

## CONSTITUTION

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## CONNEXIONZ LIMITED

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## **INTERPRETATION**

### **1 DEFINITIONS**

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1.1 In this constitution, unless the context otherwise requires the following expressions have the following meanings:

"Act" means the Companies Act 1993;

"alternate director" means a person appointed and continuing for the time being as the alternate of a director as provided in this constitution;

"call" means a call by the board as provided in clause 10.1 for any money that is unpaid on shares;

"Company" means Connexionz Limited;

"constitution" means this constitution as it may be altered from time to time;

"director" means a person appointed and continuing in office for the time being as a director of the Company as provided in this constitution;

"Electronic Transactions Act" means the Electronic Transactions Act 2002;

"financing statement" has the meaning given to it in the PPSA;

"legal requirement" has the meaning given to it in the Electronic Transactions Act;

"managing director" means a person appointed and continuing for the time being as a managing director of the Company as provided in this constitution;

"month" means a calendar month;

"personal representative" means:

- (a) in relation to a deceased individual shareholder, the executor, administrator or trustee of the estate of that shareholder;
- (b) in relation to a bankrupt individual shareholder, the assignee in bankruptcy of that shareholder; and
- (c) 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 thereunder, and a donee of an enduring power of attorney complying with that Act;

"PPSA" means the Personal Property Securities Act 1999;

"security interest" has the meaning given to it in the PPSA; and

"share" means a share issued, or to be issued, by the Company.

1.2 Expressions which are defined in the Act have, where appearing in this constitution, the meanings given to them by the Act, except as otherwise expressly provided in this constitution to the extent to which such express provision does not contravene and is not inconsistent with the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning in this constitution shall be governed by the context in which it appears in this constitution.

## **2 CONSTRUCTION**

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- 2.1 In this constitution, unless the context otherwise requires:
- (a) Headings appear as a matter of convenience only, and do not affect the interpretation of this constitution;
  - (b) Any reference, other than in the Schedules to this constitution, to a clause is a reference to a clause in this constitution other than in such Schedules;
  - (c) The words "include" or "including" do not imply any limitation;
  - (d) The singular includes the plural and vice versa, and words importing one gender include the other genders;
  - (e) The word "person" includes any association of persons whether corporate or unincorporated, and any government or state or agency or department thereof, whether or not having separate legal personality;
  - (f) The words "written" or "in writing" include any means of presenting or reproducing words, figures or symbols in a tangible and visible form in any medium, or in a visible form in any medium by electronic means that enables them to be stored in permanent form and retrieved and read;
  - (g) Any reference to "dollars" or "\$" is a reference to New Zealand dollars;
  - (h) Any reference to time is a reference to New Zealand time;
  - (i) Any reference to any document includes all amendments, modifications and replacements thereto or thereof from time to time;
  - (j) Any reference to any enactment, regulations or other legislative or statutory instrument or requirement is a reference to that enactment, those regulations or that legislative or statutory instrument or requirement as amended or modified from time to time, or to any enactment, regulations or legislative or statutory instrument or requirement re-enacted or substituted therefor;
  - (k) A working day shall be deemed to commence at 8.30 a.m. and terminate at 5 p.m.; and
  - (l) Where any act, matter or thing is to be done on a day that is not a working day, that act, matter or thing may be done on the next succeeding working day.
- 2.2 The Schedules to this constitution form part of this constitution.
- 2.3 In the event that a legal requirement under the Act is reproduced in this constitution, such requirement in this constitution may be met by using electronic means in accordance with the Electronic Transactions Act in the same manner as is required by the Electronic Transactions Act to meet such requirement under the Act.
- 2.4 A document that is in electronic form and communicated by electronic means to the Company is taken to be received as provided in section 11 of the Electronic Transactions Act, or as the Company and the sender otherwise agree upon in writing. For the purposes of such section of such Act, a document that is in electronic form and communicated by electronic means to a shareholder is taken to be received at the time at which it is sent if no error message is received by the information systems used by the Company to send the communication, provided that if such a communication would be taken to be received under the provisions of this clause 2.4 after 5.00 p.m. on any day in the relevant time zone in respect of which the shareholder has given its address details, it shall instead be taken to be received at 8.30 a.m. on the next following working day in that time zone.

## **CONSTITUTION**

### **3 CONSTITUTION MAY NEGATE OR MODIFY CERTAIN PROVISIONS OF ACT**

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

## **ISSUE OF SHARES**

### **4 SHARES ON ISSUE AT TIME OF ADOPTION OF CONSTITUTION**

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At the time of adoption of this constitution, there is 24,586,266 shares on issue (being 24,205,266 ordinary shares and 381,000 redeemable preference shares).

### **5 ISSUE OF OTHER SHARES**

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Subject to the Act, this constitution and the terms on which any existing shares have been issued, the board may issue shares, and options or rights to acquire shares, of any class (including redeemable preference shares), at any time, to any person, and in any number it thinks fit. For the avoidance of doubt, the board may issue further shares of any class ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions, and such issue will not be deemed to be an action affecting the rights attached to existing shares.

### **6 NO PRE-EMPTIVE RIGHTS ON ISSUE OF SHARES**

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Shares, or options or rights to acquire shares, issued or proposed to be issued by the Company that rank or would rank (in the case of such options or rights, upon the exercise thereof) as to voting or distribution rights, or both, equally with, prior to or subsequent to shares already issued by the Company are not required to be first offered for acquisition to holders of shares already issued or holders of any class of shares already issued.

### **7 COMPANY PAYING UP SHARES ISSUED**

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Subject to the Act, the board may authorise the payment from the reserves of the Company of any amounts unpaid on shares already issued by the Company.

### **8 BONUS SHARES**

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The board may authorise the issue of shares as fully or partly paid up from the reserves of the Company to all shareholders of the same class in proportion to the number of shares held by each such shareholder.

## **CONSOLIDATION, DIVISION AND SUBDIVISION OF SHARES**

### **9 CONSOLIDATION, DIVISION AND SUBDIVISION OF SHARES**

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The board may authorise:

- (a) The consolidation and division of the shares or any class of shares in proportion to those shares or the shares in that class; and
- (b) The subdivision of the shares or any class of shares in proportion to those shares or the shares in that class.

## **CALLS ON SHARES**

### **10 CALLS ON SHARES**

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- 10.1 The board may make calls on any shareholder for any money that is unpaid on that shareholder's shares and not otherwise payable at a specified time or times under this constitution or the terms of, or any contract for, the issue of those shares. An amount called pursuant to a call may be required by the board to be paid by instalments. A call shall be regarded as having been made at the time at which the resolution of the board authorising the call is passed.
- 10.2 The board may postpone or revoke a call.
- 10.3 Every shareholder on whom a call is made shall be given not less than 5 working days' written notice specifying the time or times and place of payment for the amount called pursuant to the call on that shareholder's shares, and shall pay that amount in accordance with that notice.
- 10.4 Where two or more persons are registered as the holder of a share, the joint holders of such share shall be jointly and severally liable to pay all amounts called pursuant to a call on that share.
- 10.5 If an amount called pursuant to a call is not paid in full at the time specified for payment, the shareholder from whom the amount is due shall pay to the Company interest on that part of the amount that remains unpaid at a rate determined by the board calculated from the time specified for payment until the date on which payment is made. The board may waive, in whole or in part, the requirement for payment of interest.
- 10.6 The board may, provided it acts in good faith and in a non-discriminatory manner in doing so, on the issue of shares differentiate between shareholders as to the amounts payable in respect of the shares and the time or times of payment of those amounts.
- 10.7 Any amount that is payable on any share at a specified time or times under this constitution or the terms of, or any contract for the, issue of the share shall be regarded as comprising a call duly made and payable at the specified time or times as the case may be, except that for avoidance of doubt there shall be no requirement that notice be given in accordance with clause 10.3. If the amount is not paid in full at the time at which it is payable, clauses 10.4, 10.5, 11 and 12 shall apply as if the amount had become payable pursuant to a call made in accordance with this constitution.

