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CONSTITUTION OF ELECTRICITY  
ASHBURTON LIMITED

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# CONSTITUTION OF ELECTRICITY ASHBURTON LIMITED

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# CONSTITUTION OF ELECTRICITY ASHBURTON LIMITED

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## EFFECT OF CONSTITUTION

### 1 CONSTITUTION

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

### 2 DEFINITIONS

- 2.1 In this constitution, unless the context otherwise requires:

“*Act*” means the Companies Act 1993 as amended from time to time or any Act which replaces that Act.

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

“*Change of Control*” has the meaning set out in clause 6.2.

“*Class*” means a class of shares having attached to them identical rights, privileges, limitations, and conditions.

“*Company*” means Electricity Ashburton Limited.

“*this Constitution*” means this constitution as it may be altered from time to time in accordance with the Act.

“*Control Event*” means any of the following events occurring without the approval of shareholders pursuant to a Control Resolution:

- (a) The shareholders of the Company resolve to sell by one transaction or a series of related transactions more than fifty percent in value of the assets of the Company; or
- (b) The Company determines to repurchase or redeem more than 75% of the shares on issue in the Company (other than the surrender of Rebate Shares in the normal course) without the approval of Shareholders pursuant to a Control Resolution.

- (c) Any issue of shares which would result in any person or group of related companies acquiring or holding in excess of twenty five percent of the shares on issue excluding the Deferred Shares.

PROVIDED that the transfer of assets by the Company to a wholly owned subsidiary or a holding company (each as defined in the Act) that is within the same consolidated tax group under the Income Tax Act 1994 shall not be a Control Event as aforesaid.

*“Control Resolution”* is a Special Resolution where in the passing of that Special Resolution at least thirty percent (30%) of all holders of Rebate Shares who are entitled to vote cast votes on that resolution and it is also passed in accordance with the provisions for a Special Resolution.

*“Co-op Act”* means the Co-operative Companies Act 1996 as amended from time to time or any Act which replaces that Act.

*“Council”* means the Ashburton District Council and any successor to that Council arising from Local Government reform.

*“Deferred Shares”* means the shares held by the Council and having attached thereto the deferred rights set out in clauses 6.1 to 6.12 hereof.

*“Director”* means a duly appointed director of the Company.

*“Distribution”*, in relation to a distribution by the Company to a shareholder, means:

- (a) The direct or indirect transfer of money or property, other than the Company's own shares, to or for the benefit of the shareholder; or
- (b) The incurring of a debt to or for the benefit of the shareholder;

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means.

*“District”* means the area contained within the perimeter within which the Company had its electrical distribution network as at the 1st April 1995 together with any additional area designated by the Board having regard to any extensions to the Company's electrical distribution network.

*“Dividend”* has the same meaning as contained in the Act.

*“Energy Trader”* is a person firm or company who is selling or otherwise trading in electricity.

*“Equity Right”* means a right to acquire an Equity Security.

*“Equity Security”* means a security which confers:

- (a) A present or future right to participate in the control of the Company by voting at general meetings of the Company; or
- (b) A present or future right to participate in the profits of the Company (other than at a fixed rate or rates fixed by reference to indicators outside the Company)

and includes an Equity Right.

*“Financial Year”* means the financial year of the Company and if the financial year is altered means the financial period for which financial statements are prepared and submitted to shareholders.

*“Farmer”* means a person who gains the majority of his or her income from farming of whatever type within the District.

*“Holder”, “Shareholder”* and *“Member”* means a holder of Rebate Shares or any other class of Equity Securities issued by the Company.

*“Interest Group”*, in relation to any action or proposal affecting rights attached to shares, means a group of shareholders:-

- (a) Whose affected rights are identical; and
- (b) Whose rights are affected by the action or proposal in the same way; and
- (c) Subject to subsection (e) below, who comprise the holders of one or more Classes of shares in the company.

For the purposes of this definition of the term “interest group”:-

- (d) One or more interest groups may exist in relation to any action or proposal; and
- (e) if:- (i) action is taken in relation to some holders of shares in a Class and not others; or

- (ii) a proposal expressly distinguishes between some holders of shares in a Class and other holders of shares of that Class;

Holders of shares in the same Class may fall into 2 or more interest groups.

*“Interested”*, in relation to a director, has the meaning set out in Section 139 of the Act.

*“Interest Rate”* means the 90 day bank bill rate for buying bank bills at 11am on the day when such interest commenced to be payable or if no such rate exists on that day the said interest rate on the nearest day thereto.

*“Interests Register”* means the register kept under Section 189(1) (c) of the Act.

*“Major Transaction”* has the meaning set out in Section 129(2) of the Act.

*“Minimum Holding”* means a Minimum Holding of Rebate Shares to be held by a Shareholder to give an entitlement to Rebates such Minimum Holding being determined from time to time by the Board pursuant to clause 7.2.

*“Ordinary Resolution”* means a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.

*“Person”* includes any society, firm, company, individual, body corporate, or any other legal entity and the successors to that person.

*“Personal Representative”* in relation to an individual, means the executor, administrator or trustee of the estate of that individual.

*“Rebate”* means a distribution by the Company by way of cash, assets or other consideration to a User.

*“Rebate Shares”* means shares issued to a User which entitles that User (but not an Energy Trader) to a rebate in respect of Services.

*“Related Company”* has the same meaning as set out in the Act.

*“Redeemable Shares”* means a share which is redeemable in terms of section 68 of the Act for a fixed amount or an amount calculated by reference to a formula and entitled to a dividend at a fixed rate or a rate fixed by reference to indicators both such amounts determined without reference to the Company’s assets or profitability.

*“Relevant Interest”* has the meaning set out in Section 5 of the Securities Amendment Act 1988.

*“Register”* means the share register to be kept pursuant to Section 87 of the Act.

*“Securities”* and *“securities”* has the meaning in the Securities Act 1978.

*“Services”* means the direct or indirect provision of the right to use lines and equipment associated with lines owned by the Company for the conveyance of electricity.

*“Shareholders Committee”* shall be the committee appointed by the Shareholders as set out in clause 16.1 hereof.

*“Solvency Test”* has the meaning set out in Section 4 of the Act.

*“Special Meeting”* means a meeting called in accordance with Section 121 of the Act.

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

*“Special Security”* means any Equity Security however named to which special rights, privileges or restrictions apply which prevent it from ranking pari passu with the voting securities of the Company but does not include any security that does not rank pari passu only by reason of being partly paid or not ranking equally for dividends or rebates.

*“Statement of Corporate Intent”* means a statement incorporating the following:-

- (a) The objectives of the Company.
- (b) The nature and scope of the activities to be undertaken.
- (c) The ratio of consolidated shareholders' funds to total assets, and definitions of those terms.
- (d) The accounting policies.
- (e) The performance targets and other measures by which the performance of the Company may be judged in relation to its objectives.

- (f) An estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed by way of rebates, dividends, or other distributions to the shareholders.
- (g) The procedures to be followed before the Company or any subsidiary of the Company subscribes for, purchases, or otherwise acquires shares in any company or other organisation.
- (h) The Board's estimate of the commercial value of the shareholders' investment in the Company and the manner in which, and the times at which, the value is to be reassessed.
- (i) Such other matters as are agreed between the Shareholders Committee and the Board.

*"User"* means a person who is connected to the electricity lines owned and operated within the District by the Company and who directly, or indirectly through an electricity supply business, pays the charges for the use of those lines by being:

- (a) an end-customer who is liable for the payment of electricity conveyed to that customer over those lines or for services in relation to those lines; or
- (b) an end-customer of any electricity supply business that is liable for payment for services in relation to those lines;

#### **AND EXCLUDES**

- (c) an Energy Trader; and
- (d) A person who is connected to such lines for a short or temporary period.

*"Working Day"* means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
- (b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year.
- (c) If the 1st day of January in any year falls on a Friday, the following Monday; and



- (d) If the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

*“Voting Security”* means an Equity Security which confers a right to vote at meetings of shareholders of the Company (subject to the restriction on the number of votes which can be cast) not being a vote that is restricted to particular proposals affecting an interest group or a particular proposal.

**2.2** An expression not defined in this Constitution but defined in the Act or the Co-op Act shall have the same meaning in this Constitution as in the Act or Co-op Act. Where a conflict arises between those Acts the provisions of the Co-op Act shall prevail.

**2.3 Construction.** In this constitution:

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

2.3.2 Unless the context requires otherwise:

- (a) Words importing the singular include the plural and vice versa, and a gender includes all other genders; and
- (b) Words importing persons include firms, corporations, unincorporated associations and authorities and firm includes partnership;

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

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

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

2.3.6 A reference to a “share” means a share in the Company.

**2.4 Effect of Act on Constitution [section 27].** As between the Act and this Constitution:

- 2.4.1 Except to the extent that the provisions of the Act or the Co-op Act are amended, negated or modified by this Constitution as permitted by the Act or the Co-op Act the provisions of the Act or the Co-op Act shall prevail.
- 2.4.2 This Constitution shall have no effect to the extent that it contravenes the Act and the Co-op Act.
- 2.4.3 If any term which is defined herein is also a defined term under the Co-Op Act or the Act then if a conflict exists or arises the definition in the Co-Op Act shall prevail and if the definition is not in the Co-op Act but is in the Act the definition in the Act shall prevail.

**2.5 Constitution Binding [section 31].** Subject to the provisions of the Act this Constitution is binding on and between

2.5.1 The Company and each shareholder; and

2.5.2 Each shareholder;

as herein set out.

**2.6 Liability of Shareholders [section 97].** The liability of shareholders is limited and no shareholder shall be liable for the obligations of the Company.

**2.7 Alteration to Constitution [section 32].** The shareholders may alter or revoke this Constitution by Special Resolution. Where an alteration or revocation affects more than one Interest Group separate meetings of each Interest Group shall be held.

**2.8 Supply Contracts.** Each Shareholder agrees that all of the terms and conditions of the supply of Services by the Company to Users shall be binding on, and complied with, by each Shareholder.

**2.9 Co-operative Purpose.** The Company carries on and intends to carry on the following principal activities as co-operative activities:-

2.9.1 The provision of a network and ancillary services for the supply of electricity.

2.9.2 Supplying Services to Shareholders.

2.9.3 Supply or providing the Shareholders with goods or services, or both.

2.9.4 Entering into any other commercial transaction with the Shareholders.

- 2.9.5 Supplying or providing goods or services, or both, that are ancillary to, or that otherwise facilitate, the carrying on by the company of a co-operative activity.
- 2.9.6 Any other co-operative activity permitted under the Co-op Act.

**2.10 Compliance with Electricity Industry Reform Act 1998 [EIR Act].** The Company shall at all times comply with the provisions of the EIR Act. No shareholder or Director shall require the Company or the Board to do, or omit to do, anything that is not in compliance with the provisions of that Act.

