

Constitution

of

Tower Limited

**THIS CONSTITUTION INCORPORATES THE CHANGES APPROVED BY
SHAREHOLDERS AT THE ANNUAL MEETING ON 5 FEBRUARY 2014**

Constitution

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1.0 **Interpretation**

Definitions

1.1 In this Constitution, unless the context otherwise requires:

"**Act**" means the Companies Act 1993 as amended from time to time.

"**Appraisal Report**" means an appraisal report complying with Rule 1.7.

"**Associated Person**" has the meaning given in Rule 1.8.

"**ASX**" means ASX Limited ABN 98 008 624 691, or the market that it operates, as the context requires.

"**ASX Rules**" means the Listing Rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

"**Board**" in relation to the Company means those directors who number not less than the quorum specified in Regulation 11.4 of this Constitution acting together as a board of directors.

"**Business Day**" means a day on which NZX is open for trading.

"**Class**" means a class of Securities having identical rights, privileges, limitations and conditions, and includes or excludes Securities which NZX in its discretion deems to be of or not to be of that class.

"**the Company**" means Tower Limited.

"**Constitution**" means this Constitution as the same may be amended from time to time.

"**Convert**" in respect of a Security, means to convert that Security into, or exchange that Security for, a Security of a different sort, whether at the option of the holder, or of the Company, or otherwise, or to subscribe for or obtain a Security of a different sort pursuant to a right conferred by the first mentioned Security. "**Conversion**" and "**Convertible**" have corresponding meanings.

"**Debt Security**" means a Security having any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property) and includes a debenture, debenture stock, bond, note or certificate of deposit and any other Security which NZX in its sole discretion declares by a Ruling to be a Debt Security, but does not include any Security that NZX in its sole discretion declares by a Ruling not to be a Debt Security.

"**Equity Security**" means a Security:

- (a) which confers a present or future right to participate in the assets of the Company after payment of claims payable under section 313(1) of the Act; or
- (b) which confers a present or future right to participate in the income or profits of the Company; or
- (c) which carries, or will in future carry, a Vote, or a right to participate in the ultimate control of the Company; or

- (d) which may be Converted into a Security of the nature referred to in (a) to (c) without;
 - (i) the agreement of the holder; or
 - (ii) approval of the precise terms and conditions of issue of the Security of the nature referred to in (a) to (c) on Conversion in accordance with Rule 7.3.1,

and includes any other Security which NZX in its sole discretion declares, or which NZX has previously declared, by a Ruling to be an Equity Security, but does not include any Security that NZX in its sole discretion declares, or which NZX has previously declared, by a Ruling not to be an Equity Security.

"Issuer" means any person which is or has been Listed, and where applicable has the extended meaning given in Rule 1.6.6.

"Listed" means in respect of any person, the entering into between that person and NZX of a listing agreement, whereby that person agrees to comply with the Main Board Rules and NZX agrees to administer that person's listing on NZX.

"Main Board Rules" means the Main Board/Debt Market Listing Rules (previously known as the NZSX/NZDX Listing Rules) as amended from time to time by NZX.

"Managing Director" means any director carrying the title 'Managing Director' from time to time.

"Minimum Holding" means a parcel or number of Securities as set out in appendix 2 of the Main Board Rules.

"NZX" means NZX Limited and includes its predecessors, successors and assigns and, as the context permits, includes any duly authorised delegate of NZX including the NZX Markets Disciplinary Tribunal.

"Option" means an option to acquire a Security.

"Ordinary Resolution" means (subject to Rule 1.6.8) a resolution passed by a simple majority of Votes of holders of Securities of the Company which carry Votes, entitled to vote and voting.

"Quotation" means in respect of a Class of Securities of the Company, the granting of a right for Trading Participants (as defined in the Main Board Rules) to quote bids and offers for that Class of Security on NZX. **"Quote"** and **"Quoted"** have corresponding meanings.

"Related Company" has the meaning given in section 2(3) of the Act (read together with section 2(4) of the Act).

"Relevant Interest" has the meaning given in the Securities Markets Act 1988.

"Renounceable", in relation to a Right or offer of Securities means a Right or offer that is transferable by any holder for the time being to another person (whether or not an existing holder of any Securities to which the Right or offer relates).

"Right" means any right to acquire any Security or benefit of any kind, whether conditional or not, and whether Renounceable or not.

"Rule or Rules" means the Main Board Listing Rules applying to the Main Board market (or any successor to the Main Board market) as amended from time to time.

"Ruling" means any decision or determination by NZX or ASX (as applicable)as to the meaning or interpretation or application of the Main Board Rules and includes any ruling, waiver, or revocation of a waiver given by NZX or ASX (as applicable).

"Security" means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person and includes:

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

"Special Resolution" means a resolution approved by a majority of seventy five percent (75%) of votes of those shareholders entitled to vote and voting on the question.

"Subsidiary" means:

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

"Treasury Stock" means shares in the Company which have been acquired by the Company and are held by the Company as treasury stock pursuant to provisions of the Act, and includes shares held by a Subsidiary of the Company other than in accordance with section 82(6) of the Act.

"Vote" means a right to vote at meetings of holders of Securities of the Company other than:

- (a) a right to vote solely upon matters of a nature immaterial or inconsequential to the control of the Company, or to the control of any material part of the business or operations of the Company; or
- (b) a right to vote only when a payment in respect of the Security in question is in arrears or some other default exists, or on a proposal to change the rights attaching to that Security, or in other circumstances of a special or remote nature; or
- (c) a right to vote attaching to Securities which are not Equity Securities, exercisable only at meetings of holders of those Securities.

1.2 In this Constitution:

- (a) A reference to a share means a share in the Company.
- (b) Any headings appear as a matter of convenience and shall not affect the construction of the Constitution.
- (c) References to any statute, statutory regulations or other statutory instrument shall be deemed to be references to the statute, statutory regulations or instrument as from time to time amended or re-enacted, or as the context permits, provisions substituted therefor and for the time being in force.
- (d) The singular includes the plural and vice versa and words importing any gender include the other genders.

- (e) The words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction.
- (f) Unless stated otherwise, references to monetary amounts are to New Zealand currency and references to time are to New Zealand time.
- (g) Except as specified in Regulation 1.1, words or expressions which are defined in the Act shall have the meaning given by the Act unless the context otherwise requires.
- (h) References to any ASX Rule or Main Board Rule shall be deemed to be references to the ASX Rule or Main Board Rule as from time to time amended or substituted.
- (i) Except as specified in Regulation 1.1, words or expressions which are defined in the Main Board Rules (whether or not expressed with an initial capital letter) shall have the meaning given by the Main Board Rules unless the context otherwise requires.

Compliance with the Main Board Rules

- 1.3 Subject to any enactment or rule of law, and to any Ruling, the Company shall at all times comply with the Main Board Rules, provided that this Regulation 1.3 shall apply only as long as the Company is Listed. If any provision of this Constitution is or becomes inconsistent with the Main Board Rules, the Main Board Rules shall prevail.