## **FORFEITURE OF SHARES**

### **11 FORFEITURE OF SHARES**

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- 11.1 The board may at any time during which:
- (a) Any amount that is payable on any of a shareholder's shares at a specified time or times under this constitution or the terms of, or any contract for the, issue of those shares; or
  - (b) Any amount called, or any instalment of an amount called, pursuant to a call on any of a shareholder's shares,
- remains unpaid and overdue, give to that shareholder not less than 5 working days' written notice requiring payment of that amount together with any accrued interest thereon and any costs or expenses incurred by the Company by reason of non-payment of the amount, and stating that in the event of non-payment of that money by the time specified in the notice, the share or shares to which the amount relates shall be liable to be forfeited by the shareholder.

- 11.2 In the event that a notice which complies with the requirements of clause 11.1 is given to a shareholder, and that shareholder fails to make payment in accordance with that notice, the board may:
- (a) Resolve that any share or shares in respect of which, and all distributions authorised in relation to such share or shares and not paid before, that notice was given be forfeited; and
  - (b) Cancel any share certificate relating to any share or shares forfeited pursuant to any such resolution.
- 11.3 In the event that any share or shares are forfeited pursuant to any resolution referred to in clause 11.2:
- (a) The Company shall give written notice of such resolution to the person who has forfeited such share or shares and enter details of the forfeiture in the share register; and
  - (b) The person who has forfeited such share or shares shall deliver any share certificate relating to the share or shares to the Company within 10 working days after the Company has given such notice,
- provided that any failure to give such notice or enter such details, or to deliver any such share certificate, shall not invalidate such forfeiture.
- 11.4 A person who has forfeited a share or shares shall immediately cease to be a shareholder in respect of that share or those shares notwithstanding any other provision of this constitution, and shall remain liable to make payment in accordance with the notice referred to in clause 11.1 however that liability shall cease if the Company receives payment in full of such money owing or if the Company waives the right to receive payment in full of such money owing.
- 11.5 The board may cancel the forfeiture of a share or shares if:
- (a) The shareholder who forfeited the share or shares makes payment in accordance with the notice referred to in clause 11.1; and
  - (b) The board has not sold or otherwise disposed of the share or shares as permitted by clause 11.6.
- 11.6 The board may sell or otherwise dispose of any forfeited share on such terms and in such manner as it thinks fit. The Company may receive consideration, if any, in respect of the sale or other disposition of a forfeited share or forfeited shares, and may execute a transfer or transfers in respect thereof in favour of the person or persons to whom the same is or are sold or disposed of and register that person or those persons as the holder thereof. The title of any such person to the share or shares shall not be affected by any irregularity or invalidity in the procedures contained in this constitution in respect of the forfeiture, sale or other disposal thereof, nor shall any such person be bound to see to the application of the consideration, if any, in respect thereof. The remedy of any person aggrieved by the sale or other disposition shall be in damages only and against the Company exclusively. Any residue of the consideration, if any, after satisfaction of the money payable in accordance with the notice referred to in clause 11.1 together with the costs and expenses incurred by the Company in selling or otherwise disposing of the share or shares forfeited, shall be paid to the person who forfeited the share or shares or to the personal representatives, successors or assigns of that person. If the share certificate, if any, relating to any share or shares forfeited is not delivered to the Company, the board may issue a new share certificate distinguishing it as it thinks fit from the share certificate which is not delivered, which is deemed to be cancelled.
- 11.7 A certificate signed by a director that a share has been duly forfeited on a specified date or that any power of sale or other disposal has arisen and is exercisable by the Company

under this constitution in respect of such share shall, in the absence of manifest error or fraud, be conclusive evidence of the facts contained in that certificate.

## **LIEN ON SHARES**

### **12 LIEN ON SHARES**

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12.1 The Company shall have a first and paramount lien, ranking in priority ahead of all other equities, on all shares registered in the name of a shareholder (whether solely, or jointly with one or more other persons), all dividends authorised in relation to such shares and all proceeds of sale of such shares, for:

- (a) All amounts which remain unpaid (whether or not presently payable);
- (b) All interest payable on any amount which remains unpaid and overdue;
- (c) All costs and expenses incurred by the Company by reason of non-payment of any amount when due, together with all costs and expenses incurred by the Company in any sale or other disposal process in the event of forfeiture; and
- (d) Any amount that the Company may be called on to pay (whether or not the time specified for payment has arrived) under any ordinance, statute, regulation or other law or legislation,

in respect of those shares, and for all other liabilities and obligations of the shareholder (whether solely, or jointly with one or more other persons) to the Company (whether or not the time specified for payment, fulfilment or discharge of any such liability or obligation has arrived).

12.2 The registration of a transfer of any shares on which the Company has a lien shall operate as a waiver of the lien on those shares, except as is otherwise provided in this constitution or unless the Company gives written notice to the contrary to the transferee of the shares prior to the registration of the transfer.

12.3 In the event that:

- (a) A lien which the Company has on any share or shares is for an amount which remains unpaid and is presently payable; and
- (b) The registered holder of the share or shares, or the person entitled to it or them in consequence of his or her bankruptcy or death, has failed to pay that amount within 10 working days after the Company has given that registered holder written notice demanding payment of that amount,

the Company may sell the share or shares in such manner as the board thinks fit.

12.4 The Company may receive consideration, if any, in respect of the sale of a share or shares pursuant to clause 12.3, and may execute a transfer or transfers in respect thereof in favour of the person or persons to whom the same is or are sold and register that person or those persons as the holder thereof, discharged from all money which has become payable in respect thereof prior to the sale. The title of any such person to the share or shares shall not be affected by any irregularity or invalidity in the procedures in respect of the sale, nor shall any such person be bound to see to the application of the consideration, if any, in respect thereof. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively. Any residue of the consideration, if any, after satisfaction of the money presently payable in terms of the lien on the share or shares, shall, subject to any similar lien for amounts which have not become payable that existed on the share or shares before the sale, be paid to the person entitled to the share or shares immediately before the sale or to the personal representatives, successors or assigns of that person. If the share certificate, if any, relating to any share or shares sold is not delivered to the Company, the board may issue a new share certificate

distinguishing it as it thinks fit from the share certificate which is not delivered, which is deemed to be cancelled.

- 12.5 A certificate signed by a director that any power of sale has arisen and is exercisable by the Company under this constitution in respect of any share or shares on which the Company has a lien is, in the absence of manifest error or fraud, conclusive evidence of the facts contained in that certificate.

## **DISTRIBUTIONS TO SHAREHOLDERS**

### **13 DIVIDENDS IN PROPORTION TO AMOUNT PAID UP ON SHARES ISSUED**

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In determining for the purposes of section 53(2) of the Act the amount paid to the Company in satisfaction of the liability of a shareholder under this constitution (including, without limitation, unpaid calls) or under the terms of issue of a share the amount of the dividend shall be in proportion to the amount paid to the Company in satisfaction of such liability during any part(s) of the period in respect of which the dividend is authorised, provided that if any share is issued on terms which include the right to participate in dividends only as from a particular date that share shall participate in dividends accordingly.