### **3 EXPLANATORY NOTES**

- 3.1** The notes set out below do not form part of the obligations between Shareholders but are for the purpose of summarising the detailed rights and obligations set out in this Constitution. The wording of the provisions of this Constitution shall take precedence over clauses 3.1 to 3.3 hereof.
- 3.2** As at the date of adoption of this Constitution the shares in the Company are divided into two classes namely:-
- 3.2.1 Rebate Shares held by Users. Each User is entitled to hold 100 REBATE SHARES of \$1.00 each with all of the Rebate Shares ranking pari passu.
  - 3.2.2 Deferred Shares held by the Council. The Deferred Shares have no rights to rebates dividends or other distributions of the Company other than as specifically provided and only have voting rights arising in the special circumstances set out in clauses 6.2, 6.4, 6.6 and 6.9. In the event that 65% or more of the Holders of Rebate Shares (being all voting shares) agree that the major assets of the Company are to be sold to a third party or the constitution of the Company is to be altered to permit 65% or more of the voting shares on issue to be held by a third party (either alone or in association with others) then the Deferred Shares will have certain rights as hereinafter set out.
  - 3.2.3 The above provisions shall not prevent the Company entering into a Major Transaction as provided by Section 129 of the Act.
- 3.3** This Constitution provides for a "Shareholders' Committee" comprising 7 members of whom 3 are appointed by the Council and 4 are elected by Users. The Shareholders Committee has the duty, among other duties, on behalf of the Shareholders, to determine the persons who are to be appointed as Directors of the Company. The right of the Shareholders to appoint Directors of the Company is only through the Shareholders Committee.

## 4 ADMISSION AS SHAREHOLDER

- 4.1** The decision of the Board as to whether a share is a Rebate Share, Deferred Share or any other type or class of Equity Securities shall be binding on all shareholders of the Company and any proposed transferee of those Equity Securities.
- 4.2** The decision of the Board as to whether or not a person is entitled to be or become a shareholder of the Company shall be conclusive and binding on all persons affected by that decision.
- 4.3** The decision of the Board on whether a shareholder is still a User shall be final and binding on all shareholders. In determining such matter the Board shall take into account:
- 4.3.1 The temporary cessation of supply of Services shall not be a cessation of the supply of Services.
- 4.3.2 The change in the point of supply of Services without the User ceasing to take Services shall not be a cessation of supply of Services.

## 5 SHARE STRUCTURE AND RIGHTS

- 5.1 Rebate Shares.** The Board shall give to every User the right to apply for and hold such number of Rebate Shares as shall be a Minimum Holding PROVIDED THAT no Energy Trader shall be entitled to apply for or be issued any Rebate Shares. To give effect to such provision the Board may:-
- 5.1.1 Provide that the amount payable for the said Rebate Shares shall be either paid in cash or deducted from Rebates payable to that User; or
- 5.1.2 Permit that User to pay the amount payable in respect of those Rebate Shares over such period or period as the Board considers appropriate.

No User shall be required to hold any more Rebate Shares than any other User. The Company shall not issue and/or shall not approve the transfer of Rebate Shares which would result in any User holding less than a Minimum Holding. The Council shall be entitled to hold a Minimum Holding notwithstanding it holds the Deferred Shares.

- 5.2 Issue of Further Equity Securities.** The Board may issue further Equity Securities (not being Rebate Shares) as hereinafter set forth and provided that such Equity Securities are issued for proper consideration that issue of Equity Securities shall not give the Council as the Holder of the Deferred Shares any right to object thereto.

- 5.3 Further Issues of Rebate Shares.** The Board may from time to time issue to Users Rebate Shares and such issues of Rebate Shares shall not give the Council any right to object to the issue thereof.
- 5.4** Subject to the restrictions and provisions hereinafter appearing and to the foregoing clauses 5.1 to 5.3 and the proviso to clause 5.6 hereof the Board may issue:
- 5.4.1 Rebate shares;
  - 5.4.2 Ordinary shares;
  - 5.4.3 Preference shares;
  - 5.4.4 Convertible securities;
  - 5.4.5 Options;
  - 5.4.6 Such other types and classes of Securities that the Board considers appropriate.
- 5.5** Any securities issued by the Board:
- 5.5.1 May confer on the holder of that security special or limited rights to votes, distributions (of capital or income) transferability or otherwise.
  - 5.5.2 If they are options shall not confer on the holders a right to vote except at a meeting of option holders.
  - 5.5.3 If they are convertible securities may permit those convertible securities to participate in any offer of securities made to the holders of the class of securities into which those convertible securities are to convert.
- 5.6** The Board may issue shares that are redeemable by the Company:
- 5.6.1 At the option of the Company; or
  - 5.6.2 At the option of the holder of the shares; or
  - 5.6.3 on a date specified or determined by the Board;
- For a consideration that is:
- 5.6.4 Specified or otherwise determined by the Board; or

5.6.5 To be calculated by reference to a formula; or

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

PROVIDED that the total amount raised by issue of redeemable shares and which carry the right to repayment of the amount invested, and which have a fixed or variable rate of dividend attached thereto shall not exceed 40% of the shareholders funds of the Company immediately prior to that issue of redeemable shares.

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

## **5.8 Consolidation or Subdivision of Shares**

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

5.8.2 The Board may subdivide shares so that each Shareholder holds a proportionately greater number of shares.

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

**5.10 Alteration to Class Rights.** If the Equity Securities on issue are divided into different classes then the Board may implement any proposal and issue any further Equity Securities that:

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

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

PROVIDED that the rights attached to the Deferred Shares shall not be altered except with the consent of the Council.

**5.11 Certain Proposals not an Alteration of Rights.** The following proposals shall not be a modification, abrogation or alteration of the rights attached to any Class of Equity Securities on issue:

- 5.11.1 The issuing of Equity Securities having differing rights to rebates, profit sharing or distributions;
- 5.11.2 The issuing of Rebate Shares to a User;
- 5.11.3 The issuing of any Equity Securities in accordance with the conversion rights attaching to Equity Securities on issue.
- 5.11.4 The acceptance for surrender of Equity Securities held by any shareholder where other Equity Securities of the same class are not being surrendered;
- 5.11.5 The requirements for compulsory surrender of any Equity Securities;
- 5.11.6 The requirements that a Minimum Holding of Equity Securities of a specified class be held to qualify a shareholder for distribution of a Rebate, dividend or other payment.
- 5.11.7 The issuing of any further Equity Securities for a consideration that is fair and reasonable to the Company and to existing shareholders taking into account that the Company is a co-operative issuing shares for a nominal value which are surrendered at that nominal value.

**5.12 Share Issue Price.** The Board shall determine that any Equity Securities issued by the Company have a nominal value. Different classes of Equity Securities may have different nominal values as determined by the Board at the time of issue of each class of Equity Security. Until otherwise determined the nominal value of each Rebate Share and each Deferred Share shall be one dollar (\$1.00).

**5.13 New Share Issues.** The provisions of Section 45 of the Act shall not apply and subject to the provisions of sub clauses 5.13.1, 5.13.3 and 5.13.4:

- 5.13.1 The Board shall have the right to issue Equity Securities:
- (a) As Rebate Shares to a User at such nominal value as is fixed by the Board at the time of issue.
  - (b) To an existing shareholder as fully paid securities on the basis that maintains the proportionate rights of those Shareholders entitled to participate in bonus issues of shares.
  - (c) To an existing holder of Rebate Shares to increase the number of Rebate Shares held by that Shareholder to the number specified by the Board as being required to qualify for Rebates.

- (d) To any holder of existing securities in accordance with specific rights attached to those existing securities to participate in issues of securities.
- (e) To any holder of securities to satisfy any rights of conversion attached to those securities.
- (f) Pursuant to any takeover offer made by the Company to any other shareholders of a company in exchange for shares in another company or the issue of shares to the vendor of an asset being acquired by the Company in payment or part payment of the purchase price of such asset.

5.13.2 All Equity Securities shall be offered by the Board to all shareholders in proportion to the existing Equity Securities held by them and such offer shall be made by notice specifying the number of shares to which the shareholder is entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined and after the expiration of such time or on the receipt of an intimation from the shareholder to whom such notice is given that such shareholder declines to accept the shares offered the Board may dispose of the same in such manner as they think most beneficial to the Company.

5.13.3 The Board may offer and issue any Equity Securities if the terms and conditions to issue those securities has been approved by an Ordinary Resolution of holders of each Class of securities then on issue whose rights and entitlements could be affected by that issue.

5.13.4 The Board shall have the right to issue to any person any Equity Securities which are offered to existing shareholders of the Company and which are not taken up within the period prescribed by the Board when making that offer.

## **6 DEFERRED SHARES**

**6.1** The Council shall have the right to hold all of the Deferred Shares in the Company. The Deferred Shares shall have no rights to:-

6.1.1 Any distribution of dividends or Rebates by the Company; or

6.1.2 Exercise any vote except as provided in clauses 6.4, 6.6 and 6.9;

6.1.3 Any distribution on a winding up of the Company;

6.1.4 Any rights on an amalgamation of the Company;

EXCEPT as hereinafter expressly provided.



**6.2** In the event that shareholders of the Company holding sixty five percent (65%) or more of the Rebate Shares on issue determine to sell or otherwise dispose of those shares so that another person (either alone or in concert with others under any contract arrangement or understanding) acquires or controls 65% or more of the total voting shares on issue in the Company (called a "Change in Control") THEN IF the same offer has been made to the Council for the Deferred Shares on the basis that one Deferred Share has the same value as one Rebate Share AND the Council has accepted that offer the Council may transfer the Deferred Shares to the same person to whom those holders of the Rebate Shares have determined to transfer their Rebate Shares.

**6.3** If there has been a Change in Control (as defined in clause 6.2) and the Council has:-

6.3.1 Received for the Deferred Shares the same offer on the same terms and conditions for the Deferred Shares as was given to all the holders of the Rebate Shares, in respect of which offer 65% or more of the holders of the Rebate Shares accepted that offer; and

6.3.2 Declined to accept that offer in respect of the Deferred Shares;

THEN the Board of the Company may either sell the Deferred Shares on behalf of the Council, and account to the Council for the proceeds thereof, or without being liable to the Council in any manner, surrender all the Deferred Shares for the aggregate sum of one dollar (\$1.00).

**6.4** If there has been a Change in Control (as defined in clause 6.2) and the Council has not received the same offer on the same terms and conditions for each Deferred Share that was made for each of the Rebate Shares THEN from on the date on which 65% or more of the holders of the Rebate Shares have agreed to accept any offer which will result in a Change in Control the Council shall be entitled to one vote on a show of hands and one vote on a poll for each Deferred Share held by the Council.

