxy form shall be sent with each notice of meeting of Shareholders and:

- (a) Shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote; and
- (b) Shall not be sent with any name or office (eg chairperson of directors) filled in as proxy holder, however this clause 13.8.5(b) shall not prevent the Company indicating in a footnote to the proxy that certain persons or office holders are willing to act as proxy if the Shareholder wishes to appoint them.

So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates voting instructions for proxy holders and which enable the Holder to indicate if the vote is against or for each resolution.

13.8.6 Subject as set out below a vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal, revocation of the proxy or of the authority under which the proxy was executed or the transfer of the share in respect of which the proxy is given if no written notification of such death, mental disorder, revocation or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used. If written notification of such death, mental disorder, revocation or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used then the proxy shall be invalid and no votes by the proxy shall be counted or be effective.

13.8.7 An instrument appointing a proxy shall be in the following form or a form as near to it as circumstances permit:

Vbase Limited

Instrument Appointing A Proxy

I/We _____

of _____

being a Shareholder of Vbase Limited appoint

_____ [print name of proxy]

of _____

or failing him/her _____ of _____

as my/our proxy to vote for me/us on my/our behalf at the annual/special meeting of Shareholders to be held at _____ on _____ commencing _____ at _____ am/pm and at any adjournment of such meeting.

I/We direct my/our proxy to vote in the following manner

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Resolutions	Vote with a tick	
	For	Against
1. _____	___	___
2. _____	___	___
3. _____	___	___
4. _____	___	___

Dated: _____

Signed: _____

[Usual signature/s]

Where the resolution does not reasonably permit the security Holder to instruct the proxy as to the way in which the vote on a resolution is to be cast, the following form may be used:

Vbase Limited

Instrument Appointing A Proxy

I/We _____

of _____

being a Shareholder of Vbase Limited appoint

_____ [print name of proxy]

of _____

or failing him/her _____ of _____

as my/our proxy to vote for me/us on my/our behalf at the annual/special meeting of Shareholders to be held at _____ on _____ commencing _____ at _____ am/pm [or all meetings of the Company held within 12 months of the date of this Instrument] and at any adjournment of any such meeting.

Dated: _____

Signed: _____

[Usual signature/s]

13.9 **Postal votes:** The Board may determine to carry out a vote by postal vote in accordance with clause 7 of the First Schedule to the Act or by such other method as the Board may determine.

13.10 **Minutes:**

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13.10.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

13.10.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

13.11 Shareholder proposals:

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

13.11.2 (If the notice is received by the Board not less than 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

13.11.3 If the notice is received by the Board not less than 5 Working Days and not more than 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

13.11.4 If the notice is received by the Board less than 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

13.11.5 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.

13.11.6 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.

13.11.7 Where the costs of giving notice of the Shareholder 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.

13.12 Adjournments of meetings: The chairperson may adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

13.13 Meeting procedure: Except as provided in this Constitution, the chairperson of the meeting shall regulate the procedure at any meeting of Shareholders.

13.14 Voting rights: Generally:

13.14.1 In the case of a meeting of Shareholders held under clause 13.5.1, 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

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(b) Voting by show of hands.

13.14.2 In the case of a meeting of Shareholders held under clause 13.5.2, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

13.14.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 13.14.4.

13.14.4 At a meeting of Shareholders a poll may be demanded by:

- (a) Not less than 2 Shareholders having the right to vote at the meeting; or
- (b) 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
- (c) 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 shares that confer that right; or
- (d) The chairperson.

13.14.5 A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

13.14.6 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.

13.14.7 Except as provided in clause 13.14.8, if a poll is demanded it shall be taken in such manner as the chairperson directs and the results of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

13.14.8 A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such times as the chairperson directs and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of a poll.

13.14.9 The chairperson of a Shareholders' meeting is entitled to a casting vote.

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

13.15 **Corporations may act by representatives:** A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

13.16 **Votes of joint Holders:** Where two or more persons are registered as the Holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint Holders.

14. Directors

14.1 **Number of Directors:** The number of Directors shall be as determined by the Major Holder from time to time. ▼

Deleted: Until otherwise so determined the minimum number of Directors (other than alternate Directors) shall be five.

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14.2 Appointment of Directors:

14.2.1 The Major Holder shall be entitled to appoint and remove any person as a Director of the Company.

14.2.2 The appointment and removal of a Director pursuant to sub-clause 14.2.1 shall be effected by notice served by the Major Holder at the registered office of the Company.

14.2.3 The Board shall send notice to all shareholders advising of any vacancy on the Board and the name of the Director or former Director to which such vacancy relates, within 5 Working Days of the vacancy occurring or of the Board becoming aware of the impending vacancy, whichever shall occur first.

Deleted: <#>Notwithstanding any provision to the contrary herein contained at least two of the Directors shall not be members or employees of the Local Authority who is a Shareholder. If a person who is a Director becomes a member or employee of a Local Authority who is a Shareholder in breach of this provision such person shall forthwith resign as a Director of the Company.¶

14.3 **Appointment of alternate:** The Major Holder may also appoint an alternate for any Director so appointed. That person so appointed shall, during the absence or inability to act of a Director, act in his or her place. The appointee while holding office as an alternate Director shall be entitled to all notices of meetings of the Directors and any paper minutes or documents sent to Directors and to attend and vote at any Meetings of Directors but shall not vote at any meeting except in the place of the Director for whom he is an alternate and he shall not require any qualification and shall not be entitled to be remunerated otherwise than out of the remuneration of the Director appointing him. Any appointment so made may be revoked at any time by the appointer. Any appointment or revocation under this clause shall be effected by notice in writing to be delivered to the secretary of the Company.

14.4 **Removal and cessation of office of a Director:** A Director shall cease being a Director of the Company:

14.4.1 Upon that Director being removed by notice under clause 14.2.2.

14.4.2 Upon a Director giving notice of resignation to the Company such notice to be effective from the date specified therein if not earlier than the date the notice is given or if no such date is specified then forthwith on that notice being given.

14.5 **Rotation:** Subject to clause 14.6, all Directors will be liable to retire in accordance with this clause but following retirement will be eligible for re-appointment by the Major Holder. Each Director shall cease to hold office at the annual meeting of the Company immediately after the expiry of three years from the date of appointment. In any year at least two Directors will retire by rotation and if the number of Directors due to retire is less than two then the Directors who have been longest in office must retire so that at least two Directors retire by rotation in any one year (unless otherwise agreed amongst the Directors).

Deleted: <#>If that Director is appointed in breach of the provisions of Clause 14.2.3 so that more than the maximum allowable number of Directors are members or employees of a Local Authority. Unless the Major Holder directs to the contrary the last appointed Director who breaches this provision shall retire from office.¶

14.6 **Exceptions to rotation:** The Directors who are in the full time employment of the Company or any subsidiary of the Company are exempt from the obligation to retire under clause 14.5 but are subject to removal as a Director by the Major Holder at any time.

14.7 **Disqualification:** Without limiting Section 157, the office of Director shall be vacated if the Director:

14.7.1 Absents himself or herself from the meetings of Directors for a period of three months or does not attend at least one-half of the meetings of Directors held in each year, without special leave of absence from the other Directors; or

14.7.2 Being an employee or member of a Local Authority ceases to be employed by, or a member of, that Local Authority.

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

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15. Directors' Meetings

- 15.1 **Third Schedule excluded:** The provisions of the Third Schedule to the Act shall not apply, and the provisions of this clause 15 shall apply to proceedings of the Board or a committee of the Board.
- 15.2 **Procedure:** The Board may meet together for the despatch of business, adjourn, or otherwise regulate their meetings and proceedings as, subject to this Constitution, they may think fit.
- 15.3 **Notice of Meeting:**
- 15.3.1 Any Director may convene a meeting.
- 15.3.2 Notice of every meeting stating the date time and place of the meeting must be given to all Directors in New Zealand. Notice need not be in writing.
- 15.3.3 Any irregularity in the calling of a meeting may be waived if all Directors entitled to be given notice of the meeting waive the irregularity at the time or at a later date.
- 15.4 **Quorum:** A majority of Directors shall be a quorum. A meeting of the Directors at which a quorum is present shall be competent to exercise any of the powers under this Constitution or the Act for the time being vested in or exercisable by the Directors generally. At a meeting of a committee of the Board appointed under clause 15.10 a majority of that committee shall be a quorum provided that majority is at least two Directors.
- 15.5 **Vacancies and reduction of numbers:** Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the number fixed by this Constitution as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purpose.
- 15.6 **Chairperson:** The Major Holder shall have the right to appoint the chairperson of the Board and a deputy chairperson. If the Major Holder does not exercise that right then the Board may elect their own chairperson and deputy chairperson of their meetings and determine the period for which he or she is to hold office. If no such chairperson is elected or if at any meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting the Directors present may choose one of their number to be chairperson of the meeting.
- 15.7 **Other meeting methods:**
- 15.7.1 For the purposes of this Constitution a meeting of Directors or a committee of Directors may be held by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting and all the provisions in this Constitution as to meetings of the Directors shall apply to such meetings so long as the following conditions are met:
- (a) All the Directors for the time being entitled to receive notice of the meeting shall be entitled to notice of such a meeting and to be linked by such means for the purposes of such meeting. Notice of any such meeting may be given by such means;
- (b) Each of the Directors taking part in such a meeting must be able to hear each of the other Directors taking part at the commencement of the meeting; and

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- (c) At the commencement of the meeting each Director must acknowledge his or her presence for the purpose of the meeting to all the other Directors taking part.