Effect of NZX Rulings

- 1.4 If NZX has granted a Ruling in relation to the Company authorising an act or omission which in the absence of the Ruling would be in contravention of the Main Board Rules or this Constitution, unless a contrary intention appears in this Constitution, the act or omission shall be deemed to be authorised by the Main Board Rules and this Constitution.

Enforceability of Transactions breaching the Main Board Rules

- 1.5 (a) A failure to comply with the Main Board Rules shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Main Board Rules shall not be entitled to enforce that transaction or contract.
- (b) Regulation 1.5(a) shall not affect the rights of any holder of Securities of the Company against the Company or the directors of the Company arising from failure to comply with the Main Board Rules.

- 1.6 This Constitution has no effect to the extent that it contravenes, or is inconsistent with, the Act.

Incorporation of Main Board Rules

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

Compliance with ASX Rules

- 1.8 For so long as the Company is admitted to the official list of ASX:
- (a) Notwithstanding anything contained in this Constitution, if the ASX Rules prohibit an act being done, the act shall not be done.

- (b) Nothing contained in this Constitution prevents an act being done that the ASX Rules require to be done.
- (c) If the ASX Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the ASX Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
- (e) If the ASX Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
- (f) If any provision of this Constitution is or becomes inconsistent with the ASX Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

2.0 **Management of the Company**

Role of Board

- 2.1 The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board, subject to Regulation 2.7 and Rules 9.1 and 9.2.
- 2.2 Notwithstanding Regulation 2.1 of this Constitution:
 - (a) The chairperson of a meeting of shareholders must allow a reasonable opportunity for shareholders at the meeting to question, discuss or comment on the management of the Company; and
 - (b) A meeting of shareholders may pass a resolution relating to the management of the Company.

Shareholders' Resolutions Regarding Management

- 2.3 A resolution relating to the management of the Company passed by a meeting of shareholders shall not be binding on the Board.

Delegation by the Board

- 2.4 The Board may delegate to a committee of directors, a director or employee of the Company, or any other person, any one or more of its powers, other than those specified in the Second Schedule to the Act.
- 2.5 The Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:
 - (a) Believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the Company by the Act and this Constitution; and
 - (b) Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

Managing Director

Power to appoint Managing Director and Term

- 2.6
- (a) The Board may from time to time appoint any person, including one of the directors, to the office of Managing Director of the Company for a period not exceeding five years and on such conditions as it thinks fit.
 - (b) Notwithstanding Regulation 2.6(a) the Managing Director may be reappointed as Managing Director upon expiry of the term of appointment.
 - (c) Nothing in Regulation 2.6(a) shall affect the terms of engagement of the Managing Director as an employee.
 - (d) If the Board so determines, the Managing Director may be referred to as the Chief Executive of the Company.

Managing Director Liable to Dismissal

- (e) Every Managing Director shall be liable to be dismissed or removed by the Board but the Board may enter into any agreement on behalf of the Company with any person who is, or is about to become, the Managing Director, with regard to the length and terms of his or her employment, but so that the remedy of any such person for any breach of the agreement shall be in damages only, and he or she shall have no right to claim to continue in such office contrary to the will of the Board.

Remuneration of Managing Director

- (f) The remuneration of the Managing Director shall be fixed by the Board and may be in addition to any remuneration of that Managing Director as an ordinary director.

Managing Director Not Liable to Retire by Rotation

- (g) The Managing Director shall not, while he or she continues to hold that office, be liable to retire by rotation, but he or she shall be taken into account in determining the number of directors to retire. The Managing Director shall be subject to the same provisions as regards resignation, removal, and disqualification as the other directors of the Company, and if he or she ceases to hold the office of director from any cause, he or she shall thereupon cease to be the Managing Director. If a Managing Director shall cease to be employed by the Company then, unless the Board otherwise determines, he or she shall immediately cease to be a director.

Powers Capable of Being Conferred Upon Managing Director

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

Major Transactions

- 2.7 The Company must not enter into a major transaction (as that term is defined in section 129 of the Act) unless the transaction is:
- (a) approved by a Special Resolution; or
 - (b) contingent upon approval by a Special Resolution.

3.0 **Shares**

Rights and Powers Attaching to Shares

3.1 Subject to Rule 8.3, a share in the Company confers on the holder:

- (a) The right to one vote at a meeting of the Company on any resolution, including any resolution to:
 - (i) Appoint or remove a director or auditor;
 - (ii) Alter the Constitution;
 - (iii) Approve a major transaction;
 - (iv) Approve an amalgamation of the Company under section 221 of the Act;
 - (v) Put the Company into liquidation.
- (b) The right to an equal share in dividends authorised by the Board;
- (c) The right to an equal share in the distribution of the surplus assets of the Company.

Subject to section 53 of the Act, the rights specified in this Regulation 3.1 may be negated, altered, or added to by the terms on which the share is issued.

Terms of Issue

- 3.2
- (a) Without limiting the classes of shares that may be issued, shares in the Company may be issued on terms that they:
 - (i) are convertible; or
 - (ii) are redeemable; or
 - (iii) confer preferential rights to distributions of capital which may be made subject to the power of the directors to make distributions; or
 - (iv) confer preferential rights to distributions of income which may be made subject to the power of the directors to make distributions; or
 - (v) confer special, limited or conditional voting rights; or
 - (vi) do not confer voting rights; or
 - (vii) possess any combination of two or more of the foregoing characteristics.
 - (b) The issue of shares ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions or both is expressly permitted. Accordingly any such issue of shares shall not be an action modifying, abrogating or altering the rights, privileges, limitations and conditions attached to existing shares as contemplated by section 117 of the Act.
 - (c) The taking of action by the Company affecting the rights attached to shares in the Company is not invalid by reason only that the action was not approved in accordance with Rule 8.3.1.

Board to Issue Shares

- 3.3 The Board may issue shares at any time, to any person, in any number, in such classes and on such terms as it thinks fit, subject to the Rules and the ASX Rules, and the provisions of the Act and this Constitution.

Acquisition of Company's own Shares

- 3.4 The Company is permitted to hold its own shares.

Consideration for Shares

- 3.5 Before the Board issues shares the Board must:
- (a) Decide the consideration for which the shares will be issued and the terms on which they will be issued; and
 - (b) If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
 - (c) Resolve that, in its opinion, the consideration for and terms of the issue are fair and reasonable to the Company and to all existing shareholders; and
 - (d) If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

Directors' Certificate

- 3.6 The directors who vote in favour of a resolution required by Regulation 3.5 must sign a certificate:
- (a) stating the consideration for, and the terms of, the issue; and
 - (b) describing the consideration in sufficient detail to identify it; and
 - (c) where a present cash value has been determined in accordance with Regulation 3.5(b), stating that value and the basis for assessing it; and
 - (d) stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the Company and to all existing shareholders; and
 - (e) if the shares are to be issued other than for cash, stating that, in their opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

Exceptions to "Fair Value" Issues

- 3.7 Regulations 3.5 and 3.6 do not apply to:
- (a) The issue of shares that are fully paid up from the reserves of the Company to all shareholders of the same class in proportion to the number of shares held by each shareholder;
 - (b) The consolidation and division of the shares or any class of shares in the Company in proportion to those shares or the shares in that class;
 - (c) The subdivision of the shares or any class of shares in the Company in proportion to those shares or the shares in that class.