**6.5** The Council shall be entitled at any time to require the Directors to call a meeting of all shareholders. If the Directors fail to call such a meeting within 7 Working Days of being requested so to do the Council may call such a meeting. In requesting the calling of a meeting of members of the Company the Council shall specify the business to be considered at the meeting to be so called.

**6.6** If a Control Event shall arise or occur then the Deferred Shares held by the Council shall forthwith, after such Control Event, attain full voting rights so that each Deferred Share shall have one vote for each Deferred Share on a poll and one vote on a show

of hands. In the event that more than fifty percent in value of the assets of the Company are sold (as set out in the definition of Control Event) and a distribution is made by the Company arising from such sale then for the purposes of such distribution the Deferred Shares shall be entitled to a proportionate part of that distribution in the same proportion as the Deferred Shares then bear to the total shares on issue in the Company with that distribution to be made as if the Deferred Shares rank pari passu with the ordinary shares in all respects.

**6.7** The Deferred Shares shall not be transferable by the Council except:-

6.7.1 To a successor Council in the event that the Council is amalgamated with another local authority in accordance with the provisions of any Act, Regulation, Order in Council or other statutory direction.

6.7.2 In accordance with the provisions of clause 6.2 or clause 6.3.

6.7.3 If the Council does not receive an offer for the Deferred Shares as set out in clause 6.4 and the Council then wishes to sell or transfer the Deferred Shares.

6.7.4 In accordance with the provisions of clauses 12.4 and 12.5.

The Directors shall have the absolute right to decline any transfer of the Deferred Shares except as set out above.

**6.8** If the Council determines to sell or otherwise dispose of the Deferred Shares whether directly or indirectly, or any interest therein except as set out in clause 6.7 hereof then the Directors of the Company shall forthwith surrender all of the Deferred Shares for the aggregate sum of one dollar (\$1.00).

**6.9** In the event that the shareholders of the Company determine that:-

6.9.1 The Company shall merge with or become amalgamated with another company; and

6.9.2 The rights attached to the Deferred Shares are not carried forward into the new company or continue in the Company if the Company is the merger vehicle;

THEN the Deferred Shares shall forthwith attain full voting rights on the basis of one vote for each share on a poll and one vote on a show of hands including in respect of all necessary resolutions required to approve the merger or amalgamation.

**6.10** In the event that any Equity Securities are issued by the Company or any approval is given pursuant to a Control Resolution to enable a person or group of associated persons to acquire or hold in excess of 25% of the voting Equity Securities on issue in the Company [excluding the Deferred Shares] so as to effectively transfer control of the Company to a third party then the Council will be entitled to transfer and sell its Deferred Shares and notwithstanding the provisions of clauses 12.1 to 12.10 the Company will register a transfer of shares by the Council to any other party.

**6.11** The Council irrevocably appoints the Company and each Director of the Company severally to be its attorney or attorneys and in its name and on its behalf to enter into execute sign and do all transfers, assurances, deeds, instruments, acts and things whatsoever which shall in the opinion of the Company or the Directors of the Company or the attorney be necessary or that it ought to be executed signed and do for the purpose of carrying out any act or obligation imposed upon the Council pursuant to this Constitution or for giving to the holders of all other shares in the Company the full benefit of any of the provisions of this Constitution and generally to use the name of the Council in the implementation of all or any of the covenants contained in this Constitution and on the part of the Council required to be implemented.

The rights given to the Company and each Director shall not be exercised:-

6.11.1 Unless 10 Working Days notice of intention to use such powers has been given to the Council; or

6.11.2 If the exercise of that power would alter or negate the rights of the Council under clauses 6.2, 6.4, 6.5, 6.6, 6.9, 6.10, 6.12 and 12.4.

**6.12** The rights attached to the Deferred Shares shall not be altered modified or abrogated except with the prior consent and approval of the Council and the provisions of clause 9.1 shall not apply to the Deferred Shares.

## **7 REBATE AND MINIMUM HOLDINGS**

**7.1** The Board shall determine from time to time the Rebates payable (if any) to Holders of Rebate Shares. The Board may also establish differential Rebates so that different levels of rebate are paid in accordance with any one or more of the following criteria:-

7.1.1 According to various numbers of units of energy consumed; or

7.1.2 Based on different levels of usage of the network of the Company; or

7.1.3 Based on different tariff classifications and pricing structures; or

7.1.4 Different levels of Services provided; or

7.1.5 Different capacity ratings; or

On such other basis as is determined from time to time by the Board.

As between all members the number of Rebate Shares that shall be required to be held in respect of Services shall be the same for each member to the intent that no Shareholder shall be required to hold more shares than another shareholder in respect of the Services acquired or purchased from the Company.

**7.2** The Directors shall have the power from time to time to determine the Minimum Holding of Rebate Shares to be held by a member to qualify for the payment of Rebates by the Company. Until otherwise so fixed the Minimum Holding of Rebate Shares shall be one hundred. The Directors shall not use such power to:-

7.2.1 Increase the Minimum Holding so as to prevent any member holding the Minimum Holding of Rebate Shares immediately prior to such increase continuing to qualify for Rebates from the Company;

7.2.2 Require any member to subscribe for further shares in the Company;

but subject as set out in (a) above the Directors may impose a condition upon each member that unless a Minimum Holding of Rebate Shares are held then the member may be precluded from obtaining a Rebate in respect of any purchase of Services from the Company.

**7.3** If the Directors give notice to a shareholder requiring that shareholder to either purchase further Rebate Shares in the Company or subscribe for further Rebate Shares in the Company and that shareholder refuses or neglects to so acquire or subscribe for such Rebate Shares within a period specified by the Directors in such notice then the Directors may either:-

7.3.1 Refuse to pay any rebates to such member in respect of that member's usage of the Services except in the proportion of  $a/b$  where "a" is the number of Rebate Shares held by that member and "b" is the Minimum Holding of Rebate Shares; or

7.3.2 Surrender the shares held by that member in accordance with the provisions of clause 9.1 hereof.

**7.4** Notwithstanding anything hereinbefore contained to the contrary the Company and the Directors shall not refuse the supply of Services to any person by reason of that person not acquiring Rebate Shares in the Company. The Directors are empowered in such special circumstances as the Directors deem appropriate to dispense with or reduce the requirement for any User to hold Rebate Shares in the Company.

**7.5** Requirement to Increase to Minimum Holding. The Board may in exercising its rights under clause 7.2.2:-

7.5.1 Give the affected Holder a time period of not less than 3 months within which that holder must acquire more Rebate Shares of the Class so notified so as to bring the number of Rebate Shares held by that Holder up to the Minimum Holding;

7.5.2 If a Holder does not increase his, her or its holding of Rebate Shares to a Minimum Holding within the time period specified by the Board to:-

- (a) Require that Holder to sell the Rebate Shares of that Holder within a time period specified by the Board and the Board may arrange for the sale of those Rebate Shares for that purpose; or
- (b) Surrender or repurchase the Rebate Shares of that Class held by that Holder.

**7.6 Maximum Number of Shares.** The Board may determine from time to time the maximum number of shares or any class of shares that may be held by a Shareholder. Such number may be reviewed by the Board at any time and increased or decreased. If such number is decreased the Board shall surrender, and the Shareholders holding in excess of that number shall agree to the surrender, of such number of shares as will reduce all holdings below that maximum number. The Board shall not require the sale of any Deferred Shares pursuant to this provision.

**7.7 Deferred Discounts.** The Company has the right to provide to Holders of Rebate Shares discounts in reduction or on account of any liabilities existing or future, payable directly or indirectly, to the Company by those Holders. The Board shall determine those discounts in a fair and equitable manner as between shareholders to whom the discount is allowed using the same principles as if that discount was a Rebate.

## **8 OTHER SHARE ISSUE MATTERS**

**8.1 Convertible Securities.** The Board may issue convertible securities upon such terms and conditions as it thinks fit including the right for the holders of convertible

securities to participate, in the same manner and to the same extent as the holders of the Class into which the convertible securities are to be converted, in any issue of securities offered to the holders of such Class.

**8.2 No issue to affect Co-operative Status.** The Directors shall not issue shares or otherwise issue securities that may lead the Company to cease to be a co-operative company without the prior approval of a Special Resolution of the Company in General Meeting.

**8.3 Existing Rights not to be taken into account.** The issue of further Equity Securities ranking equally with, in priority to, or ranking behind existing Equity Securities, whether as to voting, entitlements to rebates and other distributions or otherwise is expressly permitted and shall not affect the rights which may attach to Equity Securities on issue from time to time.

## **9 SURRENDER OF SHARES**

**9.1** If at any time in the opinion of the Directors any shareholder has:-

9.1.1 Ceased to be or is not a User; or

9.1.2 Not purchased any of the Company's Services either directly or indirectly for two years; or

9.1.3 Neglected or refused to increase his shareholding as required under clause 7.3; or

9.1.4 Refused or neglected to give a declaration of beneficial ownership as required by clause 12.9; or

9.1.5 Failed to comply with clause 12.2; or

9.1.6 Requested the Directors to surrender that shareholder's Rebate Shares; or

9.1.7 Failed to comply in a material respect with requirements relating to transactions with the Company contained in any contract between the Company and a shareholder;

the Directors may resolve to call on such shareholder to transfer that shareholder's Equity Securities to a User at the issue price thereof or (in the case of Rebate Shares) to surrender such Rebate Shares at the issue price thereof and if such shareholder does not within thirty days after being notified of such resolution so transfer Equity Securities or surrender Rebate Shares as aforesaid such shareholder

shall be deemed to have appointed the Company the agent of that shareholder for the sale of such Equity Securities to a User at the issue price thereof or to have authorised the Company to surrender such Rebate Shares at the nominal value thereof. The Directors at their discretion may surrender Rebate Shares at a price either above or below the nominal value if such price is fair and equitable to all shareholders. The decision of the Directors on whether or not a shareholder has ceased to be a User shall be final; in determining such matter a change in name of a User taking energy without the users of energy changing the point of supply, the temporary cessation of supply and the intermittent taking of supply shall not result in that person ceasing to be a User.

