

CONSTITUTION

OF

FIDELITY LIFE
ASSURANCE COMPANY
LIMITED

Certified as the Constitution of the Company

Dated this 12 December 2017.

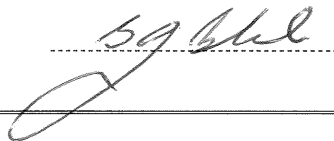
A handwritten signature in cursive script, appearing to read 'S. G. B. L.', is written over a horizontal dashed line. The signature is positioned below the date and above the bottom border of the main text area.

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1.0 Interpretation

Definitions

1.1 In this Constitution, unless the context otherwise requires:

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

"**Affiliate**" means, in relation to a particular person, any of the following persons:

- (a) a 'related company' of that person as defined in section 2(3) of the Companies Act (read as if the expression 'company' in that section, or any other section referred to by that section, includes any body corporate wherever incorporated or established);
- (b) any person which controls that first person, is controlled by that first person, or is controlled by the same person which controls that first person; and
- (c) where the first person is an individual: (i) the spouse of that first person or any person with whom that first person is living in a relationship in the nature of marriage; (ii) any parent, child or grandchild of that first person; (iii) any trust established exclusively or principally for the benefit of that first person and/or for the benefit of one or more of the persons specified in paragraphs (c)(i) or (ii) of this definition; or (iv) a company in which all of the shares are held by or on behalf of that first person and/or by or on behalf of any of the persons specified in paragraphs (c)(i), (ii) or (iii) of this definition.

"**Appointed Director**" means a director appointed under Regulations 11.2(a) or 11.2(b).

"**Beneficial Owners**" means those persons holding the beneficial ownership of the shares held by the Custodian pursuant to the Custodian Deed, as evidenced by the register of beneficiaries established and maintained by the Custodian in accordance with the Custodian Deed.

"**Board**" and "**Board of Directors**" in relation to the Company means those directors who number not less than the quorum specified in Regulation 12.4 of this Constitution acting together as a board of directors.

"**Burgess Trust**" means the trustees for the time being of the Burgess Family Trust No. 2, a trust settled pursuant to a trust deed dated 24 October 2001.

"**Business**" means the business carried on by the Group.

"**Business Plan**" means the business plan and budget for the Group referred to in Regulation 18.0 together with any updated business plan and budget from time to time approved in accordance with this Constitution.

"**Company**" means FIDELITY LIFE ASSURANCE COMPANY LIMITED.

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

"**Custodian**" means the custodian for the time being under the Custodian Deed.

"**Custodian Deed**" means the custodian deed to be entered into between the Company, Fidelity Life Custodial Services Limited (as the Custodian) and certain persons as

beneficiaries from time to time, which evidences a custodial arrangement in respect of shares in the Company held by the Custodian on bare trust for such beneficiaries.

"Encumbrance" means an option, lien, charge, mortgage, security interest, encumbrance, right of pre-emption or first refusal or any other adverse right or interest or claim of any nature.

"Fidelity Trust" means the trustees for the time being of the Fidelity Family Trust, a trust settled pursuant to a trust deed dated 1 November 1984.

"Fit and Proper Policy" means the policy recording the qualifications, requirements, and other criteria that a person must have or satisfy in order to be a director, maintained by the Company under section 34 of the Insurance (Prudential Supervision) Act 2010.

"FMCA" means the Financial Markets Conduct Act 2013.

"Group" means the Company and each subsidiary of the Company.

"Independent Director" means a director who meets the requirements of any guideline or policy published by the Reserve Bank of New Zealand dealing with the independence of directors of licensed insurers, including in the document entitled "Governance Guidelines Licensed Insurers" published in June 2011 (as that document may be amended, supplemented or replaced by the Reserve Bank of New Zealand from time to time).

"Large Shareholder" means, at any time, a Shareholder who holds more than 20% of the ordinary shares in the Company, other than the Custodian, except to the extent that the Custodian holds shares on behalf of any Beneficial Owner who individually beneficially owns more than 20% of the total ordinary shares (in which case the Custodian will be a Large Shareholder to the extent of that holding).

"Major Holding" means ordinary shares of the Company:

- (a) which are in aggregate 65% or more of the total ordinary shares; and
- (b) the holders of which include: (i) all Shareholders (other than the Custodian) who individually hold 25% or more of the total ordinary shares; and (ii) if any Beneficial Owner individually beneficially owns 25% or more of the total ordinary shares, the Custodian to the extent of those shares.

"NZSF" means Guardians of New Zealand Superannuation as manager and administrator of the New Zealand Superannuation Fund, and any Fund Investment Vehicle as defined in section 59A of the Superannuation Act.

"ordinary resolution" means a resolution passed by a simple majority of Shareholders entitled to vote and voting.

"Related Company" has the meaning given in section 2(3) of the Companies Act 1993.

"Shareholder" means a person whose name is entered in the share register as the holder for the time being of one or more shares.

"Special Approval Matters" means the matters listed in Schedule 1.

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

"**Superannuation Act**" means the New Zealand Superannuation and Retirement Income Act 2001.

"**Working Day**" has the meaning in the Act.

1.2 In this Constitution:

- (a) Any headings appear as a matter of convenience only and shall not affect the construction of this Constitution.
- (b) References to any statute, statutory regulations or other statutory instrument shall be deemed to be references to the statute, statutory regulations or instrument as from time to time amended or re-enacted, or as the context permits, provisions substituted therefor and for the being in force.
- (c) The singular includes the plural and vice versa and words importing any gender include the other genders.
- (d) The words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction.
- (e) Unless stated otherwise, references to monetary amounts are to New Zealand currency.
- (f) Except as specified in Regulation 1.1, words or expressions which are defined in the Act shall have the meaning given by the Act unless the context otherwise requires.

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

2.0 Management of the Company

Role of Board

2.1 The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board, subject to Regulations 2.7 and 2.8.

2.2 The Board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of a company.

2.3 Notwithstanding Regulation 2.1 of this Constitution:

- (a) The chairperson of a meeting of Shareholders must allow a reasonable opportunity for Shareholders and Beneficial Owners at the meeting to question, discuss or comment on the management of the Company; and
- (b) A meeting of Shareholders may pass a resolution relating to the management of the Company.

Shareholders' Resolutions Regarding Management

2.4 Subject to Regulation 2.8, a resolution relating to the management of the Company passed by a meeting of Shareholders shall not be binding on the Board.