- (d) Any shares issued on Conversion of any Convertible Securities or the exercise of any Option.

Issue of Options and Convertible Securities

3.8 Before the Board issues any Securities that are Convertible into shares in the Company or any Options to acquire shares in the Company, the Board must:

- (a) Decide the consideration for which the Convertible securities or Options, and, in either case, the shares will be issued and the terms on which they will be issued; and
- (b) If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
- (c) Resolve that, in its opinion, the consideration for and terms of the issue of the Convertible securities or Options, and, in either case, the shares are fair and reasonable to the Company and to all existing shareholders; and
- (d) If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares; and
- (e) If the Securities are Convertible into Equity Securities, subject to this Constitution and the Rules and the ASX Rules, offer the same to the holders of the shares already on issue in the same manner as provided for in Rule 7.3.4 for issues of new shares.

3.9 The directors who vote in favour of a resolution required by Regulation 3.8 must sign a certificate:

- (a) Stating the consideration for, and the terms of, the issue of the Convertible securities or options, and, in either case, the shares; and
- (b) Describing the consideration in sufficient detail to identify it; and
- (c) Where a present cash value has been determined in accordance with Regulation 3.8(b), stating that value and the basis for assessing it; and
- (d) Stating that, in their opinion, the consideration for and terms of issue of the Convertible securities or Options, and, in either case, the shares are fair and reasonable to the Company and to all existing shareholders; and
- (e) If the shares are to be issued other than for cash, stating that, in their opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

3.10 Except as provided in Regulation 3.8(e), the issue of any shares pursuant to the exercise of the rights to the same granted by the terms of issue of any Convertible securities or Options shall not be subject to pre-emptive rights, and the provisions of section 45 of the Act shall not apply with respect to such shares.

Pre-emptive Rights - New Issues

3.11 Subject to Rule 7.3.4, any shares issued or proposed to be issued by the Company that rank or would rank as to voting or distribution rights, or both, equally with or prior to shares already issued by the Company need not be offered for acquisition to the holders of the shares already issued in a manner and on terms that would, if accepted, maintain the existing voting or distribution rights, or both, of those holders, and section 45 of the Act shall not apply.

Call on Shares

Shareholders may pay calls

- 3.12 (a) Every shareholder on receiving at least 10 Business Days notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid, and that is unpaid in respect of any Equity Security that shareholder holds. Subject to the Main Board Rules, the Board may revoke or postpone a call, or require a call to be paid by instalments.

Call made when Board resolution passed

- (b) A call is regarded as having been made at the time when the Board resolution authorising the call was passed.

Joint holders are jointly and severally liable

- (c) The joint holders of an Equity Security are jointly and severally liable to pay all calls for that Equity Security.

Unpaid calls will accrue interest

- (d) If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the date of actual payment. Subject to this Constitution, the Board may waive some or all of the payment of that interest.

Amounts payable under the terms of issue treated as calls

- (e) Any amount that becomes payable on issue or at any specified date under this Constitution or under the terms of any Equity Security or under a contract for the issue of any Equity Security, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this Constitution will apply as if the amount had become payable by virtue of a call made in accordance with this Constitution.

Board may differentiate between shareholders as to calls

- (f) On the issue of any Equity Security, the Board may differentiate between shareholders as to the amount of calls to be paid and the times of payment.

Board may accept payment in advance for calls

- (g) Where a shareholder is willing to advance some or all of the money unpaid and uncalled on any Equity Security of that shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and that shareholder for the period between the date that the amount is accepted and the date that the amount becomes payable pursuant to a call or the date specified for its payment.
- (i) The Board may at any time repay to any shareholder the whole or any portion of any money so advanced upon giving that holder at least 14 days notice in writing and as from the date of such repayment interest (if any) shall cease to accrue on the money so repaid.
- (ii) A shareholder is not entitled as of right to any payment of interest on any amount so paid in advance and the Board may decline to pay any interest. Any amount so paid in advance is not to be treated as paid for the purpose of

ascertaining the amount of any dividend or other distribution payable upon the Equity Security concerned.

Liens on Shares

- 3.13 The Company shall have a lien in respect of each share for all money:
- (a) presently payable on that share;
 - (b) payable under any legislation in respect of the specific share.
- 3.14 The lien of the Company, if any, on a share shall extend to all dividends, distributions or bonuses from time to time declared in respect of such share. Any dividends or distributions may be applied in reduction or satisfaction of any amount presently payable to the Company in respect of which the lien exists.
- 3.15 (a) The Company may sell, in a manner decided by the Board, any share on which the Company has a lien if:
- (i) an amount is presently payable in respect of the share; and
 - (ii) the Company demands the amount in writing, and payment is not made within 14 days after the demand.
- (b) To give effect to a sale the Board may authorise a person to execute a transfer of the shares sold to the purchaser. The purchaser shall be registered as the holder of the shares comprised in the transfer. The purchaser shall not be bound to see to the application of the purchase money. The title of the purchaser to the shares shall not be affected by any irregularity or invalidity affecting the sale or the payment of the proceeds.
- 3.16 The Company shall apply the proceeds received from the sale first to the reasonable expenses of the sale and, secondly to the amount which is presently payable to the Company when the proceeds are received. Any remaining balance shall then be paid to the shareholder, the shares of whom were sold pursuant to the power of sale contained in Regulation 3.15.

Forfeiture of Shares

- 3.17 (a) If a shareholder fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on such shareholder requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
- (b) The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.
- (c) If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
- (d) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

- (e) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding remain liable to pay to the Company all money which at the date of forfeiture, was payable by him or her to the Company in respect of the shares, but such persons liability shall cease if and when the Company receives payment in full of all such money in respect of the shares.
- (f) A statutory declaration in writing that the declarant is a director of the Company, and that a share in the Company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.
- (g) The Company may receive the consideration, if any, given for a forfeited share on any sale or disposition thereof and may execute a transfer of the shares in favour of the person to whom the share is sold or disposed of and the person shall thereupon be registered as the holder of the share, and shall not be bound to see the application of the purchase money, if any, nor shall that persons title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

Power to sell where less than Minimum Holdings

Notice to Shareholder holding less than Minimum Holding

- 3.18 (a) Where the shares registered in the name of a shareholder are less than a Minimum Holding the Board may at any time give written notice of that fact and of the provisions of Regulation 3.18(b) to the shareholder;

Power of Sale

- (b) Where notice has been given under Regulation 3.18(a) the Company may, at any time after the expiration of three months from the date of the notice if the shares then registered in the name of the shareholder are less than a Minimum Holding sell the shares by means of a transaction on NZX or in some other manner approved by NZX, and account to the shareholder for the proceeds of sale after deduction of reasonable sale expenses;

Provisions Relating to Sale

- (c) To give effect to any sale under Regulation 3.18(b) the Board may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall not be bound to see to the application of the purchase money, nor shall his or her title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively;

Application of Proceeds of Sale

- (d) The proceeds of sale of any shares sold under this Regulation 3.18 shall be applied as follows:
- (i) First, in payment of any expenses incurred in regard to the sale;
 - (ii) Secondly, in satisfaction of any unpaid calls, instalments or premiums, interest thereon, expenses, and any other money in respect of which a lien existed;
 - (iii) The residue (if any) shall be paid to, or in accordance with a direction of, the person who was the holder of the shares immediately before the sale or the executors or administrators or assigns of that person.