15.7.2 A Director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson of the meeting and a Director is deemed to have been present and to have formed part of the quorum at all times during such a meeting unless he or she has previously obtained the express consent of the chairperson to leave the meeting.

15.8 Voting:

15.8.1 Questions arising at any meeting of the Directors shall be determined by a majority of votes of the Directors.

15.8.2 Each Director shall have one vote. In the case of an equality of votes the chairperson shall have a second or casting vote.

15.8.3 Any Director who abstains from voting shall not be deemed to have voted in favour or against a resolution.

15.9 Interested Directors: A Director shall not be counted in the quorum for the purposes of consideration of any matter in which that Director is interested, nor shall that Director vote in respect of that matter (unless that matter is one in respect of which, pursuant to an express provision in the Act, Directors are required to sign a certificate).

15.10 Proceedings of committees:

15.10.1 The Board may at any time form a committee for the purposes of determining any matter or making recommendations to the Board.

15.10.2 Any committee of Directors shall in the exercise of the powers delegated to it conform to any regulation that may be imposed upon it by the Directors.

15.10.3 A committee may elect a chairperson of its meetings. If no such chairperson is elected or if at any meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting the Directors present may choose one of their numbers to be chairperson of the meeting.

15.10.4 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Directors present. In the case of an equality of votes the chairperson shall have a second or casting vote. However, the chairperson shall not have a casting vote unless the committee consists of at least 3 Directors and there are at least 3 Directors personally present.

15.11 Defects: All acts done by any meeting of the Directors, a committee of Directors or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director, committee or person or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

15.12 Written resolutions:

15.12.1 A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted.

15.12.2 Any resolution may be signed by facsimile, electronic means or otherwise.

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15.12.3 Any such resolution may consist of several documents in like form each signed by one or more Directors.

15.13 Minutes:

15.13.1 The Directors shall cause minutes to be kept for the purpose of recording:

- (a) The names of the Directors present at each meeting of the Directors and of any committee of the Directors; and
- (b) All resolutions and proceedings at all meetings of the Directors and of committees of Directors (including all appointments of officers made by Directors).

15.13.2 Any such minutes of any such meeting if purporting to be signed by the chairperson of such meeting or by the chairperson of the next succeeding meeting shall be prima facie evidence of the matters stated in such minutes.

15.14 Board may regulate own affairs: Except as otherwise provided the Board may regulate its own meetings.

16. Directors' Remuneration

16.1 Fixing remuneration:

16.1.1 No remuneration shall be paid to a Director in his or her capacity as a Director unless that remuneration has been authorised by an Ordinary Resolution or by the Major Holder. Each such resolution shall express Directors' remuneration as either:

- (a) A monetary sum per annum payable to all Directors taken together; or
- (b) A monetary sum per annum payable to any person who from time to time holds office as a Director.

16.1.2 Nothing in this clause shall affect the remuneration of executive Directors in their capacity as executives.

16.2 Expenses: Without limiting Section 161 and clause 16.1:

16.2.1 The Directors shall be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendance at meetings of Directors and when, in any other manner, engaged on the business or affairs of the Company; and

16.2.2 The Directors may award special remuneration out of the funds of the Company by a fixed sum or salary to any Director or committee of Directors rendering any special services in going abroad or otherwise for any of the purposes of or in the interests of the Company or for undertaking any work additional to that required of Directors of a company similar to the Company and without any such award each Director shall be entitled to reasonable expenses as set out in clause 16.2.1 for or in connection with any journeys taken by him or her on the Company's business.

16.3 Other positions: A Director may be or become a director or employee of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him or her as a director or employee of or from his or her interest in any such other company unless the Company otherwise directs.

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17. Indemnity and Insurance

- 17.1 **Indemnity:** The Company will indemnify the Directors and such employees of the Company and any related company as the Board may authorise, to the fullest extent as permitted by the Act.
- 17.2 **Insurance:** The Company may effect insurance for Directors and such employees of the Company and any related company as the Board may authorise, to the fullest extent as permitted by the Act.

18. Miscellaneous

- 18.1 **Attorneys:** Without limiting Sections 128 or 130 the Directors may by power of attorney appoint any person or body of persons, whether nominated directly or indirectly for such purposes and with such powers (not exceeding those vested in or exercised by the Directors) and for such period and subject to such conditions as they think fit. Such powers of attorney may contain such provisions for the protection and convenience of persons dealing with such attorney as the Directors think fit and may also authorise any such attorney to delegate all or any of the powers vested in him or her.
- 18.2 **Sub-delegation:** Without limiting Sections 128 or 130 any delegates or attorneys of the Directors may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in them.
- 18.3 **Change of name:** A Director shall not make, and the Directors shall not approve, an application to change the name of the Company without the prior approval of Shareholders by Ordinary Resolution.
- 18.4 **Common seal:** The Company may have a common seal. The Directors shall provide for the safe custody of the seal which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in that behalf. Every instrument to which the seal shall be affixed shall be signed by a Director or the chief executive and shall be countersigned by some other person appointed by the Directors for the purpose. The Directors may by resolution determine either generally or in any particular case that the signature of any Director or other employee may be affixed by some mechanical means to be specified in such resolution.
- 18.5 **Contracts - manner of execution:** A contract or other enforceable obligation may be entered into by the Company as follows:
- 18.5.1 An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
- (a) Two or more Directors; or
 - (b) One or more attorneys appointed by the Company in accordance with clause 18.1; or
 - (c) One or more persons or class of persons expressly authorised by the Board for that purpose in respect of all transactions or particular transactions provided that where one person is signing that person's signature is witnessed;
- 18.5.2 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

Deleted: Two

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18.5.3 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.

18.6 **Reserve Matters:** The Board has responsibility for the management of the Company and its business but the following matters shall require the approval of the Shareholder;

Deleted: a Special Resolution

18.6.1 Application of insurance proceeds in the rebuild or repair of the Company's assets;

18.6.2 Entry into any arrangement, contract or transaction outside the ordinary course of the Company's business or otherwise than on arm's length terms;

18.6.3 Entry into any arrangement, contract or transaction for the purchase of materials, works and/or services for an amount exceeding \$500,000 where such materials, works and/or services are not budgeted for in the Company's annual budget; and

18.6.4 The giving of notice of termination of any arrangements, contracts or transactions which are material to the Company's business, or materially varying any such arrangements, contracts or transactions.

19. Surplus Assets

19.1 **Distribution of property:** The liquidator of the Company may, with the sanction of a Special Resolution, divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind) and may for that purpose set such value as the liquidator deems fair upon any property to be divided and may determine how the division shall be carried out as between the Shareholders or different Classes. 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 Shareholders as the liquidator, with the like sanction, thinks fit. No Shareholder shall be compelled to accept any shares or other securities on which there is any liability.

19.2 **Division of assets:** Subject to the terms upon which any Equity Securities may have been issued, if on the liquidation of the Company there shall be surplus assets remaining the excess shall be distributed pro rata between each Class of share according to their respective rights and in proportion to the number of shares held.

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Constitution

VBASE LIMITED



Lane Neave LAWYERS

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Constitution of Vbase Limited

1. Constitution

- 1.1 **Purpose:** This Constitution sets out the rights, powers, duties and obligations of the Company, the Board, the Shareholders and each Director and Shareholder except to the extent that the provisions of the Act prevail. Where the Act permits a provision to be negated, altered, added to or adopted by a constitution then to the extent that this Constitution negates, alters, adds to or adopts provisions as permitted by the Act they shall apply to the Company.