Delegation by the Board

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

Major Transactions

- 2.7 The Company must not enter into a major transaction unless the transaction is:
- (a) approved by a special resolution; or
 - (b) contingent upon approval by a special resolution.

Special Approval Matters

- 2.8 The Company may not take, and will not permit any other Group member to take, any action or decision in relation to any of the Special Approval Matters without the prior approval of each Large Shareholder. A Large Shareholder may give its approval under this Regulation 2.8 either in writing or by a vote in favour on a separate and specific shareholder resolution on that matter.

Board sub committees

- 2.9 Any committee or sub-committee of the Board must, if requested by any Large Shareholder, include an Appointed Director of that Large Shareholder.

3.0 Shares

Rights and Powers Attaching to Shares

- 3.1 Subject to Regulations 3.2 and 3.3, a share in the Company confers on the Shareholder:
- (a) The right to one vote at a meeting of the Company on any resolution, including any resolution to:
 - (i) Appoint or remove a director or auditor;
 - (ii) Alter the Constitution;
 - (iii) Approve a major transaction;
 - (iv) Approve an amalgamation of the Company under s.221 of the Act;
 - (v) Put the Company into liquidation.
 - (b) The right to an equal share in dividends authorised by the Board.

(c) The right to an equal share in the distribution of the surplus assets of the Company.

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

3.2 The rights, privileges, limitations and conditions attached to any shares in the Company may, subject to compliance with ss. 116 and 117 of the Act, be modified, abrogated or altered only with the sanction of a special resolution passed at a meeting of each interest group.

Terms of Issue

3.3 (a) Without limiting the classes of shares that may be issued, shares in the Company may be issued on terms that they:

- (i) are convertible; or
- (ii) are redeemable; or
- (iii) confer preferential rights to distributions of capital which may be made subject to the power of the directors to make distributions; or
- (iv) confer preferential rights to distributions of income which may be made subject to the power of the directors to make distributions; or
- (v) confer special, limited or conditional voting rights; or
- (vi) do not confer voting rights; or
- (vii) possess any combination of two or more of the foregoing characteristics.

(b) The issue of shares ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions or both is expressly permitted. Accordingly any such issue of shares shall not be an action modifying, abrogating or altering the rights, privileges, limitations and conditions attached to these shares as contemplated by s.117 of the Act.

Board to Issue Shares

3.4 The Board may issue shares at any time, to any person, in any number, in such classes and on such terms as it thinks fit, subject to the provisions of the Act and this Constitution, including for clarity Regulations 2.8 and 3.5.

Number of Shares

3.5 The total number of share parcels in the Company shall be no more than 49.

Consideration for Shares

3.6 Before the Board issues shares the Board must:

- (a) Decide the consideration for which the shares will be issued and the terms on which they will be issued; and

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- (b) If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
 - (c) Resolve that, in its opinion, the consideration for and terms of the issue are fair and reasonable to the Company and to all existing Shareholders; and
 - (d) If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

Directors' Certificate

3.7 The directors who vote in favour of a resolution required by Regulation 3.6 must sign a certificate:

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

Exceptions to "Fair Value" Issues

3.8 Regulations 3.6 and 3.7 do not apply to:

- (a) The issue of shares that are fully paid up from the reserves of the Company to all Shareholders of the same class in proportion to the number of shares held by each Shareholder;
- (b) The consolidation of the shares or any class of shares in the Company in proportion to those shares or the shares in that class;
- (c) The subdivision of the shares or any class of shares in the Company in proportion to those shares or the shares in that class.

Issue of Options and Convertible Securities

3.9 Before the Board issues any securities that are convertible into shares in the Company or any options to acquire shares in the Company, the Board must:

- (a) Decide the consideration for which the convertible securities or options, and, in either case, the shares will be issued and the terms on which they will be issued; and
- (b) If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and

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- (c) Resolve that, in its opinion, the consideration for and terms of the issue of the convertible securities or options, and, in either case, the shares are fair and reasonable to the Company and to all existing Shareholders; and
- (d) If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares; and
- (e) Offer the same to the holders of the shares already on issue in the same manner as provided for in Regulation 3.11(a) for issues of new shares.
- 3.10 The directors who vote in favour of a resolution required by Regulation 3.9 must sign a certificate:
- (a) Stating the consideration for, and the terms of, the issue of the convertible securities or options, and, in either case, the shares; and
- (b) Describing the consideration in sufficient detail to identify it; and
- (c) Where a present cash value has been determined in accordance with Regulation 3.9(b), stating that value and the basis for assessing it; and
- (d) Stating that, in their opinion, the consideration for and terms of issue of the convertible securities or options, and, in either case, the shares are fair and reasonable to the Company and to all existing Shareholders; and
- (e) If the shares are to be issued other than for cash, stating that, in their opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

Pre-emptive Rights - New Issues

- 3.11 (a) Any shares issued or proposed to be issued by the Company that rank or would rank as to voting or distribution rights, or both, equally with or prior to shares already issued by the Company must be offered for acquisition to the holders of the shares already issued in a manner and on terms that would, if accepted, maintain the existing voting or distribution rights, or both, of those holders.
- (b) The Board shall determine whether the issue will be renounceable, or non-renounceable. The offer shall remain open for acceptance for a reasonable time being not less than thirty Working Days (the "offer period") upon the expiration of which the offer if not accepted will be deemed to be declined. The offer shall state the offer period and shall, if the offer is renounceable, contain a notification that any Shareholder who desires an allotment of shares in excess of that Shareholder's proportion should in the reply to the Company state how many excess shares that Shareholder desires to purchase.
- (c) If the offer is renounceable, if all existing Shareholders have not claimed their proportions upon the expiration of the offer period, unclaimed shares shall be used for satisfying the claims in excess pro rata to the nearest whole share according to the number of shares applied for. If thereafter, any shares offered as aforesaid shall not have been accepted by existing Shareholders, the Board may offer such shares to any person or persons whom it is prepared to register as a Shareholder or Shareholders (subject to Regulation 3.5) and provided such person(s) is approved in writing by the Large Shareholders.