- 9.2** No person holding Rebate Shares shall be entitled to request the surrender of such shares unless that person has ceased both indirectly and directly to be a User and purchase Services from the Company. Notwithstanding any provision herein to the contrary the Directors may accept from any shareholder a surrender of shares upon such terms and conditions as may be agreed upon between such member and the Directors. The Directors may require the shareholder seeking to surrender shares to provide evidence that the Shareholder has ceased to be a User. That shareholder will not have ceased to be a User if the interest in property owned by that Shareholder (either directly or indirectly) is still beneficially held by that Shareholder or the Board is of the opinion that assets owned or controlled by that Shareholder have been restructured and as a result that Shareholder has ceased to be a User but has continued to purchase Services through another entity.
- 9.3 Date of Surrender.** Where any surrender of Rebate Shares is made and accepted by the Board that surrender shall be effective as from the date of the resolution of the Board agreeing to the implementation of such surrender or such other date as the Board may determine. The payment for the Rebate Shares being surrendered shall be within 60 days from the date of surrender as determined by the Board and as from the date of determination of the surrender the Shareholder shall not be entitled to any rebates or other distribution declared after at that date and no other rights shall accrue or any right to vote shall attach in respect of Rebate Shares to be surrendered.
- 9.4 Amount Payable on Surrender.** The amount payable on any Rebate Shares surrendered shall be the nominal value of those Rebate Shares on the date on which such surrender is effective as determined under clause 9.3 provided that if any Rebate Shares having a nominal value are not fully paid up then the amount payable shall be the amount then paid up in respect of those Rebate Shares being surrendered. The Board may at its discretion surrender shares at below the nominal value if that price is fair to the shareholders and the Company.

Until otherwise altered the nominal value of the Rebate Shares shall be \$1.00 for each Rebate Share:

- 9.5 Surrendered Share Cancelled.** Immediately upon the payment by the Company of the amount payable on the surrender of any Rebate Shares then those Rebate Shares shall be deemed to be cancelled.
- 9.6** In lieu of the surrender shares as set out in clause 9.1 to 9.5 hereof the Board may require a shareholder to transfer the Rebate Shares subject to surrender to such persons as the Board determines. If that shareholder does not within thirty days after being notified of such requirement so transfer shares or surrender shares as aforesaid such shareholder shall be deemed to have appointed each Director the agent of that shareholder for the sale of such shares to a User at the price determined as set out in clause 9.4 or to have authorised the Board to surrender such shares at the said price thereof.
- 9.7** Notwithstanding anything herein contained to the contrary the Directors shall be entitled to suspend or refuse the surrender of any shares where such surrender is in breach of the Co-op Act or could endanger the financial stability and solvency of the Company.

## **10 PAYMENT OF DIVIDENDS AND REBATES**

- 10.1 Power to Pay a Dividend and Rebate:** The Board may pay a Rebate or Dividend to any shareholder or other persons entitled thereto. Rebates and Dividends shall be paid in accordance with the provisions of this Constitution or the terms of issue of the Securities then on issue. Rebates shall be given as discounts to holders of Rebate Shares (on the same basis as set out in clause 7.1) and may be paid in such manner as the Directors shall determine.
- 10.2 Persons to whom Dividend/Rebate payable:** A Dividend or Rebate shall be paid to the person or persons who are the registered holder or holders of the Shares in respect of which the Dividend or Rebate is authorised at the time of the authorisation of the Dividend and Rebate (or at the time when the Dividend and Rebate is authorised to be made).
- 10.3 Dividend and Rebates to joint holders:** If several persons are registered as joint holders of any Shares, and such persons are entitled to receive distributions in respect of the Shares, any one of them may give effectual receipts for any Dividend and Rebate in respect of the Share.
- 10.4 Manner of payment:** A Dividend and a Rebate payable in cash may be paid in any manner (whether by direct credit or otherwise) directed by the person entitled to it. A



Rebate may also be satisfied by crediting the account with the Company of the User entitled to that Rebate Payment may be made by cheque sent by post:

10.4.1 to the registered address of the Shareholder or person entitled thereto; or

10.4.2 In the case joint holders to any one of the joint holders at his or her registered address; or

10.4.3 To such persons and to such address as the Shareholder or person entitled or such joint holder as the case may be, may direct;

And the Company shall not be responsible for any loss arising from such mode of transmission.

**10.5 No interest.** No Dividend or Rebate shall bear interest against the Company.

**10.6 Deductions from distribution:** The Directors may deduct from any Dividend and Rebate payable to any Shareholder entitled to receive Dividends or Rebates all such sums of money as may be due from him or her to the Company on account of any or all of the following:

10.6.1 Calls, instalments, any debt, or liability to the Company or any Related Company; and

10.6.2 Debts, liabilities or obligations in respect of which the Company has a lien over specific Shares in respect of which the distribution is made; and

10.6.3 Such amounts as the Company may be called upon to pay under any legislative enactment in respect of the Shares of a deceased or other Shareholder;

10.6.4 Any payment required to increase the Rebate Shares held by that Holder to a Minimum Holding.

**10.7 Right not transferred:** A transfer of any Share shall not pass the right to any Dividend or Rebate authorised for payment thereon where the date for payment of that Dividend or Rebate attached to those shares has passed before the date of registration of the transfer.

**10.8 Distribution of assets in satisfaction of Rebates/Dividends:** Without limiting Section 52, the Directors may distribute in kind among the Shareholders by way of Dividend or Rebate any of the assets of the Company, and in particular any shares or securities of other companies to which the Company is entitled.

**10.9 Unclaimed distributions:** All Dividends and Rebates unclaimed for one year after having been authorised may be intermingled with the other money held by the Company and may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed. All Dividends and Rebates unclaimed for three years after having been authorised may be forfeited by the Directors for the benefit of the Company. The Directors may at any time after such forfeiture annul the same and pay the Dividend or Rebate so forfeited to any person producing evidence that such person is entitled to the Dividend or Rebate and shall do so unless in the opinion of the Directors such Dividend would embarrass the Company.

## **11 CALL ON SHARES**

**11.1 Power to call:** Subject to the provisions of this Constitution, the Board or any person authorised by the Board may make such calls as they think fit upon the Shareholders in respect of moneys unpaid on the Equity Securities held by them respectively and not paid in accordance with the conditions of the issue of the Equity Securities. Each Shareholder shall pay the amount of every call so made on him or her to the Company or person (if any) appointed for the purpose and at the times and places appointed by the Board. A call may be made payable by instalments and may be revoked or postponed as the Board may determine.

**11.2 Prior holders not liable for calls:** Where an Equity Security renders its holder liable for calls, or otherwise imposes a liability on its holder, that liability attaches to the holder of the Equity Securities for the time being, and not to a prior holder of the Equity Securities, whether or not the liability became enforceable before the Equity Securities was registered in the name of the current holder.

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

**11.4 Joint holders:** Joint holders of an Equity Security shall be jointly and severally liable to pay all calls in respect of that Share.

**11.5 Interest:** If a sum called in respect of an Equity Security is not paid before or on the day appointed for payment the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the Board may determine. The Board may, however, waive payment of that interest wholly or in part.

**11.6 When payable:** Any sum which by the terms of issue of an Equity Security becomes payable on issue or at any fixed date shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In the case of non-payment all the relevant

provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

**Proof of liability:** The amount of any unpaid call or instalment may be recovered as a debt due from the Shareholder to the Company by proceedings commenced at any time after the call became payable. In any such proceedings it shall be sufficient to prove that:

- 11.6.1 The name of the Shareholder sued is entered in the Register as the holder or one of the holders of the Equity Securities in respect of which such debt accrued;
- 11.6.2 The resolution making the call is duly recorded in the minute book of the Company; and
- 11.6.3 Notice of such call was duly given to the Shareholder;

And it shall not be necessary to prove any other matter and the proof of the matters referred to in this clause 11.7 shall be conclusive evidence of the debt.

## **12 TRANSFER OF EQUITY SECURITIES**

**12.1** For the purposes of clause 12 of this Constitution:-

- 12.1.1 "Rebate Shares" means the shares held by a User and which have an entitlement to Rebates;
- 12.1.2 "Deferred Shares" means the shares issued to the Council with limited voting rights;

AND if there shall be any doubt as to whether an ordinary share is a Deferred Share or a Rebate Share the decision thereon by the Board shall be conclusive after taking into account whether or not the holder of such share is receiving Services directly or indirectly from the Company provided that the Council shall be entitled to hold Rebate Shares on the same basis as each other User while it receives Services.

**12.2** Rebate Shares shall not be transferable except and in the following circumstances and at the discretion of the Board:-

- 12.2.1 Where a member is transferring the whole of its business to a purchaser who wishes to take a transfer of the Rebate Shares held by the vendor Holder and such purchaser is becoming a User of the Company.

12.2.2 To a spouse where the member spouse has either died or separated with the other spouse becoming a User of the Company.

12.2.3 Pursuant to clause 12.4.

**12.3** Notwithstanding anything herein contained to the contrary the Council shall have no right to transfer the Deferred Shares except in accordance with the provisions of clauses 6.2, 6.7, 6.10 and 12.5 hereof or after obtaining the consent of the members by means of a Control Resolution.

**12.4** If the Shareholders pass a Control Resolution authorising either the transfer of shares in the Company to a person (which includes a company or other body corporate) or the issuing of shares to such a person and as a result of that transfer of shares or the issuing of those shares effective control of the Company passes to that person then:-

12.4.1 The Council shall be entitled to sell and transfer the Deferred Shares to that person without any other consents being obtained and from the transfer of the Deferred Shares the holder of the Deferred Shares shall have one vote for each Deferred Share; and

12.4.2 Such resolution to so authorise that transfer or issuing of shares shall not be effective unless it also authorises the Council to sell the Deferred Shares (or any of them) to that person at the same price and on the same terms as the Rebate Shares are sold to that person or any new shares are issued to that person.

For the aforesaid purposes if any dispute shall arise between the Board and the Council as to whether or not effective control of the Company has passed to a third party as a result of a transfer or issue of shares that dispute shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1996.

**12.5** In the event that the holders of the Rebate Shares approve:-

12.5.1 The transfer of the Rebate Shares under clause 12.4; or

12.5.2 A Major Transaction;

So as to effectively transfer control of the Company or a material part of its assets to a third party, then the Council shall also be entitled to transfer its Deferred Shares, and Rebate Shares. On such sale the Council will be entitled to the same proceeds from the sale of each of the Deferred Shares as the purchase price paid for each of the Rebate Shares.

**12.6 Instruments of Transfer.** Transfers shall be implemented in the following manner:

- 12.6.1 Any securities disposed of by an “authorised transaction” within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act.
- 12.6.2 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 the corporation as transferor or if the signature of the transferor has been witnessed by a person who has added his occupation and address after his signature.
- 12.6.3 The transferor of a security shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof.

**12.7 Refusal to register Transfers.** The Board may refuse to register the transfer of any Equity Security or delay that registration or decline to recognise any instrument of transfer in any of the following circumstances:-

- 12.7.1 Where the Company has a lien on the securities;
- 12.7.2 Where the transferee of the securities is not a User or has not applied to be a User and the transfer is of Rebate Shares;
- 12.7.3 Where it is not proved to its satisfaction that the proposed transferee is a responsible person;
- 12.7.4 Where the Board are of the opinion that the proposed transferee is not a desirable person to admit to membership;
- 12.7.5 Where the proposed transferee is indebted or under any liability to the Company in respect of those securities or otherwise;
- 12.7.6 If the proposed transferee will not provide a declaration of beneficial ownership if requested by the Board under clause 12.9;
- 12.7.7 Unless the instrument of transfer is accompanied by the certificate(s) of the securities to which it relates (if any) and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;

12.7.8 Unless the instrument of transfer is in respect of only one Class of security;

12.7.9 Where the transferee or nominee of such transferee is a person to whom a transfer is prohibited by any statute or regulation or other lawful direction;

12.7.10 Where the transferee of the securities will hold less than the Minimum Holding of securities as determined by the Board from time to time;

PROVIDED that paragraphs 12.7.3 and 12.7.4 shall not apply where a proposed transferee is a current User and is already a holder of securities.