2. Interpretation

- 2.1 **Definitions:** In this Constitution unless the context otherwise requires:

“Act means the Companies Act 1993;

Articles means the Articles of Association of the Company applying immediately preceding the adoption of this Constitution;

Auditor means the auditors of the Company;

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

Company means Vbase Limited;

Constitution means this constitution together with any amendments made to it from time to time;

Director means a director of the Company;

Equity Right means a right to acquire an Equity Security;

Equity Security means a security which confers:

2.1.1 a present or future right to participate in the control of the Company by voting at general meetings of the Company; or

2.1.2 a present or future right to participate in the profits of the Company (other than at a fixed rate or rates fixed by reference to indicators outside the Company);

and includes an Equity Right;

Holder means a person holding securities in the Company;

Local Authority has the meaning ascribed to it in the Local Government Act 1974;

Major Holder means a Holder holding a majority of the Equity Securities having the right to vote;

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;

person includes any society, firm, company, individual, body corporate, or any other legal entity;

Representative means a person authorised to act as the representative of a Shareholder at a meeting of Shareholders;

security means an Equity Security and any other securities having a right to any assets of the Company;

share means a share in the Company;

Shareholder means a person holding shares in the Company;

Special Resolution means a resolution approved by a majority of 75 percent or, if a higher majority is required by this Constitution, that higher majority, of the votes of those Shareholders entitled to vote and voting on the question;

Treasury Stock means the shares in the Company acquired by the Company and held in accordance with the provisions of the Act;

Working Day [Section 2(1) of Act] means a day of the week other than:

2.1.1 Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and

2.1.2 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; and

2.1.3 if the 1st day of January in any year falls on a Friday, the following Monday; and

2.1.4 if the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

2.2 **Definitions in the Act:** An expression not defined in this Constitution but defined in the Act shall have the same meaning in this Constitution as in the Act.

2.3 **Construction:** In this Constitution:

2.3.1 References to sections are to sections of the Act and references to clauses are to clauses of this Constitution;

2.3.2 Unless the context requires otherwise:

(a) Words importing the singular include the plural and vice versa, and a gender includes all other genders; and

(b) Words importing persons include firms, corporations, unincorporated associations and authorities and firm includes partnership;

2.3.3 Powers conferred on the Company, the Directors, a Director or a Shareholder may be exercised at any time and from time to time;

2.3.4 References to any legislation or provision of any legislation are deemed to be references to that legislation or provision as amended, substituted or re-enacted and unless the context requires otherwise include any statutory instruments issued under that legislation or provision;

2.3.5 Clause headings and other headings are for ease of reference only and shall be deemed not to form part of this Constitution nor to affect the construction of this Constitution.

3. **Securities**

3.1 **Types of securities available for issue:** Subject to the provisions of Clause 4 the Board may issue:

3.1.1 Ordinary shares;

3.1.2 Preference shares;

3.1.3 Convertible securities;

3.1.4 Options;

3.1.5 Such other types and classes of securities that the Board considers appropriate.

3.2 **Participation as to votes and other rights:** Any securities issued by the Board:

3.2.1 May confer on the Holder of that security special or limited rights to votes, distributions (of capital or income) transferability or otherwise;

3.2.2 If they are options shall not confer on the Holders a right to vote except at a meeting of option holders.

3.3 **Board may issue redeemable shares:** The Board may issue shares that are redeemable by the Company:

3.3.1 At the option of the Company; or

3.3.2 At the option of the Holder of the shares; or

3.3.3 On a date specified or determined by the Board;

for a consideration that is:

3.3.4 Specified or otherwise determined by the Board; or

3.3.5 To be calculated by reference to a formula; or

3.3.6 Required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

3.4 **Convertible securities:** The Board may issue convertible securities upon such terms and conditions as it thinks fit including the right for the Holders of convertible securities to participate, in the same manner and to the same extent as the Holders of the Class into which the convertible securities are to be converted, in any issue of securities offered to the Holders of such Class.

3.5 **Options:** The Board may issue options on such terms and conditions as shall be determined by the Board. No options may be issued which confer the right on Holders to vote other than at meetings of option Holders.

3.6 **Consolidation or subdivision of shares:**

3.6.1 The Board may consolidate shares so that each Shareholder holds, as near as is mathematically possible, a proportionately smaller number of shares.

- 3.6.2 The Board may subdivide shares so that each Shareholder holds, as near as is mathematically possible, a proportionately greater number of shares.
- 3.7 **Bonus shares:** The Board may issue any Equity Securities as fully paid securities to Shareholders of such classes of Equity Securities in such proportions as the Board may determine.
- 3.8 **Allocation of Class rights:** If the Equity Securities on issue are divided into different classes then the Board may implement any proposal and issue any further Equity Securities that:
- 3.8.1 Rank in any respect in priority to any existing Equity Securities then on issue;
- 3.8.2 Modify, abrogate or alter the rights attaching to any existing Equity Securities on issue with the prior sanction of a Special Resolution passed by the vote in person or by proxy of the Holders of the Equity Securities affected by the proposal.
- 3.9 **Shares ranking ahead can be issued:** Notwithstanding Section 117 of the Act the issue of further Equity Securities ranking equally with, in priority to or ranking behind existing Equity Securities, whether as to voting, and distributions or otherwise is expressly permitted and shall not affect the rights which may attach to Equity Securities on issue from time to time.

4. **Capital and Issue of Equity Securities**

- 4.1 **Special Resolution for issue of Equity Securities:** The Board may only issue Equity Securities after obtaining the prior consent of Shareholders by a Special Resolution. Any such resolution shall set out the terms, conditions and price for the issue of such Equity Securities.
- 4.2 **Issue with unanimous shareholder approval:** Notwithstanding the provisions of clause 4.1 the Holders of all Equity Securities having the right to vote may by unanimous consent agree to the issue of Equity Securities by the Board.
- 4.3 **Participation in issues of Equity Securities:** After compliance with the procedures set out in clause 4.1 the Board may issue Equity Securities provided that:
- 4.3.1 Those Equity Securities are offered to Holders of existing Equity Securities of the Company entitled to participate in such issue on a basis which, if the offer were accepted by all such Holders, would maintain the existing proportionate rights of each existing Holder (relative to other Holders of Equity Securities) to votes and distribution rights; or
- 4.3.2 Those Equity Securities are issued to Holders of existing Equity Securities of the Company as fully paid securities on a basis which maintains the existing proportionate rights of each existing Holder (relative to other Holders of Equity Securities) to votes and to distribution rights; or
- 4.3.3 Notwithstanding sub-clause 4.3.1 and 4.3.2 the Shareholders may by Special Resolution authorise the Board to issue Equity Securities to such persons and on such terms as specified in that resolution.
- 4.4 **Written offers of Equity Securities to be made:** Where any offer of Equity Securities is made to the existing Holders of Equity Securities under the provisions of clause 4.3 offers shall be made by notice to each Holder of Equity Securities specifying the numbers of Equity Securities and if there are different classes of Equity Securities being offered the Class of Equity Securities which that Holder of Equity Securities is entitled to take up and limiting a time period (being not less than 20 Working Days from the date of the offer or such shorter period as may be agreed to by the Major Holder) within which the offer, if not accepted, or in respect of the number of Equity Securities not accepted, will be deemed to be declined. After the expiration of such time and such further period if any specified, if applications shall not

have been received from the person having the right to subscribe for the Equity Securities so offered, or on receipt of an intimation from any Holder of Equity Securities to whom such notice is given that such Holder of Equity Securities declines to accept the Equity Securities offered, the Board may dispose of the same, by reoffering those Equity Securities to the Holders of the same Class of securities, who have accepted the offer, such offer to be made in proportion to the securities of that Class held by them. The period for which that offer shall remain open shall be determined by the Board. No offer of Equity Securities shall be made other than to any existing Holder of Equity Securities unless the Board is authorised by an Ordinary Resolution to make an offer to persons who are not existing Holders.

4.5 **Board may issue Equity Securities to satisfy obligations:** The Board shall be entitled to issue Equity Securities without complying with the provisions of clauses 4.1 to 4.3 if:

4.5.1 The terms of issue of any Equity Securities expressly reserved the right to make the issue of Equity Securities and the issue is being made in accordance with the terms of that reservation; or

4.5.2 The terms and conditions of a proposal to issue Equity Securities has been approved by a Special Resolution; or

4.5.3 The issue is made to an existing Shareholder as a bonus issue of fully paid Equity Securities on the basis that such issue maintains the proportionate rights of those Shareholders entitled to participate in bonus issues of Equity Securities; or

4.5.4 The issue is made to any Holder of securities to satisfy any rights of conversion attached to those securities; or

4.5.5 The issue is made in terms of a plan to issue Equity Securities in lieu of dividend and that plan has been approved by a Special Resolution of the holders of each Class of Equity Securities.