(d) Notwithstanding any prior acceptance by NZSF of an offer under this Regulation 3.0, NZSF is not required to acquire any shares or other equity securities to the extent that such acquisition would result in NZSF breaching section 59 of the Superannuation Act. NZSF may specify in any acceptance of such offer that its acceptance is conditional on receipt from the Board, following the end of the acceptance period, of a summary of all other acceptances in order for NZSF to assess its position in relation to compliance with section 59 of the Superannuation Act. NZSF may, within five Working Days following receipt from the Board of such summary, at its discretion if its acceptances would otherwise cause a breach of section 59 of the Superannuation Act, by notice in writing to the Board, decrease its level of acceptance of the shares or other equity securities on offer.

(e) Notwithstanding the provisions of section 45 of the Act and Regulations 3.9(e) and 3.11(a) to 3.11(c) (inclusive), but subject to Regulations 2.8 and 3.5, the directors may from time to time in their discretion:

(i) issue options, convertible securities and/or shares (referred to as "securities" for the purposes of this Regulation 3.11) to:

(aa) any employee(s) of the Company or any of its subsidiaries (including any executive or working director) or any trustee(s) on behalf of any such persons;

(bb) any director providing consultancy services to the Company or any of its subsidiaries,

on such terms and conditions as to payment or otherwise as the directors shall determine, subject to Regulations 3.6 and 3.9 provided the total number of options, convertible securities or shares as the case may be, which may be issued under the provisions of this Regulation 3.11(e) during any financial year of the Company shall not exceed two percent of the number of securities of the relevant class on issue at the commencement of such financial year;

(ii) issue shares to NZSF pursuant to the terms and conditions of a subscription agreement between the Company and NZSF dated 31 October 2017;

(iii) issue to the holders of preference shares and convertible obligations of the Company in redemption or conversion of such shares or obligations, in accordance with the terms of redemption or conversion thereof;

(iv) issue shares to the holders of share options upon the exercise of such options, in accordance with the terms of exercise thereof;

(v) issue securities whether for cash, or for consideration other than cash on such terms and conditions as to payment or otherwise as the directors shall determine, subject to Regulations 3.6 and 3.9, provided the total number of options, convertible securities or shares as the case may be, which may be issued under the provisions of this Regulation 3.11(e)(v) during any financial year of the Company shall not exceed twenty percent of the number of securities on issue at the commencement of the said period (excluding any securities of a subordinate class to those being issued), provided that where during the relevant period of 12 months voting securities have been issued other than pursuant to this Regulation 3.11(e)(v), such voting securities shall for the purpose of

this Regulation 3.11(e)(v) be deemed to have been on issue at the commencement of the said period;

- (vi) issue shares as consideration for the acquisition of the assets of any business, or shares or other securities of any company or other entity carrying on a business;
- (vii) issue shares to any existing Shareholder ("**Subscriber**") for cash, so long as not later than 6 months after that issue takes place, the Company offers to all other Shareholders (excluding any Shareholders where the Board determines it would be unduly onerous to make the offer by reason of the law of any jurisdiction to those Shareholders (including the requirement to make a regulated offer under New Zealand law)) who were not offered shares on the same terms as the Subscriber (the "**Follow-on Offer**") the opportunity to subscribe for shares of the same class as those issued to the Subscriber on the following basis:
 - (aa) the subscription price shall be the same price as the subscription price paid by the Subscriber;
 - (bb) each such Shareholder on the record date for the Follow-on Offer shall be offered a number of shares which, if subscribed in full, would cause that Shareholder to hold a percentage of the total shares not less than the percentage calculated as the number of shares held by that Shareholder immediately before such record date divided by the number of shares on issue before the subscription by the Subscriber under this Regulation 3.11(e)(vii)), rounded up to the nearest share.

For the purposes of the calculation in (bb), shares issued after the date on which the Subscriber subscribes for shares shall be ignored,

and issue shares to any existing Shareholder under the Follow-on Offer.

- (viii) issue shares under any dividend reinvestment plan approved in accordance with Regulation 2.8.
- (f) For the purposes of Regulation 3.11(e) the term "voting securities" shall mean securities which confer on the holder the rights to vote at all annual and special meetings of the Company and shall include securities, whether conferring voting rights or not, which are convertible into voting securities.

3.12 The issue of any shares pursuant to the exercise of the rights to the same granted by the terms of issue of any convertible securities or options shall not be subject to pre-emptive rights, and the provisions of s.45 of the Act shall be deemed to have been negated with respect to such shares.

Liens on Shares

3.13 The Company shall have a lien in respect of each share for all money:

- (a) presently payable on that share;
- (b) payable under any legislation in respect of the specific share.

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

Statement of Shareholders' Rights

- 3.17 (a) The Company shall issue to each Shareholder, a statement that sets out:
- (i) the class of shares held by that Shareholder, the total number of shares of that class issued by the Company, and the number of shares of that class held by the Shareholder;
 - (ii) the rights, privileges, conditions and limitations, including restrictions on transfer (if any) attaching to the shares held by the Shareholder;
 - (iii) the relationship of the shares held by the Shareholder to other classes of shares.

Exceptions

- (b) The Company shall not be obliged to provide a Shareholder with a statement if:
- (i) a statement has been provided within the previous six months;
 - (ii) the Shareholder has not acquired or disposed of shares since the previous statement was provided;
 - (iii) the rights attached to shares have not been altered since the previous statement was provided; and
 - (iv) there are no special circumstances which would make it unreasonable for the Company to refuse the request.

4.0 Transfer of Shares

Transferability of Shares

4.1 Subject to the terms of this Constitution (including, for the avoidance of doubt, Regulation 3.5):

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

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

- (a) using a wholly or partly electronic system for the transfer of securities which has been approved by any statute or regulations in New Zealand; or
- (b) a form of transfer complying with the FMCA in respect of any shares disposed of by an "authorised transaction" within the meaning of that term in the FMCA. Where an instrument of transfer would have complied with the provisions of the FMCA if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or if the signature of the transferor has been witnessed by an individual who has added his or her occupation and address after his or her signature.

To the extent that the transfer proceeds under paragraphs (a) or (b) above, the form of the instrument of transfer shall be any usual or common form or any other form which the Board may approve, signed by the Shareholder or the personal representative of the Shareholder. If registration of the transfer imposes on the transferee, as holder of the shares, any liability to the Company, the instrument of transfer must be signed by the transferee except where execution is under the common seal of a corporation, every signature to the instrument of transfer shall be witnessed by an individual who shall add his or her occupation and address after his or her signature.

4.3 The form of transfer must be delivered to:

- (a) the Company; or
- (b) an agent of the Company designated by the Board who maintains the share register.