Employee Share and Option Plans

- 3.19 (a) Subject to the ASX Rules, the Main Board Rules and this Constitution, the Board may establish and maintain employee share and option plans ('employee incentive schemes') for the purpose of rewarding or providing incentives for employees of the Company or any Subsidiary (including employees who are directors of the Company or any Subsidiary).
- (b) The directors may in their absolute discretion:
- (i) prescribe the terms and conditions of any employee incentive scheme including any rules in relation to it;
 - (ii) from time to time vary the terms and conditions of any employee incentive scheme;
 - (iii) determine which employees are entitled to participate in any employee incentive scheme;
 - (iv) terminate or suspend any employee incentive scheme.

4.0 **Transfer of Shares**

Transferability of Shares

4.1 Subject to the terms of this Constitution:

- (a) A share in the Company is transferable.
- (b) A share may be transferred by entry of the name of the transferee on the share register.

4.2 A shareholder may transfer all or any of his or her shares by:

- (a) using a wholly or partly electronic system for the transfer of securities which has been approved by any statute or regulations in New Zealand where the transfer takes place in New Zealand; or
- (b) using a wholly or partly electronic system for the transfer of securities which has been approved by any statute or regulations in Australia where the transfer takes place in Australia; or
- (c) a form of transfer complying with the Securities Transfer Act 1991 in respect of any shares disposed of in New Zealand by an "authorised transaction" or a "stock exchange transaction" within the meaning of those terms in the Securities Transfer Act 1991. Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or if the signature of the transferor has been witnessed by an individual who has added his or her occupation and address after his or her signature; or
- (d) a form of transfer complying with Australian securities transfer legislation in respect of any shares disposed of in Australia by an authorised securities exchange transaction.
- (e) To the extent that the transfer does not proceed under paragraphs (a) to (d) above, the form of the instrument of transfer shall be any usual or common form or any other form

which the Board may approve, signed by the shareholder or the personal representative of the shareholder.

- 4.3 (a) The form of transfer must be delivered to:
- (i) the Company; or
 - (ii) an agent of the Company designated by the Board who maintains the share register.
- (b) The share register may be divided into two or more registers kept in different places.

Registration of Transfers

- 4.4 On receipt of a form of transfer in accordance with Regulation 4.2, the Company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless:
- (a) the Board resolves within 30 Business Days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and
 - (b) notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 Business Days of the approval of the resolution by the Board; and
 - (c) the refusal or delay in the registration is permitted by Regulation 4.5.

Permitted Transfer Restrictions

- 4.5 The Board may refuse or delay the registration of a transfer of shares if:
- (a) The Company has a lien on the shares; or
 - (b) The registration of the transfer, together with registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding shares of less than the Minimum Holding; or
 - (c) Such action is expressly permitted by any legislation or the Main Board Rules and the ASX Rules.

- 4.6 Restricted securities under the ASX Rules may not be disposed of during the escrow period which applies to the restricted securities, except as permitted by the ASX Rules or ASX and TOWER will refuse to acknowledge a disposal (including registering a transfer) of restricted securities during the escrow period except as permitted by the ASX Rules.

Registration of Shareholding in Parcels

- 4.7 Separate parcels - The share registrar of the Company, on request by a shareholder or proposed transferee, may register a shareholding in separate parcels identified by a distinguishing word, number or other parcel differentiator. Where a shareholder's shareholding is so registered, the Company may communicate separately with the shareholder in respect of each parcel, pay dividends and otherwise act, so far as the directors consider convenient, as if the separate parcels belonged to different shareholders.

5.0 **Distributions (Repurchase, Financial Assistance, Dividends, Shareholder Discounts)**

Distributions

- 5.1 The Board, may, subject to section 53 of the Act and this Constitution, if it is satisfied on reasonable grounds that the Company will, immediately after the distribution, satisfy the solvency test, authorise a distribution by the Company at a time, and of an amount, and to any shareholders it thinks fit.
- 5.2 The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the Company will, immediately after the distribution, satisfy the solvency test and giving the grounds for that opinion.

Repurchase

- 5.3 The following provisions apply in the making of a distribution by way of a purchase or acquisition of shares in the Company:
- (a) The Company may purchase shares or otherwise acquire shares and may, subject to section 67A - 67C (inclusive) of the Act, hold shares issued by it.
- (b) Subject to section 67A - 67C (inclusive) of the Act (governing the holding and transfer of shares acquired by a Company in itself), shares acquired or purchased pursuant to Regulation 5.3(a) shall be deemed to be cancelled immediately on acquisition but may be reissued by the Board in accordance with section 67C of the Act.

Dividends

- 5.4 All distributions other than those to which Rule 7.6 apply are dividends to which the following provisions shall apply:
- (a) The Board must not authorise a dividend in respect of some but not all the shares in a class or that is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class, unless the amount of the dividend is in proportion to the amount paid, other than in advance of calls, to the Company in satisfaction of the liability of the shareholder under this Constitution or under the terms of issue of the share.
- (b) A shareholder's entitlement to receive a dividend may be waived by notice in writing to the Company signed by or on behalf of a shareholder.

Disentitlement to dividends and distributions

- 5.5 A shareholder holding restricted securities under the ASX Rules that is in breach of the ASX Rules or any restriction agreement in respect of the restricted securities is not entitled to receive dividends or distributions.

Shares in Lieu of Dividends

- 5.6 The Board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if:
- (a) the right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms; and
- (b) if all shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained; and
- (c) the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and

- (d) the shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agree to receive the shares; and
- (e) the provisions of Regulation 3.5 are complied with by the Board.

Shareholder Discounts

- 5.7 The Board may resolve that the Company offer shareholders discounts in respect of some or all of the goods sold or services provided by the Company.
- 5.8 The Board may approve a discount scheme under Regulation 5.7 only if it has previously resolved that the proposed discounts are:
 - (a) fair and reasonable to the Company and to all shareholders; and
 - (b) to be available to all shareholders or all shareholders of the same class on the same terms.
- 5.9 A discount scheme may not be approved or continued by the Board unless it is satisfied on reasonable grounds that the Company satisfies the solvency test.
- 5.10 A discount accepted by a shareholder under a scheme approved under Regulation 5.7 is not a distribution for the purposes of the Act or this Constitution provided, at the time the scheme was approved and the discount was offered, the Board had not ceased to be satisfied on reasonable grounds that the Company would satisfy the solvency test.

Unclaimed Dividends

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

6.0 **Meetings of Shareholders**

Annual Meetings

- 6.1 An annual meeting of shareholders shall be held:
 - (a) not later than 6 months after the balance date of the Company; and
 - (b) not later than 15 months after the previous annual meeting.

Special Meetings

- 6.2 (a) All meetings other than the annual meeting shall be called special meetings.