### **14 SUSPENSION OF RIGHT TO DISTRIBUTIONS**

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14.1 The board may, at any time during which a shareholder fails to make payment of:

- (a) Any amount that is payable on any of the shareholder's shares at a specified time or times under this constitution or the terms of, or any contract for the, issue of those shares; or
- (b) Any amount called, or any instalment of an amount called, pursuant to a call on any of the shareholder's shares,

which is overdue or any accrued interest thereon or any costs or expenses incurred by the Company by reason of non-payment of the amount, suspend payment of any distribution payable to the shareholder.

14.2 Any suspension referred to in clause 14.1 shall cease and be lifted upon satisfaction of the money payable referred to in that clause.

### **15 DEDUCTIONS BY BOARD FROM DISTRIBUTIONS**

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The board:

- (a) May deduct from any distribution payable to any shareholder, including any distribution the payment of which is suspended pursuant to clause 14.1, the amount of any money which the shareholder fails to pay as referred to in that clause, and apply any such deduction in reduction thereof; and
- (b) Must deduct from any distribution payable to any shareholder any amount which the board is required by law to deduct.

### **16 DISTRIBUTIONS NOT TO BEAR INTEREST AGAINST COMPANY**

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A distribution shall not bear interest against the Company.

### **17 PAYMENT OF DISTRIBUTIONS**

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A distribution payable in cash may be paid in such manner as the board thinks fit to the relevant shareholder, or, where two or more persons are registered as the holder of shares, to the person named first in the share register, or to such other person and in such manner as the shareholder or joint holders of such shares, as the case may be, may in writing direct. Any one of two or more

joint holders of shares may give a receipt for any payment in respect of such shares and that receipt shall be a full discharge to the Company for that payment.

## **18 UNCLAIMED DISTRIBUTIONS**

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- 18.1 Any distribution by the Company that has not been claimed within 1 year after having become payable may be invested or otherwise made use of by the board for the benefit of the Company until it is claimed. The Company shall be entitled to mingle the amount of any such distribution with any other money of the Company or spend the amount of any such distribution, and shall not be required to hold or regard it as being impressed with any trust for any potential claimant.
- 18.2 Any distribution by the Company that has not been claimed within 5 years after having become payable may be forfeited by resolution of the board for the benefit of the Company. The board may at any time after such forfeiture cancel the forfeiture and pay the distribution to any person producing evidence satisfactory to the board of that person's entitlement to the distribution.

## **19 SHARES IN LIEU OF DIVIDENDS**

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The board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if:

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

## **PPSA**

### **20 SECURITY INTEREST TO COMPANY**

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The creation of or provision for each of the interests and rights in favour of the Company under clauses 11, 12, 14 and 15 constitutes the creation of or provision for a security interest to the Company, in respect of which the Company may register one or more financing statements in terms of the PPSA.

### **COMPANY MAY ACQUIRE ITS OWN SHARES**

### **21 ACQUISITION OF COMPANY'S OWN SHARES**

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The Company may, in accordance with the Act, purchase or otherwise acquire shares issued by the Company. If the Company has the right to sell a share under clauses 11 or 12, the Company may, in its absolute discretion elect to purchase or otherwise hold those shares in accordance with clause 11 or 12 (whichever is relevant) and hold those shares under clause 23. For the avoidance of doubt, if no calls have been on the relevant shares then the consideration for the transfer to the Company shall be nil.

## **22 BOARD MAY MAKE OFFER TO ACQUIRE SHARES**

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The board may make an offer to one or more shareholders to acquire shares issued by the Company, in such number or proportions as it thinks fit and in accordance with the Act.

### **TREASURY STOCK**

## **23 COMPANY MAY HOLD ITS OWN SHARES**

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The Company may, in accordance with the Act, hold shares issued by the Company that it has acquired.

## **24 REISSUE OF SHARES COMPANY HOLDS IN ITSELF**

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For avoidance of doubt, except as provided in sections 67C(1) and (2) of the Act, the transfer by the Company of shares held as permitted by clause 23 shall not be subject to any of the provisions of the Act or this constitution relating to the issue of shares.

### **REDEMPTION OF SHARES**

## **25 COMPANY MAY REDEEM ANY REDEEMABLE SHARES ISSUED**

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The Company may, in accordance with the Act, redeem any redeemable shares issued by the Company:

- (a) At the option of the Company (but subject in the case of redeemable shares issued pursuant to a document, to the terms of that document);
- (b) At the option of the holder of the redeemable shares (but subject in the case of redeemable shares issued pursuant to a document, to the terms of that document); or
- (c) On a date specified in the terms of issue of the redeemable shares,

for a consideration that is specified, or to be calculated by reference to a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

## **26 REDEMPTION AT OPTION OF COMPANY**

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The Company may hold an option to redeem any redeemable shares issued by the Company in relation to one or more shareholders and may exercise such option, in accordance with the Act.

### **TRANSFER OF SHARES**

## **27 TRANSFER OF SHARES**

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- 27.1 The form of transfer of shares may be in any common or usual form, or any other form approved by the board.
- 27.2 Without limiting section 84(5) of the Act, the board may refuse or delay the registration of any transfer of shares if:
  - (a) Sections 84(2) and (3) and 95(5) of the Act and clause 27.1 have not been complied with;
  - (b) The form of transfer of shares has not been properly signed;
  - (c) The form of transfer of shares is not accompanied by such evidence as the board may reasonably require to establish the right of the present holder of the shares to make the transfer;

- (d) If the Company and the relevant person have entered into a contract for the issue of shares, the board is satisfied that such person has complied with such contract;
- (e) In the board's opinion, giving effect to the transfer would contravene the law; or
- (f) The board, in its absolute discretion:
  - (i) Considers that it would not be in the best interests of the Company to give effect to the transfer; or
  - (ii) Does not approve of the proposed transferee.

## **28 MINIMUM HOLDINGS**

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- 28.1 The board may from time to time set the minimum holding of a shareholder's share. The Company may commence procedures for the sale of a shareholder's shares if the shares registered in that shareholder's name number less than the minimum holding. This clause 28.1 and clauses 28.2 to 28.4 (inclusive) shall govern the sale of minimum holdings.
- 28.2 The board may at any time during which the shares registered in a shareholder's name number less than the minimum holding, give to that shareholder notice in writing of that fact and that if at the expiration of the period specified in such notice, being not less than 3 months after the notice is served on the shareholder, the shares registered in the shareholder's name still number less than the minimum holding, the Company may exercise its power to sell, and arrange the sale of, the shareholder's shares, provided that no such notice shall be given to a shareholder before enquiry has been made by the board as to whether any further transfer or transfers of shares which may affect the number of shares registered in the shareholder's name are pending and the effect of any such transfer or transfers has been taken into account for the purposes of determining whether the shares registered in the shareholder's name would still number less than the minimum holding.
- 28.3 In the event that notice referred to in clause 28.2 has been given to a shareholder and at the expiration of the period specified in the notice the shares registered in the shareholder's name still number less than the minimum holding, the Company may at any time thereafter sell such shares in such manner as it thinks fit.
- 28.4 The Company may receive consideration, if any, in respect of the sale of a share or shares pursuant to clause 28.3, and may execute a transfer or transfers in respect thereof in favour of the person or persons to whom the same is or are sold and register that person or those persons as the holder thereof. The title of any such person to the share or shares shall not be affected by any irregularity or invalidity in the procedures in respect of the sale, nor shall any such person be bound to see to the application of the consideration, if any, in respect thereof. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively. Any residue of the consideration, if any, after satisfaction firstly of the costs and expenses incurred by the Company in selling the share or shares, secondly of any money payable in accordance with any notice referred to in clause 11.1 and thirdly of any money presently payable in terms of any lien on the share or shares, shall, subject to any similar lien for amounts which have not become payable that existed on the share or shares before the sale, be paid to the person entitled to the share or shares immediately before the sale or to the personal representatives, successors or assigns of that person. If the share certificate, if any, relating to any share or shares sold is not delivered to the Company, the board may issue a new share certificate distinguishing it as it thinks fit from the share certificate which is not delivered, which is deemed to be cancelled.