Registration of Transfers

4.4 On receipt of a form of transfer in accordance with Regulation 4.2, the Company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless:

- (a) each of the following is satisfied:
 - (i) the Board resolves within 30 Working Days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and
 - (ii) notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 Working Days of the approval of the resolution by the Board; and

(iii) the refusal or delay in the registration is permitted by Regulation 4.5;
or

(b) the transfer would result in a breach of Regulation 3.5 or would otherwise cause the Company to become, or be likely to result in the Company becoming, a code company, as defined in the Takeovers Act 1993 (in which case the Board must refuse the registration of the transfer of such shares).

4.4A Until such time as the name of the transferee has been entered in the share register in accordance with Regulation 4.4, the transferor shall be deemed to remain a holder of those shares.

Permitted Transfer Restrictions

4.5 The Board may refuse or delay the registration of a transfer of shares if:

- (a) The Company has a lien on the shares; or
- (b) The holder of the shares has failed to pay to the Company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with the Act or this Constitution; or
- (c) The shares are not fully paid and the proposed transferee has not executed an agreement in a form required by the Board evidencing the obligations of the proposed transferee to pay the sum unpaid in respect of the shares or has failed to pay the costs of the Company in respect of such agreement; or
- (d) The form of transfer in respect of the shares relates to more than one class of share; or
- (e) The form of transfer is not accompanied by the certificate for the shares to which it relates (if a certificate has been issued) and such other evidence as the directors may reasonably require of the right of the transferor to make the transfer, or
- (f) The holder of the shares has failed to comply with the terms of any contract with the Company relating to the shares; or
- (g) The Board considers that it would not be in the best interests of the Company to do so; or
- (h) The rights contained in Regulations 4.6 to 4.12 have not been exhausted.

Pre-emptive rights/sale requirements

- 4.6
- (a) Subject to Regulation 4.18, every Shareholder, who desires to sell or transfer any shares (the "proposing transferor") shall give notice in writing (a "transfer notice") to the Company that the proposing transferor desires to transfer the shares. The transfer notice must nominate the sum the proposing transferor considers to be the value of the shares referred to in the transfer notice.
 - (b) A transfer notice shall constitute an offer to the Company to purchase the shares for the sum nominated in the transfer notice, or at the option of the Company at the fair value to be fixed in accordance with Regulation 4.8. The offer to the Company constituted by the transfer notice shall remain open for acceptance for a period of one calendar month after the Company is served with such notice.

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- (c) In the event that the Company declines to purchase the shares, the transfer notice shall constitute the Board the agent of the proposing transferor for the sale of such shares to any Shareholder or Shareholders of the Company or other person or persons nominated by the Board (on the basis that such shares will be made available in the following order of priority: (i) first, to the Large Shareholders; (ii) second, to any other Shareholder who the Board believes wishes to acquire such shares (provided that the Board considers it practicable to offer such shares to, and for such shares to be acquired by, such persons); and (iii) third, to any other person or persons nominated by the Board) at the sum specified in the transfer notice, or, at the option of the purchasing Shareholder or Shareholders or person or persons nominated by the Board at the fair value to be fixed in accordance with Regulation 4.8.
- (d) If a transfer notice includes several shares it shall not operate as if it were a separate transfer notice in respect of each share and the proposing transferor shall be under no obligation to sell or transfer part only of the shares specified in the transfer notice. Except as provided in Regulation 4.9, the transfer notice shall not be revocable without the sanction of the Board in writing.
- 4.7 If the Company elects to purchase the shares, or if the Company declines the offer to purchase the shares and the Board within the space of two calendar months after being served with such transfer notice, finds a Shareholder or Shareholders or any other person or persons willing to purchase the shares whom the Board in its discretion (in accordance with Regulation 4.6(c)) is prepared to register as a Shareholder or Shareholders (the "transferee" or "transferees"), and gives notice thereof to the proposing transferor, the proposing transferor shall, subject to Regulation 4.9, be bound to transfer the shares to the Company, or transferee or transferees, as the case may be, upon payment of the price or fair value as herein provided (subject to any lien which the Company may have under the Constitution or the terms of issue of the shares and to deduction in respect thereof).
- 4.8 The proposing transferor and the transferee will agree the fair value of the relevant shares within 10 Working Days of the requirement for fair value to be fixed being triggered. If the proposing transferor and the transferee do not agree within that period of 10 Working Days, the fair value of the relevant shares shall be determined by a single expert. That expert shall be agreed between the proposing transferor and all transferees which have not agreed the fair value, or failing that agreement within 10 Working Days, appointed by the Arbitrators and Mediators Institute of New Zealand. The expert will determine the fair value. The decision of the expert will be final and binding on the proposing transferor and all transferees which have not agreed fair value with the proposing transferor. The Arbitration Act 1996 will not apply. The costs and expenses of the expert will be borne by the Company.
- 4.9 If the fair value fixed as aforesaid is less than the sum nominated in the transfer notice, the proposing transferor may revoke the transfer notice by giving notice in writing to the Company within 7 days of notice of the "fair value".
- 4.10 If in any case the proposing transferor after becoming bound as aforesaid makes default in transferring the shares, the Company may execute a transfer or transfers of the shares on behalf of the proposing transferor and:
- (a) In the event that the Company has elected at its option to purchase or acquire the shares, the Company may hold the purchase money (subject to any lien in favour of the Company as aforesaid) in trust for the proposing transferor. A director's receipt shall be a good discharge to the Company for the purchase price and no question shall be raised as to the title of the Company to the shares after the shares have been purchased or acquired by the Company.