4.6 **Alteration of Shareholders' rights:** If the share capital is divided into different Classes of Equity Securities and any proposal is made under which:

4.6.1 All or any of the rights and privileges attached to existing Equity Securities may be modified, abrogated or altered; or

4.6.2 The interest of the Holders of existing Equity Securities may be adversely affected by a modification, abrogation or alteration to any other Class of Equity Securities; or

4.6.3 The capital thereof may, subject to the Act, be repaid otherwise than on liquidation or in accordance with the terms of the issue thereof,

then such proposal may only be implemented with the sanction of a Special Resolution passed by the vote in person or by proxy of the Holders of Equity Securities of the Interest Groups affected by such proposal.

4.7 **Deemed modifications of existing rights:** The following propositions shall be deemed to be modifications of the rights of existing Equity Securities to which the provisions of clause 4.6 shall apply:

4.7.1 To create Equity Securities ranking for repayment of capital and/or payment of dividend in priority to existing Equity Securities of the Company; or

4.7.2 To modify the conditions of issue of any options to subscribe for Equity Securities; or

4.7.3 To create any additional Equity Securities ranking equally for repayment of capital and/or payment of dividend with existing Equity Securities (unless the right to create and issue such additional Equity Securities was reserved as part of the terms of issue of those existing Equity Securities); or

- 4.7.4 To create any further Equity Securities without expressly stating their priority as to repayment of capital and/or payment of dividend in relation to existing Equity Securities.

5. Company may acquire its own Shares

- 5.1 **Authorisation:** In accordance with the Act and subject to clause 5.2 the Company is permitted to:
- 5.1.1 Purchase or otherwise acquire its own shares;
 - 5.1.2 Purchase or make an offer to purchase shares from one or more Shareholders;
 - 5.1.3 Hold as Treasury Stock and re-offer shares so acquired by the Company.
- 5.2 **Offers and Treasury Stock:** In exercising the above power the Board shall comply with any restrictions and provisions set out in the Act and may:
- 5.2.1 Make an offer to all Shareholders in proportion to the shares held by them; or
 - 5.2.2 Make an offer to one or more Shareholders to acquire all or part of a Shareholder's or Shareholders' shares; and
 - 5.2.3 Hold for re-offer as Treasury Stock in accordance with the Act any shares purchased or otherwise acquired subject to the restrictions contained in the Act.
- 5.3 **Share cancelled on repurchase:** Any shares repurchased by the Company, and not set aside as Treasury Stock in accordance with, and as limited by, the Act shall be deemed to be cancelled on acquisition.
- 5.4 **Pre-emptive rights on offers of Treasury Stock:** The Board in reoffering any shares under sub-clause 5.2.3 above shall, subject to the Class provisions hereinafter set out, offer those shares first to all of the Shareholders pro-rata according to their existing shareholding in the Company provided that if any Shareholder does not wish to purchase those shares the Board may re-offer those shares to such person or persons as the Board selects in the same manner as if the offer was an offer of new shares as set out in clause 4.4. If there are different Classes of shares any offer shall be made pro-rata within that Class so that members of that Class have the first opportunity to purchase those shares. Thereafter the shares shall be offered to the Holders of any other Classes of shares.

6. Redeemable Securities and Redemption of Securities

- 6.1 **Board may issue redeemable shares:** The Board may issue shares that are redeemable by the Company as set out in clause 3.3. All Redeemable Shares shall be issued in accordance with the provisions of clauses 3.3, 4, 6.2 and 6.3.
- 6.2 **Board may redeem shares:** Subject to the Act the Company may redeem any shares which, by their terms of issue, are redeemable and such redemption may be exercised in respect of one or more Shareholders or in respect of part of the shares held by any Shareholder.
- 6.3 **Approval by Special Resolution:** The Company may redeem shares, where the precise terms and conditions of the specific proposal to redeem those shares has been approved by Special Resolution of each class of Equity Security whose rights of entitlement are affected by that redemption.

7. Dividends

- 7.1 **Power to pay a dividend:** Subject to the Board being satisfied that the Company will meet the Solvency Test after the Dividend being authorised by the Board is made the Board may pay a Dividend to any Shareholder or other persons entitled thereto. Dividends shall be paid in accordance with the terms of issue of the securities then on issue.
- 7.2 **Persons to whom dividend payable:** A Dividend shall be paid to the person or persons who are the registered Holder or Holders of the shares in respect of which the Dividend is authorised at the time of the authorisation of the Dividend (or, if the terms on which the Dividend was authorised so provide, at the time when the Dividend is authorised to be paid).
- 7.3 **Dividend to joint Holders:** If several persons are registered as joint Holders of any shares, and such persons are entitled to receive Dividends in respect of the shares, any one of them may give effectual receipts for any Dividend in respect of the share.
- 7.4 **Manner of payment:** A Dividend payable in cash may be paid in any manner (whether by direct credit or otherwise) directed by the person entitled to it. Failing any direction, payment may be made by cheque sent by post:
- 7.4.1 To the registered address of the Shareholder or person entitled thereto; or
- 7.4.2 In the case joint Holders to any one of the joint Holders at his or her registered address; or
- 7.4.3 To such persons and to such address as the Shareholder or person entitled or such joint Holder as the case may be, may direct,
- and the Company shall not be responsible for any loss arising from such mode of transmission.
- 7.5 **No interest:** No Dividend shall bear interest against the Company.
- 7.6 **Deductions from Dividend:** The Directors may deduct from any Dividend to any Shareholder entitled to receive Dividends all such sums of money as may be due from him or her to the Company on account of any or all of the following:
- 7.6.1 Calls or instalments or any debt or liability; and
- 7.6.2 Debts, liabilities or obligations in respect of which the Company has a lien over specific shares in respect of which the Dividend is paid; and
- 7.6.3 Such amounts as the Company may be called upon to pay under any legislative enactment in respect of the shares of a deceased or other Shareholder.
- 7.7 **Right not transferred:** A transfer of any share shall not pass the right to any Dividend authorised for payment thereon where the date for payment of that Dividend attached to those shares has passed before the date of registration of the transfer.
- 7.8 **Dividend by way of distribution of assets:** Without limiting Section 52, the Directors may distribute in kind among the Shareholders by way of Dividend any of the assets of the Company, and in particular any shares or securities of other companies to which the Company is entitled.
- 7.9 **Unclaimed Dividends:** All Dividends unclaimed for one year after having been authorised may be intermingled with the other money held by the Company and may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed. All Dividends unclaimed for five years after having been authorised may be forfeited by the Directors for the benefit of the Company. The Directors may at any time after such forfeiture

annul the same and pay the Dividend so forfeited to any person producing evidence that such person is entitled to the Dividend and shall do so unless in the opinion of the Board the payment of that dividend cannot be made under the Act or there are no available funds for that purpose.

- 7.10 **Dividend includes distributions:** For the purpose of this clause 7 the term Dividend includes any distribution by the Company.

8. Call on Shares

- 8.1 **Power to call:** Subject to clause 8.2, the Board or any person authorised by the Board may make such calls as they think fit upon the Shareholders in respect of moneys unpaid on the shares held by them respectively and not paid in accordance with the conditions of the issue of the shares. Each Shareholder shall 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. A call may be made payable by instalments and may be revoked or postponed as the Board may determine.
- 8.2 **Prior Holders not liable for calls:** Where a share renders its Holder liable for calls, or otherwise imposes a liability on its Holder, that liability attaches to the Holder of the share for the time being, and not to a prior Holder of the share, whether or not the liability became enforceable before the share was registered in the name of the current Holder.
- 8.3 **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.
- 8.4 **Joint Holders:** Joint Holders of a share shall be jointly and severally liable to pay all calls in respect of that share.
- 8.5 **Interest:** If a sum called in respect of a share is not paid before or on the day appointed for payment the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the Board may determine. The Board may, however, waive payment of that interest wholly or in part.
- 8.6 **When payable:** Any sum which by the terms of issue of a share becomes payable on issue or at any fixed date 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 sum becomes payable. In the case of non-payment all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.
- 8.7 **Proof of liability:** The amount of any unpaid call or instalment may be recovered as a debt due from the Shareholder to the Company by proceedings commenced at any time after the call became payable. In any such proceedings it shall be sufficient to prove that:
- 8.7.1 The name of the Shareholder sued is entered in the Register as the Holder or one of the Holders of the shares in respect of which such debt accrued;
- 8.7.2 The resolution making the call is duly recorded in the minute book of the Company; and
- 8.7.3 Notice of such call was duly given to the Shareholder,
- and it shall not be necessary to prove any other matter and the proof of the matters referred to in this clause 8.7 shall be conclusive evidence of the debt.