**12.8 Refusal to register transfer [Section 84(5)].** If the Board resolves within 30 working days of the receipt of a transfer to delay or refuse to register a transfer they shall:

12.8.1 Set out in that resolution the full reasons for so delaying or refusing to register that transfer; and

12.8.2 Within five working days of the passing of that resolution give notice to the transferor and transferee of the resolution and the reasons therein stated.

**12.9** At any time the Directors may by notice in writing require any transferee of securities or holder of securities to lodge with the Company within 14 days of the date of such notice a Statutory Declaration and/or such other written advice or documents as the Directors may require disclosing full details of the beneficial ownership of any securities and who has a Relevant Interest in any securities:

12.9.1 Comprised in any transfer; and/or

12.9.2 Held by that holder of securities.

**12.10** If:-

12.10.1 A holder of securities or transferee fails to provide a statutory declaration or other written advice or documents within the period of 14 days as aforesaid as required by clause 12.9; or

12.10.2 If the declaration under clause 12.9 shows that the securities referred to aforesaid are not held, or will not be held, as required by this Constitution; or

12.10.3 Any securities are transferred in breach of clauses 12.1 to 12.4; or

12.10.4 The beneficial ownership of any securities or the right to exercise any votes attached to those securities or any control over those securities is held other than by the registered holder;

Then any transfer by that holder may be refused and the holder of such securities shall be deemed to have given an irrevocable notice appointing each Director of the Company as the irrevocable attorney of that holder for the purpose of surrendering all of the securities held by that holder or permitting the Company to repurchase those securities. The said securities shall be surrendered or repurchased at the discretion of the Board.

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

**12.12 Rights of Personal Representatives:** A Personal Representative of a Shareholder:

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

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

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

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

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

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

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

**12.15** The provision of clause 12 shall apply to all transfers of Securities with any necessary modifications for securities which are not Shares.

**12.16 Share register:** The Share register may be divided into two or more registers kept in different places.

**12.17 Lost certificates:** If a share certificate is defaced, lost or destroyed it may be renewed on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the Company of investigating evidence as the Directors may in each case think fit.

### **13 FORFEITURE AND LIEN**

**13.1 Failure to pay:** If a Shareholder fails to pay any call or instalment of a call on the day appointed for payment, the Board may serve a notice on the Shareholder requiring payment of the unpaid call or instalment together with any interest which may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.

**13.2 Notice:** 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. The notice shall state that in the event of non-payment by the time appointed the Shares in respect of which the call was made will be liable to be forfeited. The notice shall also state the place at which payment is to be made.

**13.3 Non-compliance:** If the requirements of any such notice are not complied with, any Share in respect of which the notice has been given may, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all distributions authorised in respect of the forfeited Shares and not actually paid or made before the forfeiture.

**13.4 Entry of forfeiture:** When any Share is so forfeited:

13.4.1 Notice of the resolution shall be given to the Shareholder in whose name it stood immediately prior to the forfeiture;



13.4.2 An entry of the forfeiture, with the date thereof, shall forthwith be made in the register;

13.4.3 The share certificate of any such Shares shall be immediately cancelled by the Company and the Shareholder in whose name such cancelled Share stood immediately prior to such cancellation shall return such share certificate to the Company within 14 days of receiving notice of such resolution; and

13.4.4 As soon as it is sold or disposed of, an entry of the date and manner of the sale or disposition, shall be made in the register.

**13.5 Forfeited share:** A forfeited Share shall be deemed to be the property of the Company and may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. The Board may, at any time before a sale or disposition, annul the forfeiture on such terms as the Board thinks fit.

**13.6 Ceasing to be Shareholder:** A person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable by the Shareholder to the Company in respect of the Shares. The Shareholder's liability shall cease if and when the Company receives payment in full of all such money in respect of the Shares.

**13.7 Fixed time payments:** The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

**13.8 Restriction on forfeiture:** Shares shall not be liable to forfeiture for the failure of persons entitled thereto (by transmission or otherwise) to submit evidence of title within a specified time.

**13.9 Lien on shares:** The Company shall have a first lien upon all of the Shares registered in the name of each Shareholder (whether solely or jointly) and upon the proceeds of sale of such Shares for:

13.9.1 Unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Securities; and

13.9.2 Such amounts as the Company may be called upon to pay under any legislation in respect of the specific Securities.

13.9.3 Any money debts or other liabilities owing to the Company or to a Related Company.

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

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

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

13.11.2 14 days' notice in writing demanding payment of such sum has been given to the Shareholder or to the person entitled by reason of the Shareholder's death or bankruptcy.

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

**13.13 Discharge from calls:** Upon registration of the transfer to the purchaser of Shares sold or disposed of by the Company pursuant to clause 13.5 or 13.11 ("the Transferee") the Transferee shall hold such Shares free from all calls due prior to such purchase.

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

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

**13.16 Proceeds:** The net proceeds of the sale of any forfeited Share which is sold within 12 months of the date of forfeiture or of Shares sold for the purpose of enforcing the lien shall be applied:

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

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

13.16.3 Thirdly, in payment to the previous holder of the Share or to the executors, administrators or assigns of the previous owner.

**13.17 Evidence:** A certificate by a Director and countersigned by an authorised person that the power of sale has arisen and is exercisable by the Company under this Constitution, or that Share in the Company has been duly forfeited on the date stated, shall be conclusive evidence of the facts stated in that certificate.

## **14 SHAREHOLDER VOTING**

**14.1** On a show of hands or on a vote on voices every holder of a Rebate Share having the right to vote shall have one vote and on a poll every Holder of Rebate Shares present in person or by proxy (or in the case of a corporation by a duly appointed representative of that corporation) shall have one vote for each share entitled to vote.

**14.2** The Council as the holder of the Deferred Shares shall only have the right to vote on matters that directly affect the rights held under those Deferred Shares. The Council shall have no rights to vote as a holder of those Deferred Shares where:-

14.2.1 There is an issue of Rebate Shares to Users or a User.

14.2.2 There is a pro-rata issue of Equity Securities or an issue approved by Ordinary Resolution and the issue price of those Equity Securities is fair and reasonable to the Company and all Shareholders.

BUT the Council shall have a vote where:

14.2.3 If a resolution is proposed under which any of the provisions of clause 6 or clauses 12.3 to 12.5 and 16.11 or this clause 14.2 of this Constitution are to be amended modified or revoked.

14.2.4 If there is a Change in Control and clause 6.4 is applicable.

14.2.5 If clause 6.9 is applicable.

**14.3** No shareholder shall be entitled to a vote for any Rebate Shares if there is any payment due by that Holder to the Company in arrears in respect of that share or if a lien is held on any shares pursuant to clause 13.9 hereof..

## **15 SHAREHOLDERS MEETINGS**

**15.1 Notice of meetings generally:**

- 15.1.1 Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and an auditor of the Company not less than 10 Working Days before the meeting.
- 15.1.2 The notice must state:
- (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
  - (b) The text of any Special Resolution and/or Control Resolution to be submitted to the meeting.
- 15.1.3 Without limiting clause 15.1.2(a), notices in respect of proposed changes to this Constitution shall be sufficiently explicit to enable the effect of such changes to be understood without reference to the existing or proposed Constitution.
- 15.1.4 An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 15.1.5 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.
- 15.1.6 If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- 15.1.7 If a resolution is to be proposed at a meeting of shareholders and, if that resolution is passed, shareholders will have a right to require the Company to purchase their Shares pursuant to the provisions of Section 110 or Section 118 of the Act then the notice of meeting to consider the resolution shall contain a prominent statement of that right.
- 15.1.8 Each notice of meeting given to shareholders shall provide for a time at that meeting or any adjournment thereof for a representative of the Shareholders' Committee to speak to all shareholders present at the meeting.

## **15.2 Methods of giving notice:**

- 15.2.1 A notice, statement, report, accounts or other document required to be sent to a Shareholder shall be sent in the manner provided in Sections 388, 390 and 391 of the Act.
- 15.2.2 Where a Shareholder does not have either a registered address within New Zealand or an address outside New Zealand and has not supplied to the Company an address (either within or outside New Zealand) for the sending of notices then the address of the Shareholder is deemed to be the registered office of the Company.
- 15.2.3 If a holder of a Security has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that Security holder at such address and, subject to the Act, shall be deemed to have been received by that Security holder 24 hours after the time of the posting.
- 15.2.4 Holders of all shares entitled to vote at that meeting shall be entitled to attend general meetings and to receive copies of all notices, reports and financial statements issued generally to holders of securities carrying Votes.
- 15.2.5 Subject to Section 212, a Shareholder may, by written notice to the Company, waive the right to receive all or any documents from the Company and may revoke the waiver in the same manner. While the waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

## **15.3 Methods of holding meetings.** A meeting of Shareholders may be held either:

- 15.3.1 By a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 15.3.2 By means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

## **15.4 Chairperson**

- 15.4.1 If the Directors have elected a chairperson, he or she shall chair a meeting of Shareholders. If there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is

unwilling or considers it inappropriate to act (either in relation to the entire meeting or in relation to any particular business to be considered at the meeting), the Directors present shall elect one of their number to be chairperson of the meeting (or for that part of the meeting which relates to the particular business).

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

## 15.5 Quorum

15.5.1 A quorum for a meeting of shareholders is present if 5 Shareholders or their proxies or shareholders able to exercise votes on 5% of the shares on issue are present.

15.5.2 Subject to sub clause 15.5.3 no business may be transacted at a meeting of Shareholders if a quorum is not present.

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

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

## 15.6 Proxies

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

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

- 15.6.3 A proxy must be appointed by notice in writing signed by the Shareholder and the proxy shall only apply to the particular meeting or for which it is given or any adjournment of such meeting.
- 15.6.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company not less than 48 hours before the start of the meeting.
- 15.6.5 A proxy form shall be sent with each notice of meeting of Shareholders and:
- (a) Shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote; and
  - (b) Shall not be sent with any name or office (e.g. chairperson of directors) filled in as proxy holder, however this sub clause 15.6.5(b) shall not prevent the Company indicating in a footnote to the proxy that certain persons or office holders are willing to act as proxy if the Shareholder wishes to appoint them.