## **29 FINANCIAL ASSISTANCE**

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The Company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the Company, or its holding company (if any), whether directly or indirectly, only if the giving of the financial assistance complies with the Act.

## **SHARE REGISTER**

### **30 PLACE OF SHARE REGISTER**

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The share register may be divided into two or more registers kept in different places.

## **TRANSMISSION OF SHARES**

### **31 TRANSMISSION OF SHARES**

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31.1 In the case of the death of a shareholder:

- (a) Where the deceased shareholder was a sole holder of shares, the personal representative(s) of the deceased shareholder; or
- (b) Where the deceased shareholder was a joint holder of shares, the surviving joint holder(s) of the shares or the personal representative(s) of the deceased shareholder,

shall be the only person(s) recognised by the Company as having any title to or interest in the deceased shareholder's interest in the shares, provided that for avoidance of doubt nothing in this clause 31.1 shall release the estate of a deceased shareholder from any liability in respect of any shares or constitute a release of any lien which the Company may have in respect of any shares.

31.2 The personal representative(s) of a shareholder:

- (a) Shall be entitled to exercise all rights (including the rights to attend meetings of shareholders and of any interest group, to vote in person or in any other manner that would be available to the shareholder, and to receive distributions), and shall be subject to all limitations, attached to the shares held by that shareholder; and
- (b) Shall be entitled to be registered as the holder of the shares referred to in clause 31.2(a), provided that such registration shall not release any rights, including any lien, to which the Company is or was entitled prior to such registration.

31.3 Where a share is subject to the control of two or more persons as personal representative(s), those persons shall, for the purposes of this constitution, be deemed to be the joint holders of the share.

## **MEETINGS OF SHAREHOLDERS**

### **32 PROCEEDINGS AT MEETINGS OF SHAREHOLDERS AND INTEREST GROUPS**

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The provisions of schedule 1 to the Act govern proceedings at meetings of shareholders except to the extent that the First Schedule to this constitution makes provision for the matters set out in such First Schedule. Proceedings at any meeting of any interest group shall also be governed in such manner, subject to all necessary consequential modifications.

## **POWERS OF MANAGEMENT**

### **33 MANAGEMENT OF COMPANY**

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The:

- (a) Business and affairs of the Company must be managed by, or under the direction or supervision of, the board; and
- (b) Board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the Company,

subject to any modifications, exceptions, or limitations contained in the Act or in this constitution.

### **34 DELEGATION OF POWERS**

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- 34.1 In exercising any powers delegated by the board, any committee of directors, director, employee of the Company, or any other person, must comply with any regulations or restrictions that the board may impose.
- 34.2 The provisions of this constitution governing proceedings, including meetings, of the board also govern proceedings, including meetings, of any committee of directors, with all necessary consequential modifications or except to the extent that they are altered or otherwise determined by the board.

### **35 MAJOR TRANSACTIONS**

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The Company must not enter into a major transaction unless the transaction is:

- (a) Approved by special resolution; or
- (b) Contingent on approval by special resolution.

### **DIRECTORS' DUTIES**

#### **36 DUTY OF DIRECTORS TO ACT IN GOOD FAITH AND IN BEST INTERESTS OF COMPANY**

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- 36.1 Subject to clauses 36.2 and 36.3, a director, when exercising powers or performing duties, must act in good faith and in what the director believes to be in the best interests of the Company.
- 36.2 If the Company is a wholly-owned subsidiary, a director may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company.
- 36.3 If the Company is a subsidiary (but not a wholly-owned subsidiary), a director may, when exercising powers or performing duties as a director, with the prior agreement of the shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company.

### **APPOINTMENT AND REMOVAL OF DIRECTORS**

#### **37 NUMBER OF DIRECTORS**

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Subject to clause 41, unless and until otherwise determined by the Company by ordinary resolution there shall be a maximum number of seven directors of the Company. The minimum number of directors (other than alternate directors) shall be three.

#### **38 APPOINTMENT AND REMOVAL OF DIRECTORS**

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- 38.1 Without limiting the manner in which directors may be appointed by ordinary resolution as provided in section 153(2) of the Act, a person may be appointed as a director by written notice to that effect to the Company at its address for service signed by shareholders who between them hold a majority of the ordinary shares, if that person is not disqualified from being appointed or holding office as a director under the Act or this constitution. Each such notice shall include an address, facsimile number and electronic mail address for the director for the purpose of service of notices of meetings of the board. The failure to include such details shall not invalidate the notice, or the appointment of the director.

38.2 Without limiting the manner in which directors may be removed from office by ordinary resolution as provided in section 156 of the Act, a director may be removed from office at any time by written notice to that effect to the Company at its address for service signed by shareholders who between them hold a majority of the ordinary shares.

38.3 Any notice referred to in clause 38.1 or 38.2:

- (a) Is effective when it is received by the Company at its address for service or at such later time specified in the notice; and
- (b) May consist of several documents (including facsimile, electronic mail or other similar means of communication) in like form each signed by one or more shareholders.

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### **39 APPOINTMENT OF DIRECTORS MAY BE VOTED ON OTHER THAN INDIVIDUALLY**

The shareholders may vote on a single resolution to appoint two or more persons as directors, without first passing a separate resolution that such single resolution be so voted on.

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### **40 ROTATION OF DIRECTORS**

At least one third of the directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for reappointment at that meeting. Those to retire shall be those who have been longest in office since they were last appointed, or deemed appointed.

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### **41 DIRECTOR CEASING TO HOLD OFFICE**

Without limiting section 157 of the Act, the office of director is vacated if the person holding that office is absent without the permission of the other directors from three consecutive meetings of the board and has not, in accordance with this constitution, appointed a person to act as an alternate director of the Company in his or her place during such absence.

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### **42 FEWER DIRECTORS MAY ACT FOR CERTAIN PURPOSES**

The continuing directors will continue to comprise the board and may act notwithstanding any vacancy in the number of directors, provided that if and for so long as the number of directors is reduced below any minimum number determined by the board in accordance with clause 38, the continuing directors may act for the purpose of increasing the number of directors to the minimum number and/or summoning a meeting of shareholders, but for no other purpose.

### **ALTERNATE DIRECTORS**

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### **43 APPOINTMENT AND REMOVAL OF ALTERNATE DIRECTORS**

43.1 Every director may:

- (a) Appoint any person (including an existing director) who is not disqualified by the Act or this constitution from being a director to act as an alternate director of the Company in his or her place either generally or for a specified period during his or her absence; and
- (b) Remove his or her alternate director from that office,

by giving written notice to that effect to the Company at its address for service. Each such notice of appointment shall include an address, facsimile number and electronic mail address for the alternate director for the purpose of service of notices of meetings of the board. The failure to include such details shall not invalidate the notice of appointment, or the appointment of the alternate director.