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- (b) In the event that the transferee is an existing Shareholder or any other person, the Company may receive the purchase money and shall thereupon cause the name or names of the transferee or transferees to be entered in the register as the holder or holders thereof and shall hold the purchase money (subject to any lien in favour of the Company as aforesaid) in trust for the proposing transferor. A director's receipt shall be a good discharge to the transferee or transferees for the purchase price and no question shall be raised as to the title of the transferee or transferees to the shares after the transferee or transferees are registered as the holders thereof.
- 4.11 If the Company declines to purchase the shares, and the Company shall not within the space of two calendar months after becoming served with a transfer notice find a Shareholder or Shareholders or other person or persons whom the Board is prepared to register as a Shareholder or Shareholders willing to purchase the shares and give notice in the manner aforesaid, the proposing transferor shall unless the proposing transferor shall have revoked the transfer notice pursuant to Regulation 4.9 at any time within three calendar months after the expiration of the said period of two months be at liberty to sell and transfer the shares to any person at a price not lower than the value specified in the transfer notice or the fair value fixed as aforesaid and the prior subclauses of this Regulation 4.0 shall not apply to such transfer provided that the right herein conferred on a Shareholder shall in all cases be subject to the provisions of Regulation 4.5(a) to 4.5(f).
- 4.12 If the Company agrees to purchase the shares, the Company shall take all steps necessary to comply with ss.58-67 of the Act (inclusive) and Regulation 6.3. The Company may not purchase any shares where such purchase would cause NZSF to contravene section 59 of the Superannuation Act.
- 4.13 Any share may be transferred by a Shareholder or Shareholders to:
- (a) any child, grandchild, wife or husband of such Shareholder; or
 - (b) a trustee or trustees of any trust which is in the opinion of the Board exclusively or principally for the benefit of such Shareholder and/or one or more of the aforesaid persons; or
 - (c) by a trustee or trustees of any such trust to a beneficiary,
- but this Regulation shall be read and construed as subject to the provisions of Regulation 4.5(a) to 4.5(f).
- 4.14 Regulations 4.5 to 4.12 shall not apply in the case of:
- (a) a transfer of shares by operation of law including any transfer to:
 - (i) the personal representative of a deceased person whose name is registered in the share register of the Company;
 - (ii) the assignee of the property of a bankrupt whose name is registered in the share register of the Company;
 - (b) any transfer by the Custodian of all of the shares in which it holds legal title to a replacement Custodian; or
 - (c) any transfer by the Custodian of shares to the Beneficial Owner in respect of whom the Custodian is holding those shares on bare trust.
- 4.15 (a) Notwithstanding any provision of this Constitution, where a Shareholder in the Company is an incorporated company ("the corporate Shareholder"), and there is

a change in the effective control of the corporate Shareholder, then the corporate Shareholder shall be deemed to have given a transfer notice in respect of the shares held by the corporate Shareholder as if it had given a transfer notice pursuant to the provisions of Regulation 4.6(a) ("deemed transfer notice").

- (b) The sale price or specified sum in respect of such shares shall be the fair value of those shares to be determined in accordance with Regulation 4.8 of this Constitution. The determination of the fair value pursuant to Regulation 4.8 shall be final and binding upon the corporate Shareholder.
- (c) Such deemed transfer notice shall not be revocable by the corporate Shareholder concerned and any provision in the Constitution which shall entitle a Shareholder or member to revoke a transfer notice shall not have application to such deemed transfer notice.

4.16 In respect of the Beneficial Owners:

- (a) The provisions in Regulations 4.6 to 4.15 (inclusive) will apply with all necessary modification in respect of each Beneficial Owner who desires to sell, transfer or otherwise dispose of any of its beneficial ownership in any shares in the Company.
- (b) If there is a change in the beneficial ownership in any of the shares held by the Custodian where the provisions in Regulations 4.6 to 4.15 (inclusive, as modified by Regulation 4.16(a)) have not been complied with, then the Custodian shall be deemed to have given a transfer notice in respect of those shares as if it had given a transfer notice pursuant to the provisions of Regulation 4.6(a) ("deemed Custodian transfer notice").
- (c) The sale price or specified sum in respect of such shares shall be the fair value of those shares to be determined in accordance with Regulation 4.8 of the Constitution. The determination of the fair value pursuant to Regulation 4.8 shall be final and binding upon the Custodian and any Beneficial Owner.
- (d) Such deemed Custodian transfer notice shall not be revocable by the Custodian and any provision in the Constitution which shall entitle a Shareholder or member to revoke a transfer notice shall not have application to such deemed Custodian transfer notice.

4.17 Where the occurrence of the event prescribed in Regulation 4.15(a) or 4.16(b) is not disclosed to the Company at the time of its occurrence, the Company may, immediately upon becoming aware of such event, serve notice on the corporate Shareholder concerned or the Custodian (as the case may be) of the occurrence of the event and upon the service of such notice the corporate Shareholder concerned or the Custodian (as the case may be) shall be deemed to have given, a transfer notice in accordance with the provisions of Regulation 4.15 or 4.16 (as applicable) and the Constitution.

4.18 Regulations 4.5 to 4.17 (inclusive):

- (a) Apply subject to Regulations 3.5 and 4.4; and
- (b) Do not apply in respect of any sale or transfer of shares by, or change of control in respect of, any Shareholder or class of Shareholder excluded from these Regulations by the Shareholders by ordinary resolution or by written notice to the Company from Shareholders holding over 50% of the ordinary shares in the Company; and
- (c) Do not apply in respect of any transfer of any interest in shares:

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- (i) to the Custodian to be held in accordance with the Custodian Deed; or
 - (ii) contemplated by, or arising under or as a result of, a subscription agreement between the Company and NZSF dated 31 October 2017, a sale and purchase agreement between Fidelity Trust and NZSF dated 31 October 2017, an agreement between NZSF and Burgess Trust dated 31 October 2017, or the matters set out or referred to in the notice of meeting in respect of the Company's 2017 annual general meeting (and accompanying documents, including without limitation an offer to minority shareholders and statutory minority buy-out rights).

5.0 Drag Along Rights and Tag Along Rights

Drag Along Option

- 5.1
- (a) If a Shareholder or Shareholders which hold a Major Holding ("**Dragging Shareholders**") wish to sell all shares held by the Dragging Shareholders to a person ("**Drag Along Purchaser**"), the Dragging Shareholders have the option to require all other Shareholders (including the Custodian) to sell all Shares held by those other Shareholders to the Drag Along Purchaser at the same price and on the same terms (subject to Regulation 5.1(e)) as those on which the Dragging Shareholders wish to sell to the Drag Along Purchaser, in accordance with Regulations 5.1 to 5.4 ("**Drag Along Option**").
 - (b) For clarity, the Dragging Shareholders are not required to comply with Regulation 4.6 before exercising the Drag Along Option.
 - (c) The Dragging Shareholders may only exercise the Drag Along Option if:
 - (i) the offer by the Drag Along Purchaser is on arms-length terms and the Dragging Purchaser is not an Affiliate of any Dragging Shareholder; and
 - (ii) the price for the sale of the Shares will be:
 - (aa) satisfied by the Drag Along Purchaser wholly in cash;
 - (bb) payable in full on completion of the sale of Shares pursuant to the Drag Along Option ("**Drag Along Completion**"); and
 - (cc) no less than the midpoint of the most recent independent appraisal and valuation before the date of the Drag Along Notice (as defined below) of the Company and its subsidiaries obtained in accordance with a shareholders agreement dated 31 October 2017 between NZSF, Fidelity Trust, Burgess Trust and FMG Insurance Limited.
 - (d) Any Shareholder may waive either or both of the requirements in sub-clause (c)(ii) in respect of itself.
 - (e) A Shareholder which is not a Dragging Shareholder is not required to be party to or give any warranty or indemnity, other than a warranty in usual form that that Shareholder will give good title to that Shareholder's Shares free of Encumbrances.