So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates two-way voting instructions for proxy holders.

- 15.6.6 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal, revocation of the proxy or of the authority under which the proxy was executed or the transfer of the Share in respect of which the proxy is given if no written notification of such death, mental disorder, revocation or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 15.6.7 An instrument appointing a proxy shall be in the following form or a form as near to it as circumstances admit:

**ELECTRICITY ASHBURTON LIMITED**  
**INSTRUMENT APPOINTING A PROXY**

I/We \_\_\_\_\_  
of \_\_\_\_\_

being a shareholder of Electricity Ashburton Limited appoint

\_\_\_\_\_ [print name of proxy]

of \_\_\_\_\_

or failing him/her \_\_\_\_\_ of \_\_\_\_\_

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

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

Resolutions	<b>Vote with a tick</b>	
	<b>Against</b>	<b>For</b>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

[Usual signature/s]

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



**ELECTRICITY ASHBURTON LIMITED**  
**INSTRUMENT APPOINTING A PROXY**

I/We \_\_\_\_\_

of \_\_\_\_\_

being a shareholder of Electricity Ashburton Limited appoint

\_\_\_\_\_ [print name of proxy]

of \_\_\_\_\_

or failing him/her \_\_\_\_\_ of \_\_\_\_\_

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

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

[Usual signature/s]

**15.7 Postal Votes.** If the Board determines that a postal vote shall be carried out then the provisions contained in clause 7 of the First Schedule to the Act shall apply.

### **15.8 Minutes**

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

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

### **15.9 Shareholder Proposals**

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

- 15.9.2 If the notice is received by the Board not less than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 15.9.3 If the notice is received by the Board not less than 5 Working Days and not more than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 15.9.4 If the notice is received by the Board less than 5 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 15.9.5 If the Directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.
- 15.9.6 The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous, or vexatious.
- 15.9.7 Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

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

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

**15.12 Voting rights.** Generally:

15.12.1 In the case of a meeting of Shareholders held under sub clause 15.3.1, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:

- (a) Voting by voice, or
- (b) Voting by show of hands.

15.12.2 In the case of a meeting of Shareholders held under sub clause 15.3.2, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

15.12.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 15.12.4.

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

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

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

15.12.6 If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy and voting.

15.12.7 Except as provided in subclause 15.12.8, if a poll is demanded it shall be taken in such manner as the chairperson directs and the results of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

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

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

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

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

**15.14 Votes of joint holders.** 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.

**15.15 Loss of voting right if calls unpaid.** If a sum due to the Company in respect of a Share has not been paid, that Share may not be voted at a Shareholder's meeting other than a meeting of an interest group.

## **16 SHAREHOLDERS COMMITTEE**

**16.1** Unless and otherwise determined by the Company in general meeting by means of a Control Resolution a Shareholders Committee shall be appointed by the members which will comprise:-

16.1.1 4 persons elected by the holders of the Rebate Shares with at least one of those persons being a Farmer and one of such persons not being a Farmer; and

16.1.2 3 further persons appointed by the Council.

**16.2** The appointment by the Council of the 3 representatives to the Shareholders Committee shall be under the hand or seal of the Council and shall be left at the registered office of the Company and the Council may in like manner remove from office and appoint to office as a member of the Shareholders Committee any person subject to the limit of 3 persons which the Council may so appoint to the Shareholders Committee. The Council may at any time by like manner appoint any person as a member of the Shareholders Committee to replace any member removed, dying or otherwise vacating office.

**16.3** No person shall be appointed as a member of the Shareholders Committee if that person is:

16.3.1 A councillor of the Council or has been a councillor of the Councils within the previous three years.

16.3.2 A Council employee.

16.3.3 An employee of the Company or the spouse of that employee.

16.3.4 A Director of the Company or the spouse of that Director.

16.3.5 A member of Parliament or has been a Member of Parliament within the previous three years.

16.3.6 Prohibited under clause 16.16.

16.3.7 A Director of any company that carries on an electricity supply business [as defined in Section 3 of the Electricity Industry Reform Act 1998].

16.3.8 A member of a shareholders committee of a company as set out in 16.3.7 above.

**16.4** If any member of the Shareholders Committee:-

16.4.1 Is appointed as a Director of the Company; or

16.4.2 Moves outside the District; or

16.4.3 Dies or resigns; or

16.4.4 Falls within any of the categories in clause 16.3.1 to 16.3.5 and 16.3.8;

then such person shall forthwith cease acting as a member of the Shareholders Committee and shall be deemed to have resigned therefrom. If that person so ceasing to act has been appointed by the Council then the Council shall appoint the replacement for that person. If the person so ceasing to hold such office is one of the elected members then that person may continue in office until the next election at which such person would have been subject to reappointment or if such person does not continue to act then those members of the Shareholders Committee elected by the holders of the Rebate Shares shall appoint a person to replace that person so ceasing to act and such person so appointed to fill that vacancy shall be subject to re-election at the next date for election of members of the Shareholders Committee.

**16.5** Subject to the provisions of Clause 16.6 those members of the Shareholders Committee who are subject to election by shareholders shall comprise:-

16.5.1 At least one person who is a Farmer if there is not already a Farmer on the Committee and who is not subject to re-election; and

16.5.2 At least one person who is not a Farmer;

and in the event that any person elected as a Farmer ceases to be a Farmer, or is not a Farmer when elected and then becomes a Farmer, then that person shall remain as a member of the Shareholders Committee for the remainder of the term for which such person has been so elected. At the expiry of such term such person shall cease to act as a member of the Shareholders Committee but that event shall not preclude such person from being re-elected to the Shareholders Committee.

**16.6** For the purposes of ensuring that one of the Shareholders Committee shall always be a Farmer and one of such persons shall not be a Farmer the following provisions shall apply:

16.6.1 If there is a Farmer on the Shareholders Committee and that person is not retiring by rotation, and is continuing in office, then the election shall not require a further Farmer to be appointed.

16.6.2 If there is no Farmer on the Shareholders Committee or if the only Farmer on that Committee is subject to re-election then if as a result of that re-election a Farmer shall be elected to the Shareholders Committee or if the Farmer nominated receives less votes than the other candidates such Farmer shall nevertheless be appointed to the Shareholders Committee. If there are more than one Farmer taking part in the election then the provisions of this subclause shall apply and the highest polling Farmer in that election shall be appointed to the Shareholders Committee.

- 16.6.3 If due to death, retirement, the failure of a Farmer to be nominated to the Shareholders Committee or any other reason there ceases to be a Farmer on the Shareholders Committee then the Shareholders Committee shall appoint a Farmer to that committee at the earliest opportunity so that there shall always be a Farmer on the Shareholders Committee.
- 16.6.4 If on any election for the Shareholders Committee a Farmer is not on the Shareholders Committee and is not taking part in the election then a vacancy shall be held on the Shareholders Committee for the purposes of enabling a Farmer to be so appointed by the remaining members of the Shareholders Committee as set out in clause 16.6.3.
- 16.6.5 In determining the member of the Shareholders Committee to resign to allow the appointment of a Farmer the member of the Shareholders Committee most recently appointed who polled the lowest number of votes shall cease to hold office on appointment of the Farmer.
- 16.6.6 The provisions of subclauses 16.6.1 to 16.6.5 shall also apply in the negative so that if there is not a Farmer on the Shareholders' Committee the subclauses shall apply as if every reference to Farmer was a reference to "Non-Farmer".
- 16.7** In the event that a Farmer is not elected to the Shareholders Committee and the Shareholders Committee appoints a Farmer to fill the vacancy on the Shareholders Committee as required by clause 16.6 then such person so appointed shall hold office for 4 years and shall then resign but may offer himself or herself for re-election. In the event that all of the persons elected or appointed to the Shareholders Committee are Farmers the same provisions as set out in clause 16.5 and 16.6 shall apply but to the appointment of a person who is not a Farmer to the intent that a person who is not a Farmer shall be appointed to the Shareholders Committee. Any person or persons appointed as aforesaid shall reside within the District.
- 16.8** In each second year, the elected members will retire as determined by lot so that in each second year 2 members of the Shareholders Committee will be subject to re-election. Any elected member of the Shareholders Committee retiring by rotation may signify whether he or she is available for re-election and may be re-elected. Subject to the foregoing provisions the persons on the Shareholders Committee to retire in every second year shall be those who have been longest in office since their last appointment but as between persons who became members of the Shareholders Committee on the same day those to retire shall (unless they otherwise agree amongst themselves) be determined by lot.

- 16.9** A retiring member of the Shareholders Committee shall retain office until the dissolution or adjournment of the meeting at which the successor for that person is appointed.
- 16.10** At some time after the close of the preceding financial year, and not less than 3 months before the date appointed for the Annual General Meeting of the Company, the Shareholders Committee shall give notice to the shareholders of the members of that Committee retiring by rotation and who are subject to election by the shareholders. The shareholders so entitled (which shall exclude the Council) may at any time prior to the Annual Meeting of the Company nominate any person or persons to fill that office as a member of the Shareholders Committee. Such notice shall include a consent in writing signed by that person of his or her willingness to be so appointed certifying whether or not that person is a Farmer or not. Such notice may be given by a public notice inserted in a newspaper or newspapers circulating in the District. Any nominations shall close at least 1 month prior to the date upon which the elections are to be held.
- 16.11** Elections will be held in each second year. In respect of the election of the 2 elected members of the Shareholders Committee the following procedures will be followed:-
- 16.11.1 The election shall be commenced during the period between 1<sup>st</sup> April and 31<sup>st</sup> May in the relevant year.
- 16.11.2 For each election of persons to the Shareholders Committee the Company shall give written notice to all Users and the Company shall also give notice by an advertisement in a newspaper circulating in the District, that two members of the Shareholders Committee are subject to re-election and that nominations are called for from shareholders.
- 16.11.3 For the purposes of the election the returning officer shall be a person appointed by the Chairman of the Board of the Company for that purpose [called the "Returning Officer"]. The scrutineers for the election shall be appointed by the Shareholders Committee.
- 16.11.4 Only shareholders may nominate a person for election to the Shareholders Committee. The nomination form shall be signed by the nominee and the proposing shareholder and shall comply with Clause 16.10.
- 16.11.5 The closing date for nominations will be at least 21 days after the date of the advertisement in 16.11.2 above.



16.11.6 The Company shall then cause a postal ballot to be held for the election of that number of people who are required to fill the available vacancies. For the purpose of determining those shareholders who are entitled to vote on that postal ballot the share register shall be closed as at a date determined by the Company being a date not more than 14 days prior to the date of posting of voting papers. Those shareholders shall have at least 14 days within which to return the voting form and such forms must be returned by a date and time specified by the returning officer when sending out the voting papers. The election shall close not earlier than 14 days after the date of posting of voting papers to all shareholders entitled to vote.