43.2 Any notice referred to in clause 43.1 is effective when it is received by the Company at its address for service or at such later time specified in the notice.

#### **44 ALTERNATE DIRECTOR'S DUTIES, POWERS, PRIVILEGES AND RIGHTS**

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While acting in the place of the director who appointed him or her, an alternate director:

- (a) Has, and may exercise and discharge, unless otherwise restricted by the terms of his or her appointment by the director, and subject to clause 44(b), all the duties, powers, privileges and rights of that director, including the right to receive notice of meetings of the board in the circumstances set out in clause 5.2 of the Third Schedule to this constitution, participate in meetings of the board (including being counted for the purposes of determining whether a quorum is present and the right to vote) and the power to sign any document (including a resolution in writing of directors), but excluding the right to be elected as chairperson of the board and to appoint an alternate, provided that, for avoidance of doubt, the alternate director is not entitled to participate in any meeting of the board at which the director who appointed him or her is present; and
- (b) Is subject to the same terms and conditions of appointment as that director (including in respect of reimbursement of expenses, and indemnity and effecting of insurance, by the Company as if he or she were a director), except that he or she is not entitled to receive remuneration other than such proportion, if any, of the remuneration otherwise payable to that director as the director may direct by written notice to the Company.

For avoidance of doubt, if an alternate director is an existing director, he or she shall be counted separately in each capacity for the purposes of determining whether a quorum is present at a meeting of the board.

#### **45 TERMINATION OF APPOINTMENT OF ALTERNATE DIRECTOR**

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The appointment of an alternate director shall terminate automatically if:

- (a) The director who appointed him or her ceases to be a director;
- (b) The alternate director, if he or she were a director, would become disqualified from being a director pursuant to section 151 of the Act; or
- (c) The alternate director dies.

### **MANAGING DIRECTOR(S)**

#### **46 APPOINTMENT OF MANAGING DIRECTOR(S)**

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The board may from time to time appoint one or more of the directors to the office of managing director or managing directors of the Company for such period and on such other terms and conditions as the board thinks fit. The board may enter into any agreement on behalf of the Company with any person who is, or is about to become, a managing director with regard to the terms and conditions of such person's employment.

#### **47 DISMISSAL OR REMOVAL OF MANAGING DIRECTOR(S)**

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Every managing director shall be liable to be dismissed or removed by a resolution of the board. The remedy of any such person for any breach of any agreement referred to in clause 46 shall be in damages only and such person shall have no right or claim to continue in office as managing director contrary to the will of the board.

#### **48 REMUNERATION OF MANAGING DIRECTOR(S)**

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A managing director shall receive, in addition to the payment of remuneration or the provision of other benefits by the Company for services as a director, such remuneration and other benefits as the board may determine for his or her services as managing director.

#### **49 POWERS OF MANAGING DIRECTOR(S)**

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Subject to section 130(1) of the Act, the board may:

- (a) Confer on a managing director any of its powers;
- (b) Without affecting the power of a managing director to act as a member of the board, impose such terms, conditions and restrictions as it thinks fit on such managing director in the exercise of such delegated powers; and
- (c) Alter or revoke any of the powers it confers on a managing director under this clause 49.

#### **50 TERMINATION OF APPOINTMENT OF MANAGING DIRECTOR(S)**

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Subject to the terms of any agreement entered into between the board on behalf of the Company and a managing director, that managing director is subject to the same provisions as regards resignation, removal and disqualification as the other directors. If a managing director ceases to be a director for any reason, he or she will immediately cease to be managing director.

#### **51 MANAGING DIRECTOR HAS NO POWER TO APPOINT ALTERNATE MANAGING DIRECTOR**

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The power to appoint an alternate director conferred on directors by this constitution does not confer on any managing director the power to appoint an alternate managing director.

### **PROCEEDINGS OF BOARD**

#### **52 PROCEEDINGS OF BOARD**

---

The provisions set out in schedule 3 to the Act govern the proceedings of the board except to the extent that the Third Schedule to this constitution makes provision for the matters set out in such Third Schedule. For avoidance of doubt, the provisions set out in such schedule 3 are subject to the provisions of such Third Schedule and in the event of any conflict or inconsistency between that schedule 3 and the Third Schedule the provisions of the Third Schedule shall prevail.

#### **53 DISCLOSURE OF INTEREST**

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- 53.1 Subject to clauses 53.2 and 55, a director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register and disclose to the board:
- (a) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (b) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- 53.2 A director is not required to comply with clause 53.1 if:
- (a) The transaction or proposed transaction is between the director and the Company; and
  - (b) The transaction or proposed transaction is or is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.

- 53.3 For the purposes of clause 53.1, a general notice entered in the interests register and disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- 53.4 Any failure by a director to comply with clause 53.1 does not affect the validity of a transaction entered into by the Company or the director.

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#### **54 AVOIDANCE OF TRANSACTIONS**

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Subject to clause 55, a transaction entered into by the Company in which a director is interested may be avoided by the Company if permitted by, and in accordance with, the Act.

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#### **55 UNANIMOUS ASSENT OF ENTITLED PERSONS TO COMPANY ENTERING INTO TRANSACTION IN WHICH DIRECTOR INTERESTED**

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If all entitled persons have agreed to or concur in the Company entering into a transaction in which a director is interested, nothing in clauses 53 and 54 shall apply in relation to that transaction.

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#### **56 INTERESTED DIRECTOR MAY NOT VOTE**

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- 56.1 Subject to clause 56.2, a director who is interested in a transaction entered into, or to be entered into, by the Company may not:
- (a) Vote on a matter relating to the transaction;
  - (b) 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 purpose of a quorum;
  - (c) Sign a document relating to the transaction on behalf of the Company; and
  - (d) Do any other thing in his or her capacity as a director in relation to the transaction.
- 56.2 The chairperson may, with the consent of the other non-interested directors, permit the interested director to attend the meeting of directors at which the matter relating to the transaction arises, but the interested director is not to be included in the quorum for the purpose of the matter.

#### **REIMBURSEMENT TO DIRECTORS OF EXPENSES**

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#### **57 REIMBURSEMENT TO DIRECTORS OF EXPENSES**

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Each director shall be entitled to be reimbursed by the Company for all travelling, accommodation and other expenses incurred by him or her in connection with the business of the Company, including attendance at meetings.

#### **OTHER OFFICES WITH COMPANY HELD BY DIRECTOR**

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#### **58 OTHER OFFICES WITH COMPANY HELD BY DIRECTOR**

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- 58.1 Any director may act personally, or any firm of which any director is a member may act, in a professional capacity for the Company and such director or firm shall be entitled to remuneration for professional services as if the director were not a director of the Company, provided that nothing in this clause 58.1 shall authorise any director, or any firm of which any director is a member, to act as auditor of the Company.

- 58.2 Any director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director, for such period and on such terms (as to remuneration and otherwise) as the board may determine.
- 58.3 A director is not disqualified by virtue of his or her office from entering into any transaction with the Company. Any such transaction shall be valid and enforceable to the same extent as if he or she were not a director and not in a fiduciary relationship with the Company. Any such director shall not be liable to account to the Company, by reason of the director holding such office or such fiduciary relationship, for any profit realised by such transaction.