9. Forfeiture and Lien

- 9.1 **Failure to pay:** If a Shareholder fails to pay any call or instalment of a call on the day appointed for payment, the Board may serve a notice on the Shareholder requiring payment of the unpaid call or instalment 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.
- 9.2 **Notice:** The notice shall name a further day (not earlier than the expiration of 10 Working Days from the date of service of the notice) on or before which the payment required by the notice is to be made. The notice shall state that in the event of non-payment by the time appointed the shares in respect of which the call was made will be liable to be forfeited. The notice shall also state the place at which payment is to be made.
- 9.3 **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, 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 distributions authorised in respect of the forfeited shares and not actually paid or made before the forfeiture.
- 9.4 **Entry of forfeiture:** When any share is so forfeited:
- 9.4.1 Notice of the resolution shall be given to the Shareholder in whose name it stood immediately prior to the forfeiture;
- 9.4.2 An entry of the forfeiture, with the date thereof, shall forthwith be made in the register;
- 9.4.3 The share certificate of any such shares shall be immediately cancelled by the Company and the Shareholder in whose name such cancelled share stood immediately prior to such cancellation shall return such share certificate to the Company within 10 Working Days of receiving notice of such resolution; and
- 9.4.4 As soon as it is sold or disposed of, an entry of the date and manner of the sale or disposition, shall be made in the register.
- 9.5 **Forfeited share:** A forfeited share 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. The Board may, at any time before a sale or disposition, annul the forfeiture on such terms as the Board thinks fit.
- 9.6 **Ceasing to be a Shareholder:** A person whose shares have been forfeited shall cease to be a Shareholder in respect of the forfeited shares, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable by the Shareholder to the Company in respect of the shares. The Shareholder's liability shall cease if and when the Company receives payment in full of all such money in respect of the shares.
- 9.7 **Fixed time payments:** The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.
- 9.8 **Restriction on forfeiture:** Shares shall not be liable to forfeiture for the failure of persons entitled thereto (by transmission or otherwise) to submit evidence of title within a specified time.
- 9.9 **Lien on shares:** The Company shall have a first lien upon all of the shares registered in the name of each Shareholder (whether solely or jointly) and upon the proceeds of sale of such shares for:
- 9.9.1 Unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the shares; and

- 9.9.2 Such amounts as the Company may be called upon to pay under any legislation in respect of the shares.
- 9.10 **Distributions:** The lien shall extend to all distributions from time to time authorised in respect of the shares.
- 9.11 **Sale of shares:** The Board, on behalf of the Company, may sell any shares on which the Company has a lien if:
- 9.11.1 A sum in respect of which the lien exists is presently payable; and
- 9.11.2 10 Working Days' notice in writing demanding payment of such sum has been given to the Shareholder or to the person entitled by reason of the Shareholder's death or bankruptcy.
- 9.12 **Execution:** To give effect to any sale or disposition pursuant to clause 9.5 or 9.11 a Director, on behalf of the Company, may execute a transfer of the shares to the purchaser.
- 9.13 **Discharge from calls:** Upon registration of the transfer to the purchaser of shares sold or disposed of by the Company pursuant to clause 9.5 or 9.11 (in this clause 9 the **Transferee**) the Transferee shall hold such shares free from all calls due prior to such purchase.
- 9.14 **Purchase money:** The Transferee shall not be bound to see to the application of the purchase money nor shall the Transferee's title to the shares be affected by any irregularity or invalidity in the sale procedure.
- 9.15 **Former Shareholder's remedy:** The remedy of the former Shareholder and of any person claiming under or through the former Shareholder shall be against the Company exclusively and in damages only.
- 9.16 **Proceeds:** The net proceeds of the sale of any forfeited share or of shares sold for the purpose of enforcing the lien shall be applied:
- 9.16.1 First, in or towards satisfaction of any unpaid calls or instalments and interest thereon;
- 9.16.2 Secondly, in or towards satisfaction of expenses and any other moneys (if any) in respect of which the lien existed; and
- 9.16.3 Thirdly, in payment to the previous Holder of the share or to the executors, administrators or assigns of the previous owner.
- 9.17 **Evidence:** A certificate by a Director and countersigned by a person authorised by the Board that the power of sale 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, shall be conclusive evidence of the facts stated in that certificate.
- 9.18 **Further powers:** For giving effect to any such sale after forfeiture or for enforcing the lien the Board may authorise some person to transfer the shares sold to the purchaser. If the certificate for any forfeited shares is not delivered up to the Company the Board may issue a new certificate distinguishing it as they think fit from the certificate not delivered up.

10. **Transfer of Securities**

- 10.1 **Method of transfer:** A Shareholder may transfer any Equity Securities:
- 10.1.1 In accordance with or in a manner approved under the Securities Transfer Act 1991;
or

- 10.1.2 In any manner approved by the Board; and
- 10.1.3 To such transferees as may be approved by the Major Holder.
- 10.2 **Form of transfer:**
- 10.2.1 Subject to the provisions in clause 10 of this Constitution a Shareholder may transfer any Equity Securities in a form of transfer in common form or any other form approved by the Board.
- 10.2.2 Every instrument of transfer of Equity Securities not falling within clause 10.2.1 shall:
- (a) Be signed or executed by or on behalf of the transferor; and
 - (b) If registration as Holder of the Equity Security imposes a liability to the Company on the transferee, be signed or executed by or on behalf of the transferee.
- 10.3 **Transmission on death of Shareholder:** If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the shares of the deceased Shareholder but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any share or constitute a release of any lien which the Company may have in respect of any share.
- 10.4 **Rights of Personal Representatives:** A Personal Representative of a Shareholder:
- 10.4.1 Is entitled to exercise all rights (including without limitation the rights to receive distributions, to receive notices of and attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the shares held by that Shareholder; and
- 10.4.2 Is entitled to be registered as Holder of those shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative.
- 10.5 **Joint Personal Representatives:** Where a share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint Holders of the share.
- 10.6 **Definition of Personal Representative:** For the purposes of this clause, "Personal Representative" means:
- 10.6.1 In relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- 10.6.2 In relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- 10.6.3 In relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed under that Act, and a donee of an enduring power of attorney complying with that Act, or any person in the nature of such persons.
- 10.7 **Restrictions on transfer of securities:** The provision of clause 10 shall apply to all transfers of securities with any necessary modifications for securities which are not shares.

- 10.8 **Board may refuse to register transfers:** The Board may refuse to register the transfer of any Equity Security or delay that registration or decline to recognise any instrument of transfer in any of the following circumstances:
- 10.8.1 Where the Company has a lien on the Equity Securities;
 - 10.8.2 Where it is not proved to the satisfaction of the Board that the proposed transferee is a responsible person;
 - 10.8.3 Where the Board is of the opinion that the proposed transferee is not a person desirable to admit to membership;
 - 10.8.4 Where the proposed transferee is indebted or under any liability to the Company in respect of those Equity Securities or otherwise;
 - 10.8.5 Unless the instrument of transfer is accompanied by the Certificate of the Equity Securities to which it relates (if any has been issued) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;
 - 10.8.6 Unless the instrument of transfer is in respect of only one class of Equity Security;
 - 10.8.7 Unless the transfer is in accordance with the rights of pre-emption hereinafter contained in Clause 10 of this Constitution.
- 10.9 **Major Holder has first right to Equity Securities being sold:** If any Equity Securities in the Company are to be transferred by any Holder other than a Major Holder then such Equity Securities shall only be transferable to the Major Holder or to a transferee approved by the Major Holder and at a price approved by the Major Holder. If the transfer is to the Major Holder and there is a dispute on the transfer price then the dispute in respect of such price shall be determined as follows:
- 10.9.1 The Major Holder and the transferee shall determine if they can agree on one valuer to value the shares.
 - 10.9.2 If agreement on one valuer cannot be reached within 10 Working Days then the Major Holder and the transferee shall each appoint a valuer which valuers shall appoint an umpire before entering into that valuation.
 - 10.9.3 The valuers and umpire shall be working as experts and shall not be subject to the Arbitration Act 1996.
 - 10.9.4 The value as determined by the one valuer (if agreed) or umpire shall be binding on the Major Holder and the transferee.
- 10.10 **Right to repurchase:** In the event that any shares are offered for sale and the Major Holder does not wish to purchase those shares then the Company shall make an offer pursuant to section 59 of the Act to repurchase those shares provided that the approval of the Major Holder shall first be obtained prior to such offer to repurchase being made.
- 10.11 **Declaration of beneficial ownership:** At any time the Directors may by notice in writing require any transferee of Equity Securities or Holder of Equity Securities to lodge with the Company within 10 Working Days of the date of such notice a Statutory Declaration and/or such other written advice or documents as the Directors may require disclosing full details of the beneficial ownership of any Equity Securities:
- 10.11.1 Comprised in any transfer; and/or
 - 10.11.2 Held by that Holder of Equity Securities.