16.11.7 The result of the election shall be given by the Returning Officer to the Chairman of the Board of the Company and the Company shall announce that result within 14 days of the closing date for voting.

16.11.8 The Returning Officer shall be entitled to destroy all voting papers 1 month after the date on which the returning officer has advised the Company Secretary (or Chairman) of the result of the postal voting.

**16.12** Any nominee to the position as a member of the Shareholders Committee will be required to consent to that appointment and must prepare a curriculum vitae (not exceeding 500 words) setting out the qualifications of that person for such appointment.

**16.13** When the voting papers are sent to all members such voting papers shall be accompanied by:-

16.13.1 A list of all persons nominated to fill the vacancy on the Shareholders Committee;

16.13.2 The curriculum vitae for each such person as forwarded by that person such curriculum vitae not to exceed 500 words; and

16.13.3 A stamped addressed envelope for return of the voting paper.

**16.14** The returning officer carrying out such postal ballot shall be entitled to destroy all voting papers relating to the appointment of persons to the Shareholders Committee one month after the date upon which the returning officer has advised the Shareholders Committee of the result of that postal ballot.

**16.15** If the nominations for membership of the Shareholders Committee do not exceed the available vacancies then those persons who have been nominated shall be deemed to have been elected to the Shareholders Committee without the necessity

for a postal ballot. This is subject to clauses 16.3, 16.6 and 16.7 and to the provision that one member of the Shareholders Committee shall be required to be a Farmer and one a non Farmer.

**16.16** A person shall not be appointed to the Shareholders Committee if that person would have been prohibited from being appointed a Director of the Company pursuant to the provisions of Section 151 of the Act.

**16.17 Proceedings of the Shareholders Committee.** The proceedings of the Shareholders Committee shall be carried out in the same manner as provided for under clause 19 of this Constitution as if the Shareholders Committee were the Directors except as set out below. For the purposes of the meetings of the Shareholders Committee a quorum shall comprise 5 members of that Committee. A memorandum in writing signed by that number of the Shareholders Committee as would form a quorum of that Committee (5 members) shall constitute the same valid resolution as if passed at a properly constituted meeting of the Shareholders Committee. For that purpose the same resolution in like form signed by members of the Shareholders Committee by way of facsimile or other electronic transfer and on separate sheets of paper shall be deemed to be one and the same resolution.

**16.18 Remuneration of Shareholders Committee.** Each member of the Shareholders Committee shall receive annual fees which, shall be a maximum of 25% of the average remuneration paid to the ordinary Directors (excluding the Chairman) of the Company for the same period. The Chairman of the Shareholders Committee shall receive double the average amount received by any other member of the Shareholders Committee. All such fees shall be payable by the Company.

**16.19** In addition to the above fees the Company will pay the reasonable expenses of the Shareholders Committee. Such fees and expenses shall be submitted by the Shareholders Committee to the Company on an annual basis for approval by the Company in advance and shall be included in the Company's budgets for that year.

**16.20** The fees payable to the Shareholders Committee and all expenses of that Committee shall be audited by the Company's auditors at the expense of the Company. Such fees and expenses shall be shown as a separate line item in the annual financial statements of the Company.

**16.21** The Shareholders Committee shall keep records of its meetings but such records shall not be available to the Company.

**16.22** The Duties of the Shareholders Committee. The duties of the Shareholders Committee shall be:-

- 16.22.1 To appoint the Directors of the Company in accordance with the criteria established by the Shareholders Committee as reviewed and revised from time to time. The criteria established by the Shareholders Committee shall ensure that a balanced Board of Directors comprising people of high business acumen will be appointed as Directors of the Company. The criteria established by the Shareholders Committee will be available to all shareholders of the Company.
- 16.22.2 To receive the annual Statement of Corporate Intent for the Company and to discuss the performance of the Company with the Directors of the Company against that Statement of Corporate Intent.
- 16.22.3 To report on a regular basis to the Shareholders on the performance of the Company, including an assessment of its performance on a comparative basis as against other similar companies.

In carrying out its duties as aforesaid the Shareholders Committee shall not be entitled to give directions on or to interfere in the management of the Company or to give any directions or instructions to the Board of the Company. The functions of the Shareholders Committee shall be to receive reports from the Board of the Company so that the Shareholders Committee can report to the shareholders as to whether or not the Board is meeting the reasonable expectations of the Shareholders Committee in governing and controlling the Company.

- 16.23** The Shareholders Committee shall report, at least twice in each annual period, to the shareholders on the performance of the Company. This report shall include an assessment of that performance against the Statement of Corporate Intent, budgets, forecasts and the principal objectives of the Company.
- 16.24** The Board of the Company shall ensure that the Shareholders Committee will receive the annual financial statements (duly audited) at least 14 days prior to the date upon which notice of the annual general meeting of the Company is to be sent to all shareholders. The Shareholders Committee shall have the right to send out with the notice calling the annual general meeting of the Company a commentary on the performance of the Company for the previous financial year. The Company will also provide to the Shareholders Committee unaudited half yearly accounts for the Company and the Shareholders Committee may, if it deems it appropriate, send out to the shareholders a statement on the performance of the Company for the half yearly period. Such statement will be sent by the Company to all of the members of the Company with the next accounts for electricity and other services sent to those members by the Company.

**16.25** The Shareholders Committee shall be entitled to call a meeting of shareholders of the Company at any time for the purpose of considering any matter relating to the Company. On receiving notice to that effect from the Shareholders Committee the Directors shall forthwith and without any delay call a meeting of shareholders of the Company and shall provide to the shareholders any information or other documents provided by the Shareholders Committee for that purpose. In the event the Directors make any material decision which affects the Company and is significantly different from the plans of the Company disclosed in the Statement of Corporate Intent supplied by the Directors under clause 17.13 the Shareholders Committee may call a meeting of shareholders for the purpose of considering any matter arising out of that alteration to the Statement of Corporate Intent.

**16.26** In the event that one of the elected members of the Shareholders Committee shall die resign or otherwise cease to hold office then the elected members of that Shareholders Committee may appoint a replacement for that person. Such replacement person shall resign at the next election but shall be eligible for re-election.

**16.27** Shareholders holding not less than 5% of the Rebate Shares on issue may at any time call a meeting of the Shareholders Committee. Upon receiving such notice the Shareholders Committee shall promptly call a meeting of the members of the Company in the same manner as set out in clause 15.1.

**16.28** In the event that the Company determines by a transaction or series of related transactions to acquire new assets or securities (other than the replacement of existing assets) and the amount payable for those assets or securities exceeds 25% of the Shareholders equity of the Company then:-

16.28.1 The Board shall give the Shareholders Committee 20 Working Days notice of that proposed transaction and shall:-

16.28.2 Provide to the Shareholders Committee such further reasonable information sought by the Shareholders Committee in respect of the proposed transaction.

The Board shall not be bound to act on any recommendation of the Shareholders Committee and may on the expiry of the said 20 Working Days notice proceed with the proposed transaction.

## **17 DIRECTORS**

**17.1** Unless and until otherwise determined by Special Resolution the number of Directors must be not more than six and not less than four and subject to clause 19.5 a

quorum of Directors shall be a majority of the Directors holding office. A Managing Director may be appointed in addition to that number. The Directors of the Company shall be appointed as hereinafter provided in clause 17.2.

**17.2** The Directors of the Company shall be appointed by the Shareholders Committee and in so appointing the Directors of the Company:-

17.2.1 At least two of those Directors shall reside within the District.

17.2.2 No more than two of such Directors may reside outside the District.

The appointment and removal of any Director by the Shareholders Committee shall be signed by a majority in number of that Shareholders Committee. Such notice of appointment shall be left at the registered office of the Company and that Shareholders Committee may in like manner remove from office and reappoint to office any Director in replacement of any Director so removed, dying or otherwise vacating office.

**17.3** A duly appointed Director may not appoint any person to be an alternate or substitute Director during the absence or inability to act of that Director. If required the Shareholders Committee shall appoint an alternate for any Director who may be absent for more than two meetings. Any appointee, while that appointee holds office as an alternate Director, shall be entitled to all notices of meetings of the Directors and any papers, minutes, or documents sent to the Directors but shall only vote at a meeting of Directors in the place of the Director for whom he or she is the alternate. The appointment of an alternate Director shall be cancelled and cease whenever the Director for whom that person is appointed as an alternate ceases to be a Director provided the Director retiring at any general meeting, and being appointed at that meeting, shall not for the purposes of this clause be deemed to have ceased to be a Director.

**17.4** The office of Director shall be vacated if the Director is disqualified from being appointed from holding office as a Director of the Company pursuant to the provisions of Section 151 of the Act or:-

17.4.1 Resigns from office as a Director; or

17.4.2 Absents himself or herself from attendance at meetings of the Directors continuously for the space of 3 months without special leave of absence from the Shareholders Committee and that person's alternate shall not have attended any such meeting in his or her stead;

17.4.3 Is removed from office by Ordinary Resolution;

17.4.4 Is removed from office pursuant to clause 17.2.

17.4.5 Being a Managing Director is removed by the Board or is no longer employed by the Company.

**17.5** A Director may retire from his office at any time by tendering to the Company and the Shareholders Committee a notice in writing of his resignation or by announcing the same at a meeting of the Board of the Company. A resignation by notice as aforesaid shall take effect as from the time of receipt of such notice at the registered office of the Company unless a later date is specified in the notice. A notice of resignation may be given by telegram, facsimile, electronic mail or other electronic or any other form of word transmission or other similar means.

## **17.6**

17.6.1 At the annual meeting of the Company in each year those directors who were appointed to office for a specified term shall retire at the end of that term. Each Director whom has not been elected for a specified term shall retire at the Annual Meeting occurring three years after the meeting at which that Director was appointed (subject to the other provisions in this constitution). Any Director so retiring may be subject to re-election. A retiring Director shall retain office until the dissolution or adjournment of the meeting at which his successor is appointed.

17.6.2 In addition to the directors to retire under clause 17.6.1 any director over the age of seventy years shall retire but may be reappointed for a further period of one year subject to re appointment in each successive year.

17.6.3 A retiring Director shall be eligible for re appointment.

17.6.4 At the meeting at which a Director retires in the manner aforesaid the Shareholders Committee shall fill the vacated office by appointing a person thereto.

**17.7** The Shareholders Committee may appoint any person to be a Director, either to fill a casual vacancy or as an additional Director but subject to the limit on the number of Directors which may be appointed.

**17.8** Without limiting Section 128 or 130:-

17.8.1 The Directors may appoint one or more of their body to the office of managing Director or managing Directors of the Company either for a fixed term not exceeding five years or without any limitation as to the period for

which he or she is or they are to hold such office. The Directors may fix his or her or their remuneration which may be in addition to his, her or their remuneration as an ordinary Director or Directors and may be either by way of salary, commission on profits earned or participation in the profits of the Company or by a combination of two or more of those modes. The Board may terminate that appointment.