## REMUNERATION AND OTHER BENEFITS TO DIRECTORS

### 59 REMUNERATION AND OTHER BENEFITS TO DIRECTORS

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- 59.1 **Fixing Remuneration:** No remuneration shall be paid to a director in his or her capacity as a director of the Company or as a director of any subsidiary (including any remuneration paid by a subsidiary to the director in his or her capacity as a director of that subsidiary) unless that remuneration has been authorised by an ordinary resolution of the Company. Each such resolution shall express directors' remuneration as either:
- (a) a monetary sum per annum payable to all directors of the Company taken together; or
  - (b) a monetary sum per annum payable to any person who from time to time holds office as a director of the Company.

If remuneration is expressed in accordance with clause 59.1(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 of the Company, 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) of the Company.

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

- 59.2 **Payments Upon Cessation of Office:** The Company may make a payment to a director or former director, or his or her dependants, 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 amount of the payment, or the method of calculation of the amount of that payment is authorised by an ordinary resolution; or
  - (b) the payment is made to a director or a former director that was in office on or before 1 May 2004 and has continued to hold that office since that date, or to his or her dependants and the total amount of the payment (or base for the pension) does not exceed the total remuneration of the director in his or her capacity as a director in any three years chosen by the Company.

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 any superannuation scheme.

- 59.3 **Expenses and Special Remuneration:** Notwithstanding clause 59.1 the board may authorise, without the approval of the shareholders, the payment of special remuneration to any director who is or has been engaged by the Company to carry out work or perform any services which are not in the capacity of a director of the Company or a subsidiary.

## **INDEMNITY AND INSURANCE**

### **60 INDEMNITY AND INSURANCE**

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- 60.1 The Company may give any indemnity of the nature or type provided in sections 162(3) or (4) of the Act.
- 60.2 The Company may (with the prior approval of the board) effect any insurance of the nature or type provided in section 162(5) of the Act.

## **AUTHORITY TO BIND COMPANY**

### **61 METHOD OF CONTRACTING**

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- 61.1 A contract or other enforceable 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) A director; or
  - (b) Another person, or class of persons, authorised by the board for that purpose,
- 61.2 whose signature or signatures must be witnessed. For avoidance of doubt, nothing in this clause 61 shall limit the other methods of contracting provided in section 180 of the Act.

## **LIQUIDATION**

### **62 DISTRIBUTION OF SURPLUS ASSETS**

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Subject to the terms of issue of any shares and to clause 63, upon the liquidation of the Company any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed among the holders of the shares in proportion to their shareholdings, provided that a holder of shares that are not fully paid up shall receive only a proportionate share of what would otherwise have been that shareholder's entitlement, being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of such shareholder to the Company in respect of such shares.

### **63 DISTRIBUTION OF ASSETS IN KIND**

---

Upon the liquidation of the Company, the liquidator may, with the sanction of an ordinary resolution and any other sanction required by law, divide amongst the shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any assets to be divided as aforesaid and may determine how the division shall be carried out as between the shareholders, or shareholders holding different classes of shares. 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 thinks fit. Notwithstanding the foregoing provisions of this clause 63, no shareholder shall be compelled to accept any shares or other securities in respect of which there is any liability.

## **REMOVAL OF COMPANY FROM NEW ZEALAND REGISTER**

### **64 BOARD OR AUTHORISED DIRECTOR MAY REQUEST REMOVAL OF COMPANY FROM NEW ZEALAND REGISTER**

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- 64.1 The board, or any director who has been authorised by the board to do so, may request of the Registrar that the Company be removed from the New Zealand register on either of the grounds specified in section 318(2) of the Act.
- 64.2 For the purposes of section 318(2)(a) of the Act, the Company shall have distributed its surplus assets in accordance with this constitution if the Company does so in accordance

with clause 63, except that no liquidator needs to be appointed and reference to the "liquidator" in clause 63 shall be construed as reference to the shareholders acting by an ordinary resolution.

## **NOTICES TO DIRECTORS AND ALTERNATE DIRECTORS**

### **65 NOTICES TO DIRECTORS AND ALTERNATE DIRECTORS**

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For the purpose of a notice of a meeting of the board being sent to a director, or an alternate director, as the case may be:

- (a) A notice delivered to that person is deemed to be received at the time of delivery;
- (b) A notice posted to that person shall be sent by fastpost (by airmail if to a country other than New Zealand), and if sent to within New Zealand is deemed to be received on the third working day after the date of posting or if sent to a country other than New Zealand is deemed to be received on the tenth working day after the date of posting;
- (c) A notice sent by facsimile to that person is deemed to be received upon production by the Company's machine of a confirmation of the completion of transmission without any error or indication of incomplete transmission; and
- (d) A notice sent by electronic mail to that person is deemed to be received as provided in section 11 of the Electronic Transactions Act, or as the Company and that person otherwise agree upon in writing,

provided that if a notice would be deemed to be received under the provisions of this clause 65 after 5.00 p.m. on any day in the relevant time zone in respect of which the address, facsimile number and electronic mail address have been provided to the Company for the director, or alternate director, as the case may be, for the purpose of service of such notice, it shall be deemed instead to be received at 8.30 a.m. on the next following working day in that time zone. In the case of a notice sent by facsimile or electronic mail, such notice shall, but for avoidance of doubt without prejudice to any effective giving of the notice in terms of clause 65(c) or (d), be confirmed by the Company by sending a copy of the notice by delivery or post in accordance with the provisions of this clause 65.

## **FIRST SCHEDULE - PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

### **INTERPRETATION**

#### **1 Clause references and references to shareholder**

- 1.1 Unless the context otherwise requires, a reference in this Schedule to a clause is a reference to a clause in this Schedule.
- 1.2 A reference in schedule 1 to the Act or in this Schedule to a shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a shareholder, a representative of a corporate shareholder, and any other person who may lawfully act on behalf of a shareholder including that shareholder's personal representative(s).

### **NOTICE OF MEETINGS**

#### **2 Notice to shareholders, directors and auditors**

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 any auditor of the Company not less than 10 working days before the meeting.

#### **3 Notice to state nature of business and text of any special resolution**

The notice of a meeting must state:

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

#### **4 Notice to joint holders**

Where two or more persons are registered as the holder of a share, notice of a meeting must be sent to all of those persons.

#### **5 Irregularities in notice may be waived**

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.

#### **6 Accidental omission to give or failure to receive notice does not invalidate proceedings**

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

#### **7 Notice of adjournment**

- 7.1 If a meeting 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 from which the adjournment took place.
- 7.2 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as notice was given of the meeting from which the adjournment took place.

## **METHODS OF HOLDING MEETINGS**

### **8 Meetings in one location or by telecommunication**

8.1 A meeting of shareholders may be held either:

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

8.2 The Company is not required to hold any meeting in the manner specified in clause 8.1(b). A meeting shall be held in that manner only if the notice of the meeting so specifies or the board otherwise decides that the Company shall do so.

## **QUORUM**

### **9 No business if quorum not present**

Subject to clause 11, no business may be transacted at a meeting of shareholders if a quorum is not present at the time at which the meeting proceeds to business.

### **10 Quorum**

A quorum for a meeting is present if 5 or more shareholders having the right to vote at the meeting are present at the meeting.

### **11 Other meeting adjourned if no quorum**

If a quorum is not present within 30 minutes after the time appointed for a 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 present at that meeting constitute a quorum. The only business that may be transacted at any such adjourned meeting is the business proposed to be carried out at the meeting from which the adjournment took place.

## **CHAIRPERSON**

### **12 Chairperson of board to chair meeting**

If the directors have elected a chairperson of the board and he or she is present at a meeting of shareholders, he or she shall chair the meeting.