10.12 Sanction if beneficial rights to Equity Securities not held by registered Holder: If:

10.12.1 A Holder of Equity Securities or transferee fails to provide a statutory declaration or other written advice or documents within the period of 10 Working Days as required by clause 10.11; or

10.12.2 The declaration under clause 10.11 shows that:

- (a) The Equity Securities referred to aforesaid are not held, or will not be held, as required by this Constitution; or
- (b) The beneficial ownership of any Equity Securities or the right to exercise any votes attached to those Equity Securities or any control over those Equity Securities is held other than by the registered Holder,

then the Holder of such Equity Securities shall be deemed to have given an irrevocable sale notice appointing each Director of the Company as the irrevocable attorney of that Holder for the purpose of selling all of the Equity Securities held by that Holder. The said Equity Securities shall be sold at the earliest date at a value determined by an independent valuer appointed by the Board for that purpose and the Company shall account to the Holder for the net proceeds of sale in respect thereof.

11. Statement of Corporate Intent (Section 128)

11.1 **Board must provide Statement of Corporate Intent (SCI):** The provisions of section 128(1) and 128(2) are hereby qualified by the exception hereinafter set out which requires compliance by the Board in providing a statement of corporate intent ("SCI") which SCI is subject to reasonable comment and recommendations by the Shareholders but in respect of which the final management decisions are the prerogative of the Board:

11.1.1 The Board shall deliver to the Shareholders a draft SCI not later than one month after the commencement of each financial year of the Company.

11.1.2 The SCI shall specify for the group comprising the Company and its subsidiaries (if any) ("the Group") and in respect of the financial year in which it is delivered and for each of the immediately following two financial years, the following information:

- (a) The objectives of the Group including details of how the objectives are to be achieved.
- (b) The nature and scope of the activities to be undertaken by the Group.
- (c) The ratio of consolidated shareholders' funds to total assets and definitions of those terms.
- (d) The accounting policies.
- (e) The performance targets and other measures by which the performance of the Group may be judged in relation to its objectives.
- (f) An estimate of the amount or proportion of accumulated profits and capital reserves that it is intended be distributed to the Shareholders.
- (g) The kind of information to be provided to the Shareholders during the course of those financial years, including the information to be included in each half yearly report.

- (h) The procedure to be followed before any member of the Group subscribes for, purchases, or otherwise acquires securities in any company or other organisation.
- (i) Any activities for which the Board seek compensation from the Shareholders (whether or not the Shareholders have agreed to provide such compensation).
- (j) The Board's estimate of the commercial value of the Shareholders investment in the Group and the manner in which, and the times at which, the value is to be reassessed.
- (k) Such other matters as are agreed by the Shareholders and the Board.

11.1.3 The Board shall consider any comments on the draft SCI that are made to it within two months of the commencement of the financial year by any of the Shareholders.

11.1.4 The Board shall comply with all provisions of the Local Government Act 1974 and the Local Government Act 2002 in providing or amending any SCI.

11.1.5 The Board shall diligently comply with the provisions of the SCI.

11.2 **Required modification of SCI:** The Shareholders may from time to time, by Ordinary Resolution, require the Board to modify the SCI by including in or omitting from any of the provisions of sub-clauses 11.1.2(a) to 11.1.2(k) such further matters as the Shareholders deem appropriate.

11.3 **Right to limit Board's powers:** The Shareholders may require that there be included in the SCI provisions which may limit the right of the Board to acquire or dispose of material assets of the Company and shares of any subsidiary and to enter into material contracts.

11.4 **Delivery of SCI:** The Board shall deliver the completed SCI to the Shareholders within three months of the commencement of each financial year. Every SCI and modification thereto that is adopted by the Company shall be made available to the public as required by law.

11.5 **Modification of SCI:** A SCI may be modified at any time by written notice from the Board, so long as the Board has first:

11.5.1 Given written notice to the Shareholders of the proposed modification;

11.5.2 Considered any comments made on the proposed modification by the Shareholders within one month after the date on which the notice was given or such shorter period as the Shareholders may agree; and

11.5.3 Complied with any reasonable recommendations made by the Shareholders as set out in sub-clause 11.2.

11.6 **SCI subsidiaries to be submitted to Major Holder:** The Company, forthwith after the receipt of the SCI for each subsidiary of the Company, shall submit that SCI to the Major Holder for comment and shall take account in requesting any modification to each such SCI the views of the Major Holder.

11.7 **Appointment of directors of subsidiary companies and related companies:** In the event that the Company shall hold any shares in another company which is a subsidiary company or a related company (as defined in the Act) then prior to exercising the right to appoint any directors to any of those subsidiary or related companies the Directors shall:-

11.7.1 Consult with the Major Holder as to the director or directors to be appointed to that subsidiary or related company; and

11.7.2 Only appoint as a director of that subsidiary or related company a person or persons approved by the Major Holder.

12. Meetings of Shareholders

12.1 **Effective resolution of Shareholders:** If a matter is required by the Act or by this Constitution to be decided at a meeting of Shareholders then a resolution signed as set out below shall be as effective as if passed at a meeting of Shareholders called for that purpose:

12.1.1 If it is a resolution required under Section 196(2) of the Act it shall be signed by all Shareholders;

12.1.2 If it is a resolution in respect of other matters it shall be signed by not less than 75% of the Shareholders entitled to vote on the resolutions who together hold 75% of the votes entitled to be cast on that resolution.

Within five Working Days of a resolution being passed in accordance with (b) above the Company must send a copy of the resolution to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed.

12.2 **Unanimous resolution:** If all Shareholders agree then all of the matters set out in Section 107 of the Act can be carried out by a resolution signed by all Shareholders having the right to vote on the matter.

12.3 **Annual meetings:** The Company shall not be required to hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution as set out in clause 12.1.

12.4 **Annual meeting of Shareholders:** Subject to the provisions of the Act and unless a resolution is passed under section 122 of the Act the Board must call an annual meeting of Shareholders to be held:

12.4.1 Once in each calendar year; and

12.4.2 Not later than 6 months after the balance date of the Company; and

12.4.3 Not later than 15 months after the previous annual meeting.

12.5 **Special meetings of Shareholders:** A special meeting of Shareholders entitled to vote on an issue:

12.5.1 May be called at any time by:

12.5.2 The Board; or

12.5.3 A person who is authorised by the Constitution to call the meeting;

12.5.4 Must be called by the Board on the written request of Shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

13. Procedure at Meetings of Shareholders

13.1 **First Schedule to Act modified:** The procedures set out in the First Schedule to the Act are modified to the extent permitted by law and shall be as hereinafter set out.

13.2 **Vote for each share:** Subject to 13.14 and to any rights or restrictions for the time being attached to any Class of shares every Shareholder shall be entitled:

13.2.1 On a vote by voices or on a show of hands, to one vote; and

13.2.2 On a poll:

- (a) In respect of each fully paid share held by that Shareholder, to one vote;
- (b) In respect of each share held by that Shareholder which is not fully paid, to a proportion of the vote or votes which would be exercisable if that share were fully paid equivalent to the proportion of the total issue price of that share which has been paid (disregarding any payment in advance).

13.3 Notice of meetings generally:

13.3.1 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 auditor of the Company not less than 10 Working Days before the meeting.

13.3.2 The notice must state:

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

13.3.3 Without limiting 13.3(b)(i) notices in respect of proposed changes to this Constitution shall be sufficiently explicit to enable the effect of such changes to be understood without reference to the existing or proposed Constitution.

13.3.4 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.

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

13.3.6 If a meeting of Shareholders is adjourned for less than 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. 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.

13.3.7 If the provisions of Section 110 or Section 118 of the Act (which give the right of a Shareholder to require the repurchase of that Shareholder's shares if the resolution is passed) apply in respect of a resolution which is to be proposed at a meeting of Shareholders then the notice of meeting to consider that resolution shall contain a prominent statement of the rights under those Sections.

13.3.8 A resolution signed by all Shareholders entitled to vote on the matter to be determined shall be valid notwithstanding the failure to comply with any of the aforesaid provisions.

13.4 Methods of giving notice:

13.4.1 A notice, statement, report, accounts or other document required to be sent to a Shareholder shall be sent in the manner provided in Sections 388, 390 and 391 of the Act.