Convening Special Meetings

- 6.3 A special meeting of shareholders entitled to vote on an issue:
- (a) may be called at any time by the Board; and
 - (b) 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.

Chairperson

- 6.4
- (a) If the directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of shareholders, he or she must chair the meeting.
 - (b) If no chairperson of the Board has been elected or if, at any meeting of shareholders, the chairperson of the Board is not present within 15 minutes of the time appointed for the meeting, the shareholders present may choose any other director to be chairperson of the meeting.
 - (c) If no director is present within 15 minutes of the time appointed for the commencement of the meeting, or no director is willing to act as chairperson, the shareholders present may choose one of their number to be chairperson of the meeting.

Notice of Meetings

- 6.5
- (a) Written notice of the time and place or other method of a meeting of shareholders must be sent to every shareholder and Equity Security holder entitled to receive notice of the meeting and to every director and the auditor of the Company not less than 10 Business days before the meeting.
 - (b) The notice must state:
 - (i) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
 - (ii) The text of any resolution to be submitted to the meeting;
 - (iii) If a resolution is proposed which if passed will give shareholders who voted against the resolution the right to require the Company to purchase their shares by virtue of section 110 of the Act [Major transactions, amalgamations and removal of constitutional restrictions] or section 118 of the Act [modification of rights of Interest Groups], a prominent statement to that effect; and
 - (iv) be accompanied by an Appraisal Report if required by Rule 6.2.2 or Rule 9.2.5;
 - (c) 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.
 - (d) 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.
 - (e) The Company shall send a proxy form complying with Regulation 6.11 to every shareholder entitled to attend and vote at a meeting of the Company with the notice

convening the meeting. In every such notice, there shall appear with reasonable prominence a statement that a shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of him or her and that a proxy need not be a shareholder of the Company.

Entitlement to Notice of Meetings

- 6.6 (a) The shareholders and Equity Security holders who are entitled to receive notice of a meeting are:
- (i) If the Board fixes a date for the purpose, those shareholders and Equity Security holders whose names are registered in the share register on that date;
 - (ii) If the Board does not fix a date for the purpose, those shareholders and Equity Security holders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

Methods of Holding Meetings

6.7 A meeting of shareholders may be held by a number of shareholders, who constitute a quorum

- (a) being assembled together at the time and place appointed for the meeting; or
- (b) participating in the meeting by means of audio, audio and visual, or electronic communication, to the extent permitted by the Act, the Main Board Rules and ASX Rules; or
- (c) by a combination of both the methods described in Regulations 6.7(a) and (b) above.

The Company is not required to hold meetings of shareholders in the manner specified in clauses (b) or (c). Meetings will only be held in that manner if the notice of meeting so specifies or the Board otherwise decides that the Company should do so.

Quorum

- 6.8 (a) No business may be transacted at a meeting of shareholders if a quorum is not present.
- (b) A quorum for a meeting of shareholders is present if shareholders who have the right to vote at the meeting or their proxies, attorneys or representatives (in the case of a body corporate) are present whose number is not less than twenty five (25).
- (c) If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (i) In the case of a meeting called by the Board on the written request of shareholders pursuant to section 121(b) of the Act, the meeting is dissolved;
 - (ii) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as the directors may appoint, 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.
- (d) To avoid doubt, a shareholder participating in a meeting by means of audio, audio visual or electronic communication is present at the meeting and part of the quorum.

Voting

- 6.9 (a) In the case of a meeting of shareholders assembled together in accordance with Regulation 6.7(a), unless a poll is demanded, voting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- (i) Voting by voice; or
 - (ii) Voting by show of hands
- (b) In the case of a meeting of shareholders held under clause 6.7(b) or 6.7(c), unless a poll is demanded, voting at the meeting will be by any method permitted by the chairperson of the meeting.
- (c) To the extent permitted by the Act, the Main Board Rules and the ASX Rules, the Company may allow shareholders to vote by signifying their assent or dissent by electronic means (including for the avoidance of doubt, voting on a personal computer, with such vote being transmitted to the meeting), instead of the shareholder voting by another method permitted by the Act or this Constitution.
- (d) 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 sub-clause (e) of this Regulation.
- (e) At a meeting of shareholders a poll may be demanded by:
- (i) Not less than five shareholders having the right to vote at the meeting; or
 - (ii) A shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or
 - (iii) By a shareholder or shareholders holding shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all shares that confer that right.
- (f) A poll may be demanded either before or after the vote is taken on a resolution.
- (g) 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.
- (h) The chairperson of a shareholders' meeting is entitled to a casting vote.
- (i) For the purposes of this Regulation, 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.
- Different Polls to be Taken at Different Times**
- (j) A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs, and the meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

Proxy Allowed to Demand a Poll

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

Disentitlement to vote

- 6.10 Where a breach of the ASX Rules relating to restricted securities continues or while a breach subsists of a restriction agreement entered into by the Company under the ASX Rules in relation to shares which are restricted securities, the restricted securities do not confer on the holder any voting rights. However, those restricted securities shall not be treated or taken to be a separate class of share for any purpose.

Proxies

- 6.11 (a) A shareholder may exercise the right to vote either by being present in person or by proxy.
- (b) A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder. A proxy need not be a shareholder of the Company.
- (c) A proxy must be appointed by notice in writing signed by or, in the case of an electronic notice, sent by the shareholder or by appointing the proxy online as per the Company's instructions in a notice of meeting, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months. .

Form of Proxy

- (d) A notice appointing a proxy shall be in the following form or in such other form as the Board may approve from time to time and notify to shareholders.

I _____ of _____ being a shareholder of Tower
Limited hereby appoint _____ or failing him or her as my proxy to vote
for me and on my behalf at the meeting of shareholders to be held on the
day of _____ 19____, and at any adjournment thereof.

SIGNED this _____ day of _____ 19____.

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

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

Validity on Death or Insanity

- (f) A vote given in accordance with the terms of a notice of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy is given or the transfer of the Share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation, or transfer has been received by the Company at the registered office of the Company before the commencement of the meeting or adjourned meeting at which the proxy is used or has been handed to the Chairperson of the meeting before the vote is given.

Notice of Proxy to be produced 48 Hours Before Meeting

- (g) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced as per the Company's instructions in a notice of meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already produced to the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

Postal Votes

- 6.12 A shareholder may not exercise the right to vote at a meeting by casting a postal vote.

Minutes

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

Shareholder Proposals

- 6.14 (a) A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.
- (b) If the notice is received by the Board not less than 20 Business 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.
- (c) If the notice is received by the Board not less than 5 Business Days and not more than 20 Business 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.
- (d) If the notice is received by the Board less than 5 Business 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, 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.
- (e) If the directors intend that shareholders may vote on the proposal by proxy 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.
- (f) The Board is not required to include in or with the notice given by the Board:
 - (i) Any part of a statement prepared by a shareholder which the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or

- (ii) Any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).
- (g) 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.

Corporations May Act by Representatives

- 6.15 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.

Votes of Joint Holders and Personal Representatives

- 6.16 (a) Where 2 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.
- (b) Where two or more persons are entitled under section 93 of the Act to be registered as holder of shares of a deceased or bankrupt Shareholder, the right of one of them to vote shall be determined by the order in which their names appear in the register of shareholders.