- 17.8.2 Subject to any contract, the managing Director shall be subject to the same provisions as regards resignation, removal and disqualification as the other Directors.
- 17.8.3 The Directors may entrust to and confer upon a managing Director any of the powers exercisable by the Directors (except the power to make calls, forfeit shares, borrow money or issue debentures) upon such terms as think may think fit, either collaterally with or to the exclusion of their own powers, and may revoke, withdraw, alter or vary all or any of those powers.
- 17.8.4 Every managing Director shall be liable to be dismissed or removed by the Directors and shall have no right to continue in that office. The only remedy shall be a claim in damages against the Company.
- 17.8.5 If the managing Director ceases to hold office as an employee from any cause he or she shall cease to be managing Director.

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

**17.10 Fixing remuneration:**

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

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

17.10.2 If the remuneration for Directors is authorised pursuant to clause 17.10.1(a), then in the event of an increase in the total number of Directors holding office, the Directors may, without the authorisation of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).

17.10.3 No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a general meeting of the Company unless notice of the amount of increase has been given in the notice of meeting.

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

**17.11 Expenses:** Without limiting Section 161:

17.11.1 And notwithstanding clause 17.10, the Directors shall be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendance at meetings of Directors and when, in any other manner, engaged on the business or affairs of the Company; and

17.11.2 But subject to clause 17.10, the Directors may award special remuneration out of the funds of the Company by a fixed sum or salary to any Director or committee of Directors rendering any special services in going abroad or otherwise for any of the purposes of or in the interests of the Company or for undertaking any work additional to that required of Directors of a company similar to this and without any such award each Director shall be entitled to reasonable expenses as set out in clause 17.11.1 for or in connection with any journeys taken by him or her on the Company's business.

**17.12 Payments upon cessation of office:**

17.12.1 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:

- (a) The total amount of the payment (or the base for the pension) does not exceed the total remuneration of the Director in his or her capacity as a Director in the 3 years prior to the date of retirement or cessation of office; or
- (b) The payment is authorised by an Ordinary Resolution.



17.12.2 Nothing in this clause 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.

**17.13** The Directors shall cause the Company to provide to the Shareholders Committee the Statement of Corporate Intent for the next financial year of the Company such Statement of Corporate Intent to be provided within 60 days after the annual balance date or such extended period as may be approved by the Shareholders Committee. Such Statement of Corporate Intent shall contain such information as may be requested by the Shareholders Committee but shall not be required to disclose commercially sensitive information.

## **18 INDEMNITY AND INSURANCE**

**18.1 Indemnity for costs:** The Company may indemnify a Director or employee of the Company or a related company for any costs incurred by him or her in any proceeding:

18.1.1 That relates to liability for any act or omission in his or her capacity as a director or employee; and

18.1.2 In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

**18.2 Indemnity:** The Company may indemnify a Director or employee of the Company or a related company in respect of:

18.2.1 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

18.2.2 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 a duty specified in Section 131 or, in the case of an employee, of any fiduciary duty owed to the Company or related company.

**18.3 Insurance:** The Company may, with the prior approval of the Directors of the Company and in accordance with Section 162, effect insurance for a Director or employee of the Company or a related company in respect of:

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

**18.4 Definitions:** For the purpose of clause 18:

“*Director*” includes a former Director;

“*effect insurance*” includes pay, whether directly or indirectly, the costs of the insurance;

“*employee*” includes a former employee;

“*indemnify*” includes relieve or excuse from liability, whether before or after the liability arises; and “*indemnity*” has a corresponding meaning; and

“*related company*” has the same meaning as in Section 2(3).

## **19 DIRECTORS' MEETINGS**

**19.1 Third Schedule excluded:** The provisions of the Third Schedule to the Act shall not apply, and the provisions of this clause 19 shall apply to proceedings of the Directors or a committee of the Directors.

**19.2 Procedure:** The Directors may meet together for the despatch of business, adjourn, or otherwise regulate their meetings and proceedings as, subject to this constitution, they may think fit. A Director may summon a meeting of the Directors.

**19.3 Notice of Meeting:**

19.3.1 Any two Directors or the Chairman acting alone may convene a meeting.

19.3.2 Notice of every meeting stating the date time and place of the meeting must be given to all Directors at the address given by a Director for that purpose or if no address is given at the residential address of that Director. Notice need not be in writing.

19.3.3 Any irregularity in the calling of a meeting may be waived if all Directors entitled to be given notice of the meeting waive the irregularity at the time or at a later date.

**19.4 Procedure:** The Board may meet together for the dispatch of business, adjourn, or otherwise regulate their meetings and proceedings as they may think fit. A quorum of directors is three directors. If a quorum shall not be present at a meeting then the meeting may be adjourned for at least 48 hours and notice of the day time and place for such adjourned meeting shall be given to all directors and posted at least 36 hours prior to the time of such adjourned meeting.

Until otherwise agreed unanimously by the Board the following procedures shall apply to all meetings of the Board:

19.4.1 If a Director is absent from New Zealand, or is in New Zealand and cannot attend the meeting due to matters outside the control of that Director, then every reasonable attempt shall be made to contact that Director and include that Director in the meeting by telephone, audio visual or other means.

19.4.2 At least 48 hours notice shall be given of the proposed Board meeting.

19.4.3 If at least 75% of the Board are present or otherwise available at the meeting and a Director has not been contacted then the meeting may waive the notice period in sub clause 19.4.2.

19.4.4 A director who has leave of absence and who has not given a contact address or number or has indicated that he or she will not be available for meetings of Directors shall not be taken into account in respect of the foregoing procedures.

**19.5 Quorum:** Until otherwise determined by a majority of the Directors, 3 Directors shall be a quorum. A meeting of the Directors at which a quorum is present shall be competent to exercise any of the powers under this Constitution or the Act for the time being vested in or exercisable by the Directors generally.

**19.6 Vacancies and reduction of numbers:** Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the number fixed by this constitution as the Minimum Holding of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purpose.

**19.7 Chairperson:** The Directors may elect a chairperson of their meetings and determine the period for which he or she is to hold office. If no such chairperson is elected or if at any meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting the Directors present may choose another one of their number to be chairperson of the meeting.

**19.8 Other meeting methods:**

19.8.1 For the purposes of this Constitution a meeting of Directors or a committee of Directors may be held by means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting and all the provisions in this Constitution as to meetings of the Directors shall apply to such meetings so long as the following conditions are met:

- (a) All the Directors for the time being entitled to receive notice of the meeting (including any alternate Director) shall be entitled to notice of such a meeting and to be linked by such means for the purposes of such meeting. Notice of any such meeting may be given by such means;
- (b) Each of the Directors taking part in such a meeting must be able to hear each of the other Directors taking part at the commencement of the meeting; and
- (c) At the commencement of the meeting each Director must acknowledge his or her presence for the purpose of the meeting to all the other Directors taking part.

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

**19.9 Voting:**

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

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

19.9.3 Where two Directors form a quorum, the chairperson of a meeting at which only two Directors are present shall not have a casting vote.

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

**19.10** A Director who is interested in a transaction entered into, or to be entered into by the Company:-

19.10.1 Shall declare that interest to the Board immediately the Director becomes aware of the interest.

19.10.2 May vote on a matter relating to the transaction.

19.10.3 May attend a meeting of Directors at which a matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum.

19.10.4 May sign a document relating to the transaction on behalf of the Company.

19.10.5 May do any other thing in his or her capacity as a Director in relation to the transaction.

**19.11 Proceedings of committees:**

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

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

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

**19.12 Defects:** All acts done by any meeting of the Directors, a committee of Directors or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director,

committee or person or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

### **19.13 Written resolutions:**

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

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

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

### **19.14 Minutes:**

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

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

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

**19.15** Except as otherwise provided the Board may regulate its own meetings.

## **20 MISCELLANEOUS**

**20.1 Attorneys.** Without limiting Sections 128 or 130 the Directors may by power of attorney appoint any person or body of persons, whether nominated directly or indirectly for such purposes and with such powers (not exceeding those vested in or exercised by the Directors) and for such period and subject to such conditions as they think fit. Such powers of attorney may contain such provisions for the protection and convenience of persons dealing with such attorney as the Directors think fit and may also authorise any such attorney to delegate all or any of the powers vested in him or her.

**20.2 Subdelegation.** Without limiting Sections 128 or 130 any delegates or attorneys of the Director may be authorised by the Directors to subdelegate all or any of the powers for the time being vested in them.

**20.3 Change of Name.** A director shall not make, and the Directors shall not approve, an application to change the name of the Company without the prior approval of Shareholders by Ordinary Resolution.

**20.4 Common Seal.** The Company may have a common seal. The Directors shall provide for the safe custody of the seal which shall only be used by the authority of the Directors or of a committee of the Director authorised by the Directors in that behalf. Every instrument to which the seal shall be affixed shall be signed by a Director or the chief executive and shall be countersigned by some other person appointed by the Directors for the purpose. The directors may by resolution determine either generally or in any particular case the signature of any Director or other employee may be affixed by some mechanical means to be specified in such resolution.

**20.5 Contracts - Manner of execution.** A contract or other enforceable obligation may be entered into by the Company as follows:

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

- (a) Two or more Directors; or
- (b) One or more attorneys appointed by the Company in accordance with clause 20.1; or
- (c) Two or more persons expressly authorised by the Board for that purpose in respect of all transactions or particular transactions;

20.5.2 An obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and

20.5.3 An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

## 21 SURPLUS ASSETS

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

21.1.2 Subject to the terms upon which any class of Shares may have been issued, if on the liquidation of the Company the surplus assets shall be more than sufficient to repay the whole of the paid up capital, the excess shall be distributed as follows:-

21.1.2.1 If there are any Preference Shares or other shares having a fixed capital amount repayable in priority to other Equity Securities on issue then that amount shall be paid.

21.1.2.2 The amount paid to the Company on account of the nominal amount of all Rebate Shares and Deferred Shares shall be repaid.

21.1.2.3 The surplus then remaining (if any) shall be divided between the holders of the Rebate Shares and the Deferred Shares pro-rata according to the number of shares on issue.

If payment is not otherwise provided for as aforesaid any calls payable on shares shall be made or shall be deducted from the amount payable to any shareholder as above.

21.1.3 Subject to the terms and conditions upon which any class of Shares may have been issued, if on the liquidation of the Company the surplus assets shall be insufficient to repay the whole of the paid up capital such surplus assets shall be distributed so that as nearly as may be the losses shall be borne by the Shareholders in proportion to the nominal amount paid or which ought to have been paid on all shares at the commencement of the liquidation on the Shares held by them respectively, other than amounts paid in advance of calls.