13.4.2 Equity Security Holders of all Classes 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.

13.4.3 Subject to Section 212, a Shareholder may, by written notice to the Company, waive the right to receive all or any documents from the Company and may revoke the waiver in the same manner. While the waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

13.5 **Methods of holding meetings:** A meeting of Shareholders may be held either:

13.5.1 By a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

13.5.2 By means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

13.6 **Chairperson:**

13.6.1 The chairperson of the Board shall chair a meeting of Shareholders. If there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling or considers it inappropriate to act (either in relation to the entire meeting or in relation to any particular business to be considered at the meeting), the Directors present shall elect one of their number to be chairperson of the meeting (or for that part of the meeting which relates to the particular business).

13.6.2 If at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes after the time appointed for holding the meeting, the Shareholders present shall choose one of their number to be chairperson of the meeting.

13.7 **Quorum:**

13.7.1 A quorum for a meeting of Shareholders is present if a Major Holder able to exercise votes on a majority of the shares on issue is present.

13.7.2 Subject to clause 13.7.3 no business may be transacted at a meeting of Shareholders if a quorum is not present.

13.7.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:

(a) In the case of a meeting called under Section 121(b) the meeting is dissolved;

(b) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Board may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.

13.8 **Proxies:**

13.8.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.

13.8.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

13.8.3 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 12 months.

13.8.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company not less than 48 hours before the start of the meeting.

13.8.5 A proxy form shall be sent with each notice of meeting of Shareholders and:

(a) Shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote; and

(b) Shall not be sent with any name or office (eg chairperson of directors) filled in as proxy holder, however this clause 13.8.5(b) shall not prevent the Company indicating in a footnote to the proxy that certain persons or office holders are willing to act as proxy if the Shareholder wishes to appoint them.

So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates voting instructions for proxy holders and which enable the Holder to indicate if the vote is against or for each resolution.

13.8.6 Subject as set out below a vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal, revocation of the proxy or of the authority under which the proxy was executed or the transfer of the share in respect of which the proxy is given if no written notification of such death, mental disorder, revocation or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used. If written notification of such death, mental disorder, revocation or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used then the proxy shall be invalid and no votes by the proxy shall be counted or be effective.

13.8.7 An instrument appointing a proxy shall be in the following form or a form as near to it as circumstances permit:

Vbase Limited

Instrument Appointing A Proxy

I/We _____

of _____

being a Shareholder of Vbase Limited appoint

_____ [print name of proxy]

of _____

or failing him/her _____ of _____

as my/our proxy to vote for me/us on my/our behalf at the annual/special meeting of Shareholders to be held at _____ on _____ commencing _____ at _____ am/pm and at any adjournment of such meeting.

I/We direct my/our proxy to vote in the following manner

		Vote with a tick	
Resolutions		For	Against
1.	_____	___	___
2.	_____	___	___
3.	_____	___	___
4.	_____	___	___

Dated: _____

Signed: _____

[Usual signature/s]

Where the resolution does not reasonably permit the security Holder to instruct the proxy as to the way in which the vote on a resolution is to be cast, the following form may be used:

Vbase Limited
Instrument Appointing A Proxy

I/We _____

of _____

being a Shareholder of Vbase Limited appoint

_____ [print name of proxy]

of _____

or failing him/her _____ of _____

as my/our proxy to vote for me/us on my/our behalf at the annual/special meeting of Shareholders to be held at _____ on _____ commencing _____ at _____ am/pm [or all meetings of the Company held within 12 months of the date of this Instrument] and at any adjournment of any such meeting.

Dated: _____

Signed: _____

[Usual signature/s]

13.9 **Postal votes:** The Board may determine to carry out a vote by postal vote in accordance with clause 7 of the First Schedule to the Act or by such other method as the Board may determine.

13.10 **Minutes:**

13.10.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

13.10.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

13.11 Shareholder proposals:

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

13.11.2 (If the notice is received by the Board not less than 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

13.11.3 If the notice is received by the Board not less than 5 Working Days and not more than 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

13.11.4 If the notice is received by the Board less than 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

13.11.5 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.

13.11.6 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.

13.11.7 Where the costs of giving notice of the Shareholder 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.

13.12 Adjournments of meetings: The chairperson may adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

13.13 Meeting procedure: Except as provided in this Constitution, the chairperson of the meeting shall regulate the procedure at any meeting of Shareholders.

13.14 Voting rights: Generally:

13.14.1 In the case of a meeting of Shareholders held under clause 13.5.1, 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.

13.14.2 In the case of a meeting of Shareholders held under clause 13.5.2, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

13.14.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 13.14.4.

13.14.4 At a meeting of Shareholders a poll may be demanded by:

- (a) Not less than 2 Shareholders having the right to vote at the meeting; or
- (b) 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
- (c) 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 shares that confer that right; or
- (d) The chairperson.

13.14.5 A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

13.14.6 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.

13.14.7 Except as provided in clause 13.14.8, if a poll is demanded it shall be taken in such manner as the chairperson directs and the results of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

13.14.8 A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such times as the chairperson directs and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of a poll.

13.14.9 The chairperson of a Shareholders' meeting is entitled to a casting vote.

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

13.15 **Corporations may act by representatives:** A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

13.16 **Votes of joint Holders:** Where two or more persons are registered as the Holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint Holders.

14. Directors

14.1 **Number of Directors:** The number of Directors shall be as determined by the Major Holder from time to time.

14.2 **Appointment of Directors:**

14.2.1 The Major Holder shall be entitled to appoint and remove any person as a Director of the Company.

14.2.2 The appointment and removal of a Director pursuant to sub-clause 14.2.1 shall be effected by notice served by the Major Holder at the registered office of the Company.

14.2.3 The Board shall send notice to all shareholders advising of any vacancy on the Board and the name of the Director or former Director to which such vacancy relates, within 5 Working Days of the vacancy occurring or of the Board becoming aware of the impending vacancy, whichever shall occur first.

14.3 **Appointment of alternate:** The Major Holder may also appoint an alternate for any Director so appointed. That person so appointed shall, during the absence or inability to act of a Director, act in his or her place. The appointee while holding office as an alternate Director shall be entitled to all notices of meetings of the Directors and any paper minutes or documents sent to Directors and to attend and vote at any Meetings of Directors but shall not vote at any meeting except in the place of the Director for whom he is an alternate and he shall not require any qualification and shall not be entitled to be remunerated otherwise than out of the remuneration of the Director appointing him. Any appointment so made may be revoked at any time by the appointer. Any appointment or revocation under this clause shall be effected by notice in writing to be delivered to the secretary of the Company.

14.4 **Removal and cessation of office of a Director:** A Director shall cease being a Director of the Company:

14.4.1 Upon that Director being removed by notice under clause 14.2.2.

14.4.2 Upon a Director giving notice of resignation to the Company such notice to be effective from the date specified therein if not earlier than the date the notice is given or if no such date is specified then forthwith on that notice being given.

14.5 **Rotation:** Subject to clause 14.6, all Directors will be liable to retire in accordance with this clause but following retirement will be eligible for re-appointment by the Major Holder. Each Director shall cease to hold office at the annual meeting of the Company immediately after the expiry of three years from the date of appointment. In any year at least two Directors will retire by rotation and if the number of Directors due to retire is less than two then the Directors who have been longest in office must retire so that at least two Directors retire by rotation in any one year (unless otherwise agreed amongst the Directors).

14.6 **Exceptions to rotation:** The Directors who are in the full time employment of the Company or any subsidiary of the Company are exempt from the obligation to retire under clause 14.5 but are subject to removal as a Director by the Major Holder at any time.