Voting Rights if Calls Unpaid

- 6.17 Where there are shares of the same Class, some of which are fully paid and some of which are not fully paid, each share which is not fully paid shall carry only a proportion of the vote which would be exercisable if the share were fully paid, equivalent to the portion of the total issue price of that share which has been paid (disregarding any payment in advance).

Appointment of Attorney

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

Powers to Adjourn Meetings

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

Powers to Dissolve Meetings

- 6.20 (a) If any meeting shall become so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may in his or her

sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the meeting.

- (b) If any meeting is dissolved by the chairperson pursuant to Regulation 6.20(a) the unfinished business of the meeting shall be dealt with as follows:
- (i) in respect of any resolution not voted upon by the meeting concerning a distribution, the Board in the exercise of the powers conferred on it by this Constitution may make such distribution;
 - (ii) in respect of any resolution not voted upon by the meeting concerning the remuneration of the Auditor, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the Auditor;
 - (iii) the chairperson may direct that any item of business which is uncompleted at the meeting and which in his or her opinion requires to be voted upon be put to the vote by a poll without further discussion in accordance with Regulation 6.9:and
 - (iv) in respect of any resolution not voted upon by the meeting concerning a matter which requires approval under the ASX Rules, such resolutions will be put to the vote by a poll without further discussion in accordance with Regulation 6.9.

Shareholder Participation by Electronic Means

- 6.21 (a) For the purposes of this Constitution, a shareholder, or the shareholder's proxy or representative, may, to the extent permitted by the Act, the Main Board Rules and the ASX Rules, participate in a meeting by means of audio, audio and visual, or electronic communication if:
- (i) the Board approves those means; and
 - (ii) the shareholder, proxy, or representative complies with any conditions imposed by the Board in relation to the use of those means (including for example, conditions relating to the identity of the shareholder, proxy or representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).
- 6.22 To avoid doubt, participation in a meeting includes participation in any manner specified in this Constitution.

7.0 Directors' Duties

- 7.1 A director of the Company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the Company.
- 7.2 A director must exercise a power for a proper purpose.
- 7.3 A director of the Company must not act, or agree to the Company acting, in a manner that contravenes the Act or this Constitution.
- 7.4 A director of the Company must not:
- (a) Agree to the business of the Company being carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors; or

- (b) Cause or allow the business of the Company to be carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors.

7.5 A director of the Company must not agree to the Company incurring an obligation unless the director believes at that time on reasonable grounds that the Company will be able to perform the obligation when it is required to do so.

7.6 A director of the Company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation:

- (a) The nature of the Company; and
- (b) The nature of the decision; and
- (c) The position of the director and the nature of the responsibilities undertaken by him or her.

Reliance on Information and Advice

7.7 Subject to Regulation 7.8, a director of the Company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (a) An employee of the Company or any Subsidiary whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
- (c) Any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.

7.8 Regulation 7.7 applies to a director only if the director:

- (a) Acts in good faith; and
- (b) Makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) Has no knowledge that such reliance is unwarranted.

8.0 Self Interest Transactions

8.1 (a) A director of the Company must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register and disclose to the Board:

- (i) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
- (ii) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

- (b) A general notice entered in the interests register or disclosed to the Board to effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of

the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

8.2 (a) A transaction entered into by the Company in which a director of the Company is interested may be avoided by the Company at any time before the expiration of three months after the transaction is disclosed to all the shareholders (whether by means of the Company's annual report or otherwise).

(b) A transaction cannot be avoided if the Company receives fair value under it.

8.3 Nothing in Regulations 8.1 and 8.2 applies in relation to:

(a) Remuneration or any other benefit given to a director in accordance with Regulations 12.1 and 12.2; or

(b) An indemnity or any other benefit given to a director in accordance with Regulations 13.1 to 13.6.

8.4 (a) If all entitled persons have agreed to or concur in the Company entering into a transaction in which a director is interested, nothing in Regulations 8.1 and 8.2 shall apply in relation to that transaction.

(b) Subject to the Act, shareholders may, by Ordinary Resolution, ratify or approve any act or omission of a director or the Board.

Actions by Interested Directors

8.5 A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company, may:

(a) Not vote on a matter relating to the transaction nor be counted for the purposes of consideration of that matter as amongst the directors present at the meeting for the purpose of a quorum; but may

(b) Attend the meeting; and

(c) Sign a document relating to the transaction on behalf of the Company; and

(d) Do any other thing in his or her capacity as a director in relation to the transaction

as if the director were not interested in the transaction. Notwithstanding the preceding restrictions, a director may vote in respect of and be counted in the quorum for the purposes of a matter in which that director is interested if the matter is one, in respect of which, pursuant to an express provision of the Act, directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

Use of Company Information

8.6 A director of the Company who has information in his or her capacity as a director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:

(a) For the purposes of the Company; or

(b) As required by law; or

(c) In accordance with Regulations 8.7 or 8.8 of this Constitution; or

- (d) In complying with Regulation 8.1 of this Constitution.

Disclosure - Nominee Director of Appointor

- 8.7 A director of the Company may, unless prohibited by the Board, disclose information to a person whose interests the director represents or in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.

Disclosure & Use of Information Generally

- 8.8 A director of the Company may disclose, make use of, or act on the information referred to in Regulation 8.6 if:

- (a) Particulars of the disclosure, use, or the act in question are entered in the interests register; and
- (b) The director is first authorised to do so by the Board; and
- (c) The disclosure, use, or act in question will not, or will not be likely to, prejudice the Company.

9.0 **Share Dealing by Directors**

Disclosure

- 9.1 A director who has a relevant interest in any shares issued by the Company must:

- (a) Disclose to the Board the number and class of shares in which the relevant interest is held and the nature of the relevant interest within four Business Days of acquiring that interest; and
- (b) Ensure that the particulars disclosed to the Board under Regulation 9.1(a) are entered in the interests register.

- 9.2 A director of the Company who acquires or disposes of a relevant interest in shares issued by the Company must, forthwith after the acquisition or disposition:

- (a) Disclose to the Board within four Business Days:
- (i) The number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be; and
- (ii) The nature of the relevant interest; and
- (iii) The consideration paid or received; and
- (iv) The date of the acquisition or disposition; and
- (b) Ensure that particulars disclosed to the Board under Regulation 9.2(a) are entered in the interests register.

- 9.3 For the purposes of Regulations 9.1 and 9.2 above, the term "relevant interest" has the meaning set out in section 146 of the Act.

10.0 **Appointment and Removal of Directors**

Minimum Number & Residence

- 10.1 (a) The minimum number of directors (other than alternate directors) is 5. The maximum number of directors (other than alternate directors) is 8. The shareholders may increase the maximum number of directors by an Ordinary Resolution. Subject to these limitations the number of directors to hold office may be fixed from time to time by the Board.

Existing Directors to continue in office

- (b) The directors of the Company (both executive and non-executive) in office at the date of adoption of this Constitution shall be deemed to have been appointed directors of the Company pursuant to this Constitution and shall continue in office until they vacate office pursuant to this Constitution.