### **13 Deputy chairperson or other director to chair meeting if chairperson of board not available**

If no chairperson of the board has been elected or if, at any meeting, the chairperson of the board is not present within 15 minutes after the time appointed for the commencement of the meeting or is unwilling to act as the chairperson of the meeting, the deputy chairperson of the board (if any) shall chair the meeting, or failing that, the directors present at the meeting may elect one of their number to chair the meeting.

### **14 Shareholders may choose chairperson if no director present and available to chair meeting**

If, at any meeting, no director is present and available within 15 minutes after the time appointed for the commencement of the meeting to chair the meeting, the shareholders present may choose one of their number to chair the meeting.

## **15 Chairperson's power to adjourn meeting**

The chairperson of a meeting at which a quorum is present:

- (c) May adjourn the meeting with the consent of the shareholders present who are entitled to attend and vote at that meeting; and
- (d) Must adjourn the meeting if directed by the meeting to do so.

The only business that may be transacted at any such adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

## **16 Chairperson may adjourn or dissolve disorderly, unruly or protracted meeting**

If any meeting at which a quorum is present becomes so disorderly, unruly or inordinately protracted that in the sole and absolute opinion of the chairperson of the meeting the business of the meeting cannot be conducted in an orderly, proper or timely manner, the chairperson may, notwithstanding any other provision of this constitution, and without the consent of the shareholders present who are entitled to attend and vote at that meeting, in his or her sole and absolute discretion and without giving any reason therefor either adjourn or dissolve the meeting.

## **17 Unfinished business at dissolved meeting**

If any meeting is proposed to be dissolved by the chairperson of the meeting pursuant to clause 16, the unfinished business of the meeting shall be dealt with by the chairperson directing that any item of business which is uncompleted at the meeting and which in his or her sole and absolute opinion requires to be voted upon be put to the vote by a poll without further discussion.

## **VOTING**

### **18 Voting at meetings in one location**

In the case of a meeting of shareholders held under clause 8.1(a), 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.

### **19 Voting at meetings by telecommunication**

In the case of a meeting held under clause 8.1(b), unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.

### **20 Chairperson's declaration that resolution carried**

A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority (or lost) is conclusive evidence of that fact unless a poll is demanded in accordance with clause 21.

### **21 Poll may be demanded by shareholders or chairperson**

At a meeting a poll may be demanded by:

- (a) Not less than 5 shareholders having the right to vote at the meeting;
- (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;

- (c) A shareholder or shareholders holding shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all shares that confer that right; or
- (d) The chairperson of the meeting.

## **22 Poll may be demanded before or after vote on resolution**

A poll may be demanded at a meeting either before or after the vote is taken on a resolution.

## **23 Proxy allowed to demand poll**

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

## **24 Time at which poll taken**

A poll demanded by the chairperson of a meeting or on a question of adjournment is to be taken immediately. A poll demanded by a shareholder or shareholders in accordance with clause 21 or on any other question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

## **25 Counting votes on poll**

If a poll is taken at a meeting, votes must be counted according to the votes attached to the shares of each shareholder present and voting, provided that if a share is not fully paid up the share carries on a poll only a proportion of a full voting right, such proportion to equate to the amount paid up on the share compared with the amount which would be paid if the share was fully paid up.

## **26 Scrutineer on poll**

If a poll is taken at a meeting, the auditor of the Company for the time being, or if the auditor of the Company is unable or unwilling to act, then such person as the chairperson of the meeting nominates, shall act as scrutineer for the purposes of the poll.

## **27 Result of poll treated as resolution**

The result of a poll declared by the chairperson of the meeting at which the poll was demanded will be treated as the resolution of the meeting on the issue for which the poll was taken.

## **28 Chairperson not entitled to casting vote**

In the case of an equality of votes at a meeting (whether by voice, on a show of hands or on a poll), the chairperson of the meeting is not entitled to a casting vote.

## **29 Votes of joint holders**

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

## **30 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 meeting of shareholders other than a meeting of an interest group.

## **PROXIES**

### **31 Proxies permitted**

A shareholder may exercise the right to vote at a meeting of shareholders either by being present in person or by proxy.

### **32 Proxy treated as shareholder**

A proxy for a shareholder is entitled to attend and be heard at a meeting as if the proxy were the shareholder.

### **33 Appointment of proxy in writing and to specify duration**

A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term (for avoidance of doubt, a proxy need not be a shareholder).

### **34 Notice of appointment of proxy to be produced to the Company at least 48 hours before meeting**

No proxy is effective in relation to a meeting (or adjourned meeting as the case may be) unless a copy of the notice of appointment is produced (so as to be received by the Company) at least 48 hours before the time specified in the notice of the meeting for the start of the meeting (or adjourned meeting as the case may be). Such copy of the notice of appointment shall be produced (so as to be received by the Company) if it is delivered to or deposited at the registered office or such other place within New Zealand as is specified for that purpose in the notice of the meeting. If the notice of appointment is signed under power of attorney, a copy of the power of attorney and a signed certificate of non-revocation of such power of attorney shall accompany such copy of the notice.

### **35 Form of notice of appointment of proxy**

A notice appointing a proxy shall be in the form set out in the Second Schedule to this constitution or in such other form as the board may direct.

### **36 Vote by proxy valid where Company not notified before meeting of disqualified proxy**

In the event that:

- (a) The shareholder has become incapacitated or died;
- (b) The proxy, or the authority under which the proxy was executed, has been revoked; or
- (e) The share or shares in respect of which the notice of appointment of proxy is given has or have been transferred,

before a meeting at which a proxy exercises a vote in terms of a notice of appointment of proxy but the Company does not receive notice in writing of that incapacity, death, revocation or transfer before the start of the meeting, the vote of the proxy shall be valid.

## **POSTAL VOTES**

### **37 Postal votes not permitted**

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

## **MINUTES**

### **38 Board to ensure minutes kept of proceedings**

The board must ensure that minutes are kept of all proceedings at meetings of shareholders (and that a record is kept of all written resolutions of shareholders).

### **39 Minutes signed correct by chairperson prima facie evidence of proceedings**

Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence (unless shown to be inaccurate) of the proceedings at the meeting.

## **SHAREHOLDER PROPOSALS**

### **40 Proposal by written notice to board**

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.

### **41 Board to give notice of proposal at Company's expense**

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 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.

### **42 Board to give notice of proposal at shareholder's expense**

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 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.

### **43 Board to, if practicable on short notice, give notice of proposal at shareholder's expense.**

If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting is required to be given by the board, the board must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

### **44 Shareholder may include statement if vote on proposal may be by proxy**

If the directors intend that shareholders may vote on the proposal by proxy, 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.

### **45 Board may exclude parts of statement, proposal or resolution**

The board is not required to include in or with the notice given by the board:

- (a) Any part of a statement prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or
- (b) Any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).

**46 Shareholder to give security for costs for proposal**

Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

**CORPORATIONS MAY ACT BY REPRESENTATIVES**

**47 Body corporate may appoint representative to attend meeting**

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 (and such representative is entitled to attend and be heard at the meeting as if the representative were the shareholder).

**OTHER PROCEEDINGS**

**48 Meeting may regulate own procedure**

Except as provided in this Schedule, a meeting of shareholders may regulate its own procedure.