Exercise requirements

- 5.2 (a) If the Dragging Shareholders wish to exercise the Drag Along Option, they must give notice ("**Drag Along Notice**") to each other Shareholder (with a copy to the Company):
- (i) stating that the Dragging Shareholders are exercising the Drag Along Option;
 - (ii) setting out the price and other terms pursuant to which the Dragging Shareholders wish to sell to the Drag Along Purchaser;
 - (iii) setting out the date (or, where it is not known, anticipated date) for Drag Along Completion, which date must be at least 20 Working Days after the date of the Drag Along Notice.
- (b) A Drag Along Notice is irrevocable.

Completion requirements

- 5.3 At Drag Along Completion each Shareholder must:
- (a) sell all of the Shareholder's Shares to the Drag Along Purchaser at the price and on the terms set out in the Drag Along Notice; and
 - (b) transfer and assign to the Drag Along Purchaser legal and beneficial title and ownership of all of the Shareholder's Shares free of Encumbrances (other than Encumbrances which arise under this Constitution); and
 - (c) provide to the Drag Along Purchaser a transfer of the Shares and Equity Securities and the certificates (if any) for them and any other transfer documentation reasonably requested by the Drag Along Purchaser.

Enforcement

- 5.4 If any Shareholder does not comply with Regulation 5.3, any Director with the authority of a resolution of the Board may take any step on behalf of that Shareholder to comply with that Regulation, including signing any transfer of Shares. The Company may receive the purchase price for the Shares on behalf of the Shareholder. The receipt of such purchase price by the Company on behalf of the Shareholder shall be a complete discharge to the Drag Along Purchaser, and no question may be raised as to the title of the Drag Along Purchaser after the Drag Along Purchaser is registered as the holder of Shares. The Company shall hold the purchase price, less any expenses incurred by the Company, on trust for the Shareholder. The Shareholder must indemnify the Company and each Director for any and all liabilities, losses, claims, damages, costs and expenses (including legal costs) that arise directly or indirectly as a consequence of any action taken in good faith by the Company or a Director under this Regulation 5.4.

Tag Along

- 5.5 If a Shareholder or Shareholders which hold a Major Holding ("**Selling Shareholders**") wish to sell that Major Holding to a third party (the "**Purchaser**"), the Selling Shareholders must, before doing so, give notice to the Company and to each other Shareholder setting out:
- (a) the number of Shares that the Selling Shareholders propose to sell to the Purchaser; and

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- (b) the price and other terms on which the Selling Shareholders propose to sell the Major Holding to the Purchaser.

Tag Along Option

- 5.6
- (a) Subject to Regulation 5.6(c), any Shareholder which is not a Selling Shareholder has the option to require the Selling Shareholders to use their reasonable endeavours to cause the Purchaser to purchase from that Shareholder all (but not part only) of that Shareholder's Shares at the same price per Share and on the same terms as the Selling Shareholders (the "**Tag Along Option**").
- (b) If a Shareholder wishes to exercise the Tag Along Option, it must give notice ("**Tag Along Notice**") to the Selling Shareholders (with a copy to the Company) within 10 Working Days after the date on which the Selling Shareholders give notice under Regulation 5.5.
- (c) Regulation 5.5 and the Tag Along Option will not apply where the Board is satisfied that the sale of the Major Holding is, or forms part of, a reconstruction or re-organisation of the relevant Selling Shareholders, is not prejudicial to the Company, and in the circumstances it would not be appropriate to allow the Tag Along Option to be exercisable. Any Tag Along Notice given under Regulation 5.6(b) in this circumstance will have no effect.
- (d) A Tag Along Notice is irrevocable.
- (e) The Selling Shareholders must give each Tagging Shareholder (as defined in Regulation 5.7) at least five Working Days prior notice of the date for completion of the sale of Shares to the third party.

Restriction on Transfer to Third Party

- 5.7 If any Shareholder has given a Tag Along Notice in accordance with Regulation 5.6(b) ("**Tagging Shareholder**") the Selling Shareholders must not dispose of any Shares to the Purchaser unless at the same time the Purchaser also acquires from each Tagging Shareholder all (but not part only) of the Tagging Shareholder's Shares at the same price per Share, and on the same terms.

Tag Along Option where Shareholder is Custodian

- 5.8 Notwithstanding Regulations 5.6 and 5.7, where the Tagging Shareholder is the Custodian, the Custodian may exercise the Tag Along Option in respect of some or all of the Custodian's shares, and the Purchaser may acquire some or all of the Custodian's shares, provided that:
- (a) the Custodian may only exercise the Tag Along Option in respect of the shares held for Beneficial Owners who have given the Custodian notice that it wishes to sell its shares pursuant to the Tag Along Option;
- (b) if the Custodian exercises the Tag Along Option in respect of a Beneficial Owner, that exercise shall apply to all shares held by the Custodian on bare trust for that Beneficial Owner; and
- (c) the Custodian shall include in the Tag Along Notice details of the number of shares in respect of which the Tag Along Option is being exercised.