Appointment

- 10.2 Other than those directors holding office pursuant to the provisions of the Act or this Constitution, all directors of the Company must be appointed by an Ordinary Resolution.

Rotation

Director Retirements

- 10.3 (a) A retiring director shall continue to hold office until he or she is re-elected or, if he or she is not re-elected, until the meeting at which he or she retires, or any adjournment thereof, elects someone in his or her place or, if the meeting does not do so, until the end of that meeting or any adjournment thereof. A retiring director shall be eligible for re-election unless disqualified pursuant to Regulation 10.4.

Order of Retirement

- (b) The directors to retire at an annual meeting pursuant to Rule 3.3.11 shall be those who have been longest in office since their last election or deemed election and whose retirement is necessary to satisfy the Rules and the ASX Rules. As between individuals who became directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.
- (c) One executive director shall be exempt from the obligation to retire under Rule 3.3.11. Where a Managing Director is appointed pursuant to Regulation 2.6, the Managing Director will be the executive director who is exempt from the obligation to retire.

Vacation of Office

- 10.4 The office of director of the Company is vacated if the person holding that office:
- (a) Resigns by signing a written notice of resignation and delivering it to the address for service of the Company, such notice to be effective when it is received at that address or at a later time specified in the notice; or
- (b) Is removed from office in accordance with Rule 3.3.10; or
- (c) Becomes disqualified from being a director pursuant to section 151 of the Act, or Regulation 10.5(b)(i); or
- (d) Dies; or

- (e) Being an executive director, ceases for any reason to be in salaried employment of the Company or any of its Subsidiaries unless the Board decides otherwise; or
- (f) Is absent from meetings of the Board continuously for the space of six months without special leave of absence from the Board.

Appointment of Directors by Board

Casual Vacancies

- 10.5 (a) Where a director ceases to hold office by virtue of the vacation of office pursuant to Regulation 10.4 or where for any reason the maximum number of directors authorised by Regulation 10.1(a) have not been elected, the continuing directors shall have power at any time thereafter to appoint any other qualified person to hold office as a director until the next annual meeting. That director shall be eligible for re-election at the meeting but shall not be taken into account in determining the number of directors to retire by rotation at the meeting.

Alternates

- (b) A majority of the directors, at the request of any director (the "nominating director"), may appoint one person nominated by that director, not being an individual who is already a director of the Company, as an alternate director (hereafter called "alternate director") to act in the place of that director when he or she is unable to do so. The following provisions shall apply to the appointment of an alternate director:
- (i) Without limiting Rule 3.3.10, the office of the alternate director shall be vacated if the director who nominated the alternate director shall no longer hold office, or if the appointment of the alternate is revoked by a majority of the directors or by the nominating director.
 - (ii) A nominating director and his or her alternate director shall be counted as one director for the purposes of Regulation 10.4 and Regulation 11.4.
 - (iii) An alternate for the Managing Director may not act as Managing Director
 - (iv) An alternate director may be paid expenses, and shall be entitled to be indemnified by the Company to the same extent, with any necessary modifications, as if he or she were a director but he or she shall not be entitled to receive from the Company, in respect of his or her appointment as alternate director, remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointor as such appointor may by notice in writing to the Company from time to time direct.
- (c) No directors shall appoint a deputy or agent otherwise than by way of an appointment of an alternate.

Shareholder May Propose Person as a Director

- 10.6 A shareholder may propose a person for appointment as a director by giving written notice of the proposal to the Board in accordance with Regulation 6.14 of this Constitution.

Consent and qualification of Directors

- 10.7 (a) A person must not be appointed a director of the Company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the Company.

- (b) A person shall be required to hold shares in the Company in order to be eligible for appointment as a director or as an alternate director.

11.0 **Directors' Meetings**

Chairperson

- 11.1 (a) The directors may elect one of their number as chairperson of the Board to hold office until he or she dies or resigns or until the directors elect a chairperson in his or her place.
- (b) If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 10 minutes after the time appointed for the meeting, the directors present may choose one of their number to be chairperson of the meeting.

Notice of Meeting

- 11.2 (a) A director or, if requested by a director to do so, an employee of the Company, or any Subsidiary, may convene a meeting of the Board by giving notice in accordance with this Regulation 11.2.
- (b) Not less than 5 days' written notice of a meeting of the Board must be given either by hand, pre-paid post, facsimile or electronic means in accordance with any request made by a director to the Company from time to time for such purpose to:
 - (i) every director who is in New Zealand and every alternate director who is in New Zealand and whose nominating director is absent from New Zealand, and
 - (ii) every director who is in Australia and every alternate director who is in Australia and whose nominating director is absent from Australia, andthe notice must include the date, time and place of the meeting and the matters to be discussed.
- (c) An irregularity in the notice of a meeting or a failure to give notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors agree to the waiver.

Methods of Holding Meetings

- 11.3 A meeting of the Board may be held either:
 - (a) By a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - (b) By the contemporaneous linking together by telephone or other means of communication (including by means of audio or audio and visual communication) of the directors constituting a quorum, whether or not any one or more of the directors are absent from New Zealand and such meeting shall be deemed to be properly held provided the following conditions are met:
 - (i) all the directors including alternate directors entitled to receive notice of a meeting of the directors shall have received notice of the meeting and be entitled to be linked by telephone or such other means of communication for the purposes of such meeting;

- (ii) each of the directors taking part in the meeting by telephone or other means of communication must throughout the meeting be able to simultaneously hear each of the other directors taking part;
 - (iii) at the commencement of the meeting each director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other directors taking part;
 - (iv) a director may not leave the meeting by disconnecting the telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting, and a director shall be presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting to leave the meeting.
- (c) For the avoidance of doubt a meeting of the Board may be held by a number of the directors who constitute a quorum, by a combination of the methods described in 11.3(a) and (b).

Quorum

- 11.4 (a) Until otherwise determined by the Board a quorum for a meeting of the Board, other than an adjourned meeting, shall be at least one half of all the directors who, for the time being, are in office and are entitled to vote.
- (b) No business may be transacted at a meeting of the Board if a quorum is not present.
- (c) If a quorum is not present within 15 minutes of the time appointed for the commencement of the meeting, the meeting shall then stand adjourned for seven days. The quorum for an adjourned meeting of the Board shall be those present.

Voting

- 11.5 (a) Every director has one vote. An alternate director shall not vote at a meeting at which the person for whom he or she is an alternate director attends.
- (b) Subject to Regulation 11.5(e), in the case of an equality of votes, the chairperson shall have a casting vote.
- (c) A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.
- (d) Any director who abstains from voting shall be deemed not to have voted for or against the proposal or issue being voted on, and accordingly shall not be required to sign any director's certificates required under the Act.

Minutes

- 11.6 The Board must ensure that minutes are kept of all proceedings at meetings of the Board. Minutes that have been signed correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings of the meeting.