**SECOND SCHEDULE - FORM OF NOTICE OF APPOINTMENT OF PROXY**

**Connexionz Limited ("the Company")**

**Shareholder details** *(please print clearly)*

Full name:

Full address:

*(If two or more persons are registered as the holder of a share, enter details of the other joint holders)*

Full name:

Full address:

Full name:

Full address:

**Appointment of proxy** *(please note that if two or more persons are registered as the holder of a share, the appointment is made on behalf of each of the joint holders)*

I appoint:

Full name:

Full address:

as my proxy to exercise my vote at the [annual/special] *(strike out whichever is not applicable)* meeting[s] *(strike out "s" if not applicable)* of shareholders of the Company to be held on [date(s)] *(complete)*, and at any adjourned meeting of [that meeting/those meetings] *(strike out whichever is not applicable)*. If the person I have specified above is unable to act as my proxy then I appoint:

Full name:

Full address:

as my proxy on the same basis as set out above.

The following persons or officers are willing to act as proxy if the shareholder wishes to appoint any of them:

[Names].

**Voting instructions** *(please note that if two or more persons are registered as the holder of a share, the voting instructions are given on behalf of each of the joint holders)*

I direct my proxy to vote in the following manner:

(tick the applicable box)

General business

In favour of

Against

1

2

3

Special business

1

(identify resolution)

Signed by the shareholder

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*(If two or more persons are registered as the holder of a share, also to be signed by the other joint holders)*

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Date:

**Notes**

- 1 If this form is produced without it directing the proxy how to vote on any particular matter, the proxy will be able to vote, or abstain from voting, on the matter as he or she thinks fit.
- 2 If two or more persons are registered as the holder of a share, each of the joint holders must sign this form.
- 3 If a body corporate is registered as the holder of a share, this form must be signed on behalf of the body corporate by a person acting under the body corporate's express or implied authority.
- 4 For this form to be effective, it must be completed and a copy of it must be produced (so as to be received by the Company) at least 48 hours before the time specified in the notice of the meeting for the start of the meeting (or adjourned meeting as the case may be) at which the proxy is to exercise the vote. To be produced (so as to be received by the Company) such copy of this form must be delivered to or deposited at the registered office of the Company or such other place within New Zealand as is specified for that purpose in the notice of the meeting. If this form is signed under power of attorney, a copy of the power of attorney and a signed certificate of non-revocation of such power of attorney must accompany such copy of this form.

## **THIRD SCHEDULE - PROCEEDINGS OF THE BOARD**

### **INTERPRETATION**

#### **1 Clause references**

Unless the context otherwise requires, a reference in this Schedule to a clause is a reference to a clause in this Schedule.

### **CHAIRPERSON**

#### **2 Chairperson of board holds office until ceases to be director or replaced**

Any director elected as chairperson of the board holds that office until he or she ceases to be a director or the directors elect a chairperson in his or her place.

#### **3 Chairperson of board to chair meeting of board**

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

### **NOTICE OF MEETING**

#### **4 Director or, if requested by director, employee may convene meeting**

A director or, if requested by a director to do so, an employee of the Company, may convene a meeting of the board by giving notice in accordance with clauses 5, 6 and 7.

#### **5 Notice to directors**

- 5.1 Subject to clauses 5.2 and 5.3, not less than 2 working days' written notice of a meeting of the board must be sent to every director (including any director who is not in New Zealand) for whom an address, facsimile number or electronic mail address for the purpose of service of such notice has been provided to the Company.
- 5.2 If any director is, or is to be, out of New Zealand and has appointed an alternate director under the provisions of this constitution, the director may by giving written notice to the Company require that during the time the director is out of New Zealand any notice of a meeting be sent to the alternate director rather than the director. In that case, not less than 2 working days' written notice of a meeting must be sent to the alternate director if an address, facsimile number or electronic mail address for him or her for the purpose of service of such notice has been provided to the Company.
- 5.3 If the chairperson of the board believes that it is desirable or necessary to convene a meeting as a matter of urgency, less than 2 working days' notice, but not less than 2 hours' notice, of the meeting may be given. Such notice must be sent in writing where it is practicable to do so, but where not so practicable may be given by telephone communication on the telephone number which the director, or alternate director in the case of the director requiring notice to be sent to such alternate director in accordance with clause 5.2, provides from time to time to the Company, and if such telephone number is not for the time being so provided, to the director, or such alternate director, as the case may be, at his or her last telephone number known to the Company.

#### **6 Notice to include certain details and describe matters to be discussed**

The notice of a meeting of the board must include the date, time and place of the meeting, including in the case of a meeting to be held in the manner specified in clause 3(b) of schedule 3 to the Act the telephone number for the purposes of attending the meeting, and a description of the matters to be discussed.

## **7 Sending of notice**

Subject to clause 5, the notice of a meeting of the board must be sent to a director, or alternate director in the case of the director requiring notice to be sent to such alternate director in accordance with clause 5.2, at the address, facsimile number or electronic mail address for the director, or such alternate director, as the case may be, which has been provided from time to time to the Company for the purpose of service of such notice.

## **METHODS OF HOLDING MEETINGS**

### **8 Procedures at meetings by telecommunication**

In the case of a meeting of the board held in the manner specified in clause 3(b) of schedule 3 to the Act, in addition to being able to hear throughout the meeting each of the other directors participating:

- (a) Each of the directors participating must at the start of the meeting acknowledge his or her presence for the purpose of the meeting to all of the other directors participating;
- (b) No director participating may leave the meeting by disconnecting his or her means of communication unless he or she has first obtained the express consent of the chairperson of the meeting to do so; and
- (c) Each of the directors participating shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she first obtained the express consent of the chairperson of the meeting to leave the meeting by disconnecting his or her means of communication.

For avoidance of doubt, neither the meeting, nor any business conducted at the meeting, shall be invalidated if a director participating leaves the meeting without first obtaining the express consent of the chairperson of the meeting.

## **QUORUM**

### **9 Quorum number**

Unless otherwise determined by the board from time to time, a quorum for a meeting is present if three directors are present.

### **10 Meeting adjourned if no quorum**

If a quorum for a meeting of the board is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the following working day at the same time and place, or to such other date, time and place as the chairperson of the meeting may appoint, and if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the directors present are a quorum.

## **VOTING**

### **11 Voting at meetings**

Every director has one vote at a meeting of the board.

### **12 Resolution passed if agreed to by all present or majority in favour**

At a meeting, a resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.

### **13 Director may abstain from voting**

A director present at a meeting may abstain from voting on a resolution, and any director who so abstains shall not be presumed to have agreed to, or to have voted in favour of, such resolution.

**14 Chairperson has casting vote**

In the case of an equality of votes at a meeting, the chairperson of the meeting has a casting vote.

**MINUTES**

**15 Board to ensure minutes kept of proceedings**

The board must ensure that minutes are kept of all proceedings at meetings of the board and that a record is kept of all written resolutions of directors.

**16 Minutes signed correct by chairperson prima facie evidence of proceedings**

Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence, unless shown to be inaccurate, of the proceedings at the meeting.

**UNANIMOUS RESOLUTION**

**17 Resolution in writing valid and effective as if passed at meeting**

A resolution in writing, signed or assented to by all directors then entitled to receive notice of a meeting of the board, is as valid and effective as if it had been passed at a meeting duly convened and held.

**18 Resolution may consist of several documents**

Any resolution referred to in clause 18 may consist of several documents (including facsimile, electronic mail or other similar means of communication) in like form each signed or assented to by one or more directors.

**19 Copy resolution to be entered in minute book of proceedings**

A copy of each resolution referred to in clause 18 must be entered in the minute book of board proceedings.

**OTHER PROCEEDINGS**

**20 Board may regulate own procedure**

Except as provided in this Schedule, the board may regulate its own procedure.