14.7 **Disqualification:** Without limiting Section 157, the office of Director shall be vacated if the Director:

14.7.1 Absents himself or herself from the meetings of Directors for a period of three months or does not attend at least one-half of the meetings of Directors held in each year, without special leave of absence from the other Directors; or

14.7.2 Being an employee or member of a Local Authority ceases to be employed by, or a member of, that Local Authority.

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

15. Directors' Meetings

- 15.1 **Third Schedule excluded:** The provisions of the Third Schedule to the Act shall not apply, and the provisions of this clause 15 shall apply to proceedings of the Board or a committee of the Board.
- 15.2 **Procedure:** The Board may meet together for the despatch of business, adjourn, or otherwise regulate their meetings and proceedings as, subject to this Constitution, they may think fit.
- 15.3 **Notice of Meeting:**
- 15.3.1 Any Director may convene a meeting.
- 15.3.2 Notice of every meeting stating the date time and place of the meeting must be given to all Directors in New Zealand. Notice need not be in writing.
- 15.3.3 Any irregularity in the calling of a meeting may be waived if all Directors entitled to be given notice of the meeting waive the irregularity at the time or at a later date.
- 15.4 **Quorum:** A majority of Directors shall be a quorum. A meeting of the Directors at which a quorum is present shall be competent to exercise any of the powers under this Constitution or the Act for the time being vested in or exercisable by the Directors generally. At a meeting of a committee of the Board appointed under clause 15.10 a majority of that committee shall be a quorum provided that majority is at least two Directors.
- 15.5 **Vacancies and reduction of numbers:** Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the number fixed by this Constitution as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purpose.
- 15.6 **Chairperson:** The Major Holder shall have the right to appoint the chairperson of the Board and a deputy chairperson. If the Major Holder does not exercise that right then the Board may elect their own chairperson and deputy chairperson of their meetings and determine the period for which he or she is to hold office. If no such chairperson is elected or if at any meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting the Directors present may choose one of their number to be chairperson of the meeting.
- 15.7 **Other meeting methods:**
- 15.7.1 For the purposes of this Constitution a meeting of Directors or a committee of Directors may be held by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting and all the provisions in this Constitution as to meetings of the Directors shall apply to such meetings so long as the following conditions are met:
- (a) All the Directors for the time being entitled to receive notice of the meeting shall be entitled to notice of such a meeting and to be linked by such means for the purposes of such meeting. Notice of any such meeting may be given by such means;
- (b) Each of the Directors taking part in such a meeting must be able to hear each of the other Directors taking part at the commencement of the meeting; and

- (c) At the commencement of the meeting each Director must acknowledge his or her presence for the purpose of the meeting to all the other Directors taking part.

15.7.2 A Director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson of the meeting and a Director is deemed to have been present and to have formed part of the quorum at all times during such a meeting unless he or she has previously obtained the express consent of the chairperson to leave the meeting.

15.8 Voting:

15.8.1 Questions arising at any meeting of the Directors shall be determined by a majority of votes of the Directors.

15.8.2 Each Director shall have one vote. In the case of an equality of votes the chairperson shall have a second or casting vote.

15.8.3 Any Director who abstains from voting shall not be deemed to have voted in favour or against a resolution.

15.9 **Interested Directors:** A Director shall not be counted in the quorum for the purposes of consideration of any matter in which that Director is interested, nor shall that Director vote in respect of that matter (unless that matter is one in respect of which, pursuant to an express provision in the Act, Directors are required to sign a certificate).

15.10 Proceedings of committees:

15.10.1 The Board may at any time form a committee for the purposes of determining any matter or making recommendations to the Board.

15.10.2 Any committee of Directors shall in the exercise of the powers delegated to it conform to any regulation that may be imposed upon it by the Directors.

15.10.3 A committee may elect a chairperson of its meetings. If no such chairperson is elected or if at any meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting the Directors present may choose one of their numbers to be chairperson of the meeting.

15.10.4 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Directors present. In the case of an equality of votes the chairperson shall have a second or casting vote. However, the chairperson shall not have a casting vote unless the committee consists of at least 3 Directors and there are at least 3 Directors personally present.

15.11 **Defects:** All acts done by any meeting of the Directors, a committee of Directors or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director, committee or person or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

15.12 Written resolutions:

15.12.1 A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted.

15.12.2 Any resolution may be signed by facsimile, electronic means or otherwise.

15.12.3 Any such resolution may consist of several documents in like form each signed by one or more Directors.

15.13 Minutes:

15.13.1 The Directors shall cause minutes to be kept for the purpose of recording:

- (a) The names of the Directors present at each meeting of the Directors and of any committee of the Directors; and
- (b) All resolutions and proceedings at all meetings of the Directors and of committees of Directors (including all appointments of officers made by Directors).

15.13.2 Any such minutes of any such meeting if purporting to be signed by the chairperson of such meeting or by the chairperson of the next succeeding meeting shall be prima facie evidence of the matters stated in such minutes.

15.14 Board may regulate own affairs: Except as otherwise provided the Board may regulate its own meetings.

16. Directors' Remuneration

16.1 Fixing remuneration:

16.1.1 No remuneration shall be paid to a Director in his or her capacity as a Director unless that remuneration has been authorised by an Ordinary Resolution or by the Major Holder. Each such resolution shall express Directors' remuneration as either:

- (a) A monetary sum per annum payable to all Directors taken together; or
- (b) A monetary sum per annum payable to any person who from time to time holds office as a Director.

16.1.2 Nothing in this clause shall affect the remuneration of executive Directors in their capacity as executives.

16.2 Expenses: Without limiting Section 161 and clause 16.1:

16.2.1 The Directors shall be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendance at meetings of Directors and when, in any other manner, engaged on the business or affairs of the Company; and

16.2.2 The Directors may award special remuneration out of the funds of the Company by a fixed sum or salary to any Director or committee of Directors rendering any special services in going abroad or otherwise for any of the purposes of or in the interests of the Company or for undertaking any work additional to that required of Directors of a company similar to the Company and without any such award each Director shall be entitled to reasonable expenses as set out in clause 16.2.1 for or in connection with any journeys taken by him or her on the Company's business.

16.3 Other positions: A Director may be or become a director or employee of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him or her as a director or employee of or from his or her interest in any such other company unless the Company otherwise directs.

17. Indemnity and Insurance

- 17.1 **Indemnity:** The Company will indemnify the Directors and such employees of the Company and any related company as the Board may authorise, to the fullest extent as permitted by the Act.
- 17.2 **Insurance:** The Company may effect insurance for Directors and such employees of the Company and any related company as the Board may authorise, to the fullest extent as permitted by the Act.

18. Miscellaneous

- 18.1 **Attorneys:** Without limiting Sections 128 or 130 the Directors may by power of attorney appoint any person or body of persons, whether nominated directly or indirectly for such purposes and with such powers (not exceeding those vested in or exercised by the Directors) and for such period and subject to such conditions as they think fit. Such powers of attorney may contain such provisions for the protection and convenience of persons dealing with such attorney as the Directors think fit and may also authorise any such attorney to delegate all or any of the powers vested in him or her.
- 18.2 **Sub-delegation:** Without limiting Sections 128 or 130 any delegates or attorneys of the Directors may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in them.
- 18.3 **Change of name:** A Director shall not make, and the Directors shall not approve, an application to change the name of the Company without the prior approval of Shareholders by Ordinary Resolution.
- 18.4 **Common seal:** The Company may have a common seal. The Directors shall provide for the safe custody of the seal which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in that behalf. Every instrument to which the seal shall be affixed shall be signed by a Director or the chief executive and shall be countersigned by some other person appointed by the Directors for the purpose. The Directors may by resolution determine either generally or in any particular case that the signature of any Director or other employee may be affixed by some mechanical means to be specified in such resolution.
- 18.5 **Contracts - manner of execution:** A contract or other enforceable obligation may be entered into by the Company as follows:
- 18.5.1 An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
- (a) Two or more Directors; or
 - (b) One or more attorneys appointed by the Company in accordance with clause 18.1; or
 - (c) One or more persons or class of persons expressly authorised by the Board for that purpose in respect of all transactions or particular transactions provided that where one person is signing that person's signature is witnessed;
- 18.5.2 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

- 18.5.3 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.
- 18.6 **Reserve Matters:** The Board has responsibility for the management of the Company and its business but the following matters shall require the approval of the Shareholder:
- 18.6.1 Application of insurance proceeds in the rebuild or repair of the Company's assets;
- 18.6.2 Entry into any arrangement, contract or transaction outside the ordinary course of the Company's business or otherwise than on arm's length terms;
- 18.6.3 Entry into any arrangement, contract or transaction for the purchase of materials, works and/or services for an amount exceeding \$500,000 where such materials, works and/or services are not budgeted for in the Company's annual budget; and
- 18.6.4 The giving of notice of termination of any arrangements, contracts or transactions which are material to the Company's business, or materially varying any such arrangements, contracts or transactions.

19. **Surplus Assets**

- 19.1 **Distribution of property:** The liquidator of the Company may, with the sanction of a Special Resolution, divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind) and may for that purpose set such value as the liquidator deems fair upon any property to be divided and may determine how the division shall be carried out as between the Shareholders or different Classes. 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 Shareholders as the liquidator, with the like sanction, thinks fit. No Shareholder shall be compelled to accept any shares or other securities on which there is any liability.
- 19.2 **Division of assets:** Subject to the terms upon which any Equity Securities may have been issued, if on the liquidation of the Company there shall be surplus assets remaining the excess shall be distributed pro rata between each Class of share according to their respective rights and in proportion to the number of shares held.