6.0 Distributions (Repurchase, Financial Assistance, Dividends, Shareholder Discounts)

Distributions

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

Repurchase

- 6.3 The following provisions apply to the making of a distribution by way of a purchase or acquisition of shares in the Company:
- (a) The Company may purchase or otherwise acquire shares and may, subject to s.67A-67C (inclusive) of the Act, hold shares issued by it. The Company may not purchase any Shares where such purchase would cause NZSF to contravene section 59 of the Superannuation Act.
 - (b) Subject to s.67A-67C (inclusive) of the Act (governing the holding and transfer of shares acquired by a company in itself), shares acquired or purchased pursuant to Regulation 6.3(a) shall be deemed to be cancelled immediately on acquisition but may be reissued by the Board in accordance with the provisions of Regulations 3.1 to 3.11 of this Constitution.
 - (c) The Board may make an offer to acquire shares of the Company by means of:
 - (i) an offer to all Shareholders pro rata in accordance with s.60(1)(a) of the Act; or
 - (ii) an offer to one or more Shareholders to acquire shares made in accordance with the procedure set out in Regulations 6.3(d) and 6.3(f) to 6.3(j).
 - (d) The Board may make an offer under Regulation 6.3(c) only if it has previously resolved that:
 - (i) the acquisition in question is in the best interests of the Company; and
 - (ii) the terms of the offer and the consideration offered for the shares are fair and reasonable to the Company; and
 - (iii) it is not aware of any information that will not be disclosed to Shareholders which is material to an assessment of the value of the shares, and as a result of which the terms of the offer and consideration offered for the shares are unfair to Shareholders accepting the offer.
 - (e) Where an offer is made under Regulation 6.3(c)(i):

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- (i) The offer may also permit the Company to acquire additional shares from a Shareholder to the extent that another Shareholder does not accept the offer or accepts the offer only in part; and
 - (ii) If the number of additional shares exceeds the number of shares that the Company is entitled to acquire, the number of additional shares shall be reduced rateably.
- (f) Unless all Shareholders have consented in writing to the offer, the Board may make an offer under Regulation 6.3(c)(ii) only if it has previously resolved that:
- (i) the acquisition is of benefit to the remaining Shareholders; and
 - (ii) the terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining Shareholders.
- (g) The resolutions required by Regulations 6.3(d) and 6.3(f) must set out in full the reasons for the directors' conclusions.
- (h) The directors who vote in favour of resolutions under Regulations 6.3(d) or 6.3(f) must sign a certificate as to the matters set out in those Regulations, and may combine that certificate with the certificate required under Regulation 6.2.
- (i) Before an offer is made under Regulation 6.3(c)(ii), unless all Shareholders have consented in writing to the offer, the Company must send to each Shareholder a disclosure document that sets out:
- (i) the nature and terms of the offer, and to whom it will be made; and
 - (ii) the nature and extent of any relevant interest of any director of the Company in any shares the subject of the offer; and
 - (iii) the text of the resolution required by Regulation 6.3(f), together with such further information and explanation as may be necessary to enable a reasonable Shareholder to understand the nature and implications for the Company and its Shareholders of the proposed acquisition.
- (j) An offer under Regulation 6.3(c)(ii), unless all Shareholders have consented in writing to the offer, must be made not less than 10 Working Days and not more than 12 months after the disclosure document has been sent to each Shareholder.

Financial Assistance

6.4 The following provisions apply to the making of a distribution by the Company by way of the provision of financial assistance in connection with the purchase of its own shares:

- (a) Subject to s.77 of the Act (which requires compliance with the solvency test), 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 by its holding company, whether directly or indirectly.
- (b) Notwithstanding Regulation 6.4(a), financial assistance may only be provided if:
 - (i) all Shareholders have consented in writing to the giving of the assistance; or
 - (ii) the procedure set out in Regulations 6.4(d) to 6.4(i) is followed; or

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- (iii) the financial assistance is given in accordance with Regulation 6.4(j).
- (c) The Company may give financial assistance under Regulation 6.4(b) only if the Board has previously resolved that:
- (i) the Company should provide the assistance; and
 - (ii) giving the assistance is in the best interests of the Company; and
 - (iii) the terms and conditions under which the assistance is given are fair and reasonable to the Company.
- (d) The Company may give financial assistance under Regulation 6.4(b)(ii) only if the Board has previously resolved that:
- (i) giving the assistance in question is of benefit to those Shareholders not receiving the assistance; and
 - (ii) the terms and conditions under which the assistance is given are fair and reasonable to those Shareholders not receiving the assistance.
- (e) The resolutions required by Regulations 6.4(c) and 6.4(d) must set out in full the reasons for the directors' conclusions.
- (f) The Company may give financial assistance under Regulation 6.4(b) only if the requirements of Regulations 6.1 and 6.2 have been satisfied. In applying the solvency test for the purposes of this Regulation:
- "Assets" excludes all amounts of financial assistance given by the Company at any time in the form of loans: and
- "Liabilities" includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the Company at any time in connection with the giving of financial assistance.
- (g) The directors who vote in favour of resolutions under 6.4(c) or 6.4(d) must sign a certificate as to the matters set out in those Regulations and may combine that certificate with the certificate required under Regulation 6.2.
- (h) Before the financial assistance is given under Regulation 6.4(b)(ii), the Company must send to each Shareholder a disclosure document that sets out:
- (i) the nature and terms of the financial assistance to be given and to whom it will be given; and
 - (ii) if the financial assistance is to be given to a nominee for another person, the name of that other person; and
 - (iii) the text of the resolution required by Regulation 6.4(d), together with such further information and explanation as may be necessary to enable a reasonable Shareholder to understand the nature and implications for the Company and its Shareholders of the proposed transaction.
- (i) Financial assistance under Regulation 6.4(b)(ii) must be given not less than 10 Working Days and not more than 12 months after the disclosure document has been sent to each Shareholder.

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- (j) Financial assistance may be given under Regulation 6.4(b)(iii) if:
- (i) The amount of the financial assistance, together with any other financial assistance given by the Company pursuant to this Regulation 6.4(j), repayment of which remains outstanding, would not exceed 5 percent of the aggregate of amounts received by the Company in respect of the issue of shares and reserves as disclosed in the most recent financial statements of the Company that comply with the Financial Reporting Act 2013 and the Act (as applicable), and the Company receives fair value in connection with the assistance; and
 - (ii) Within 10 Working Days of providing the financial assistance, the Company sends to each Shareholder a notice containing the following particulars:
 - (aa) The class and number of shares in respect of which the financial assistance has been provided; and
 - (bb) The consideration paid or payable for the shares in respect of which the financial assistance has been provided; and
 - (cc) The identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner; and
 - (dd) The nature and, if quantifiable, the amount of the financial assistance.

Dividends

6.5 All distributions other than those to which Regulations 6.3 and 6.4 apply are dividends to which the following provisions shall apply:

- (a) The Board must not authorise a dividend in respect of some but not all the shares in a class or that is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class, unless the amount of the dividend is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under this Constitution or under the terms of issue of the share.
- (b) A Shareholder's entitlement to receive a dividend may be waived by notice in writing to the Company signed by or on behalf of a Shareholder, and may be waived with regard to some or all of the shares held by the Shareholder.