Unanimous Resolution

- 11.7 (a) A resolution in writing, signed or assented to by letter, facsimile or other written form by all directors including alternate directors (when the person for whom he or she is appointed is unable to act), then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

- (b) A resolution pursuant to Regulation 11.7(a) may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors (or alternate directors, as the case may be).
- (c) A copy of any such resolution must be entered in the minute book of Board proceedings.

Other

- 11.8 (a) The provisions in Regulation 11.0 of this Constitution replace those contained in the Third Schedule to the Act.
- (b) Except as provided in this Constitution, the Board may regulate its own procedure.

12.0 Remuneration and Other Benefits

12.1 The Board may authorise the:

- (a) Payment of remuneration or the provision of other benefits by the Company to a director for services in any capacity other than as a director;
- (b) Payment by the Company to a director or former director of compensation for loss of office other than as a director;
- (c) Making of loans by the Company to a director;
- (d) Giving of guarantees by the Company for debts incurred by a director;
- (e) Entering into of a contract to do any of the things set out in paragraphs (a) to (d) of this Regulation 12.1;

if the Board is satisfied that to do so is fair to the Company.

12.2 If a payment, benefit, loan, guarantee or contract is authorised under Regulation 12.1:

- (a) The Board must ensure that particulars thereof are forthwith entered in the interests register; and
- (b) Directors who vote in favour thereof must sign a certificate stating that, in their opinion, it is fair to the Company, and the grounds for that opinion.

Expenses and Special Remuneration

12.3 The directors shall be entitled to be paid reasonable travelling accommodation and other expenses incurred in relation to the management of the Company. The Board may award special remuneration to any director in undertaking any work additional to that expected of the other directors. Directors' remuneration for work not in the capacity of a director may be approved by the directors without shareholder approval, subject to Rule 9.2.

Payments Upon Cessation of Office

- 12.4 (a) The Company may make a payment to a director or former director, or his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that director, only if the amount of the payment, or the method of calculation of the amount of that payment, is authorised by an Ordinary Resolution and the total amount of the payment (or the base for the pension) does not exceed the total remuneration of that director in his capacity as a director in any three years chosen by the Company.

- (b) Nothing in this Regulation 12.4 shall affect any amount paid to an executive director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a director to a superannuation scheme.

13.0 **Indemnity and Insurance**

13.1 Except as provided in Regulations 13.2 to 13.6, the Company must not indemnify, or directly or indirectly effect insurance for, a director or employee of the Company or a Related Company in respect of:

- (a) Liability for any act or omission in his or her capacity as a director or employee; or
- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

13.2 The Company shall indemnify a director or employee of the Company or a Related Company for any costs incurred by him or her in any proceeding:

- (a) That relates to liability for any act or omission in his or her capacity as a director or employee; and
- (b) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

13.3 The Company shall indemnify a director or employee of the Company or a Related Company in respect of:

- (a) Liability to any person other than the Company or a Related Company for any act or omission in his or her capacity as a director or employee; or
- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability;

not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in Regulation 7.1 of this Constitution or, in the case of an employee, of any fiduciary duty owed to the Company or Related Company.

13.4 The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a Related Company in respect of:

- (a) Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or
- (c) Costs incurred by that director or employee in defending any criminal proceedings in which he or she is acquitted.

13.5 The directors who vote in favour of authorising the effecting of insurance under Regulation 13.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

13.6 The Board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the Company or a Related Company are forthwith entered in the interests register.

14.0 **Method of Contracting**

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

- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
 - (i) Two or more directors of the Company; or
 - (ii) One or more attorneys appointed by the Company in accordance with section 181 of the Act; or
 - (iii) A director and an employee of the Company or a Subsidiary of the Company, or any two employees of the Company or a Subsidiary of the Company, where the employee is authorised to enter into obligations on behalf of the Company and to sign documents that are required by law to be by deed. The signature of authorised employees must be witnessed.
- (b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority.
- (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

15.0 **Auditor**

15.1 The Company must, at each annual meeting, appoint an auditor to:

- (a) Hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and
- (b) Audit the financial statements of the Company for the accounting period next after the meeting.

15.2 The Board may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.

16.0 **Alteration of Constitution - Change of Name**

16.1 Subject to the Act, this Constitution may be altered at any time by Special Resolution.

16.2 An application to change the name of the Company is not an amendment of this Constitution for the purposes of this Constitution or the Act, and may be made by a director with the approval of the Board.

17.0 **Accounts**

17.1 The Board must subject to section 10 Financial Reporting Act 1993, ensure that, within 5 months after the balance date of the Company, financial statements that comply with the Financial Reporting Act 1993 are:

- (a) Completed in relation to the Company and that balance date; and
- (b) Dated and signed on behalf of the directors by 2 directors of the Company.

18.0 **Annual and Half Yearly Reports**

Annual Report

18.1 The Company shall issue an annual report to NZX and ASX and the report (or any alternative permitted notice) to its Quoted Security holders at the time and in the form required by law. The annual report received by NZX and ASX shall be received at the same time as it is sent to Security holders, and shall contain all information:

- (a) required by law;
- (b) required by the Main Board Rules; and
- (c) required by the ASX Rules.

18.2 The financial statements in the annual report shall be audited.

Half Yearly Report

18.3 The Company shall issue a half yearly report to NZX and ASX and to its Quoted Security Holders at the time and in the form required by law and the Main Board Rules. The form of half yearly report issued to NZX and ASX shall contain all information:

- (a) required by law;
- (b) required by the Main Board Rules; and
- (c) required by the ASX Rules.

19.0 **Manner of Service on Shareholders and Creditors**

19.1 A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor who is a natural person may be:

- (a) Delivered to that person; or
- (b) Posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or
- (c) Sent by facsimile to a telephone number used by that person for the transmission of documents by facsimile; or
- (d) Sent by any form of electronic communication permitted by the Electronic Transactions Act 2002 with the consent of the person, or as permitted under the Rules.

19.2 A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 388 or section 390, as the case may be, of the Act and by any form of electronic communication permitted by the Electronic Transactions Act 2002 with the consent of the Shareholder or creditor.

19.3 A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a body corporate, not being a company or an overseas company, may be:

- (a) Delivered to a person who is a principal officer of the body corporate; or
- (b) Delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
- (c) Delivered in such manner as the Court directs; or
- (d) Delivered in accordance with an agreement made with the body corporate; or
- (e) Posted to the address of the principal office of the body corporate or delivered to a box at a document exchange which the body corporate is using at the time; or
- (f) Sent by facsimile to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate.

20.0 **Removal from the Register**

20.1 Those shareholders entitled to vote and voting on the question, by Special Resolution, or the Board, or any person or persons authorised by the Board, may, subject to section 318 of the Act, request the removal of the company from the Register on the ground that:

- (a) The Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
- (b) The Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation.

21.0 **Transfer of Place of Incorporation**

21.1 Subject to Part XIX of the Act, the Company may be removed from the New Zealand register in connection with becoming incorporated under the law in force, in or in any part of, another country.

21.2 The application to be removed from the New Zealand register must be approved by Special Resolution.

22.0 **Registered Office and Address for Service**

22.1 Subject to the Act, the Board may change the registered office of the Company at any time.

22.2 Subject to the Act, the Board may change the address for service of the Company at any time.