Shares in Lieu of Dividends

6.6 Subject to Regulation 2.8, the Board may issue shares to any Shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if:

- (a) the right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all Shareholders of the same class on the same terms; and
- (b) if all Shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained; and

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- (c) the Shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
 - (d) the shares issued to each Shareholder are issued on the same terms and subject to the same rights as the shares issued to all Shareholders in that class who agree to receive the shares; and
 - (e) the provisions of Regulation 3.7 are complied with by the Board.

Shareholder Discounts

- 6.7 The Board may resolve that the Company offer Shareholders discounts in respect of some or all of the goods sold or services provided by the Company.
- 6.8 The Board may approve a discount scheme under Regulation 6.7 only if it has previously resolved that the proposed discounts are:
 - (a) fair and reasonable to the Company and to all Shareholders; and
 - (b) to be available to all Shareholders or all Shareholders of the same class on the same terms.
- 6.9 A discount scheme may not be approved or continued by the Board unless it is satisfied on reasonable grounds that the Company satisfies the solvency test.
- 6.10 A discount accepted by a Shareholder under a scheme approved under Regulation 6.7 is not a distribution for the purposes of the Act or this Constitution provided, at the time the scheme was approved and the discount was offered, the Board had not ceased to be satisfied on reasonable grounds that the Company would satisfy the solvency test.

Unclaimed Dividends

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

Dividend Policy

- 6.12 The Company intends to pay dividends in accordance with the dividend policy from time to time adopted by the Board in accordance with Regulation 2.8.

7.0 Meetings of Shareholders

Annual Meetings

7.1 An annual meeting of Shareholders shall be held once in each calendar year:

- (a) not later than 6 months after the balance date of the Company; and
- (b) not later than 15 months after the previous annual meeting.

Special Meetings

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

Directors May Attend Meetings

- (b) Each Director shall be entitled to attend every meeting of the Company notwithstanding that he or she is not a Shareholder of the Company.

Convening Special Meetings

7.3 A special meeting of Shareholders entitled to vote on an issue:

- (a) may be called at any time by the Board; and
- (b) must be called by the Board on the written request of Shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

Beneficial Owners

7.4 Beneficial Owners are entitled to attend and speak (but not vote) at any meeting of Shareholders.

Chairperson

- 7.5
- (a) If the directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, he or she must chair the meeting.
 - (b) If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes of the time appointed for the meeting, the directors present may choose one of their number to be chairperson of the meeting.

Notice of Meetings

- 7.6
- (a) Written notice of the time and place of a meeting of Shareholders must be given to every Shareholder entitled to receive notice of the meeting and to every director and the auditor of the Company not less than 10 Working Days before the meeting.
 - (b) The notice must state:
 - (i) The nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and

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- (ii) The text of any resolution to be submitted to the meeting; and
 - (iii) If a resolution is proposed which if passed will give Shareholders who voted against the resolution the right to require the Company to purchase their shares by virtue of s.110 or s.118 of the Act, a prominent statement to that effect.
- (c) An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
 - (d) If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.
 - (e) The Company shall send a proxy form complying with Regulation 7.11 to every Shareholder entitled to attend and vote at a meeting of the Company with the notice convening the meeting. In every such notice, there shall appear with reasonable prominence a statement that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of him or her and that a proxy need not be a Shareholder of the Company.

Entitlement to Notice of Meetings

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

Methods of Holding Meetings

- 7.8 (a) A meeting of Shareholders may be held either:
 - (i) By a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - (ii) 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.

Quorum

- 7.9 (a) No business may be transacted at a meeting of Shareholders if a quorum is not present.
- (b) A quorum for a meeting of Shareholders is present if Shareholders or their proxies, attorneys or representatives (in the case of a body corporate) are present who number not less than three (3).

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- (c) If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (i) In the case of a meeting called by the Board on the written request of Shareholders pursuant to s.121(b) of the Act, the meeting is dissolved;
 - (ii) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as the directors may appoint, and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.

Voting

- 7.10
- (a) Voting at a meeting of Shareholders shall be done by way of poll.
 - (b) Votes must be counted according to the votes attached to the shares of each Shareholder present in person or by proxy and voting.
 - (c) In the event of an equality of votes, the chairperson of a Shareholders' meeting is not entitled to a casting vote.
 - (d) A Shareholder need not cast all the votes to which that Shareholder is entitled, and need not exercise in the same way all of the votes which that Shareholder casts.
 - (e) The Custodian (whether directly or through a proxy, attorney, representative or otherwise) may only cast a vote attached to a share where and to the extent directed to in writing by the Beneficial Owners having beneficial ownership of that share. However, neither the Chairman of the meeting nor any other person is required to make enquiry as to whether the Custodian has such directions, and the validity of a vote cast by the Custodian is not affected by the absence of such directions.

Proxies

- 7.11
- (a) A Shareholder may exercise the right to vote either by being present in person or by proxy.
 - (b) A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
 - (c) A proxy must be appointed by notice in writing signed by the Shareholder which must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months and a copy of which must be produced before the start of the meeting. A Shareholder may appoint more than one proxy, provided that the proxy form specifies the shares to which the proxy relates and that more than one proxy is not appointed to exercise the rights attached to a particular share.

Form of Proxy

- (d) A notice appointing a proxy shall be in the following form or in such other form as the Board may approve:

I, _____ of _____ being a Shareholder of FIDELITY LIFE ASSURANCE COMPANY LIMITED hereby appoint _____ or failing him or her _____ as my proxy to vote for me and on my behalf

in respect of [all of my Shares/[*specify applicable shares*]] at the meeting of Shareholders to be held on the day of , and at any adjournment thereof.

SIGNED this day of .

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

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

Proxy Not to be Named

- (e) The Company shall not issue any proxy form with a proxy named therein either by name or by reference to an office which he or she may hold, but the Company may indicate in a footnote that certain persons are willing to act as a proxy if a Shareholder desires to appoint any of them and the Company may set out on any proxy form issued by the Company the names of the Directors for the time being of the Company.

Validity on Death or Insanity

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

Notice of Proxy to be Lodged 48 Hours Before Meeting

- (g) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced not less than 48 hours before the time of the meeting in the manner set out in Regulation 7.11(h).

Notice of Proxy to be Lodged in Particular Manner 48 Hours Before Meeting

- (h) A copy of the written notice appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote.

Two-way Voting

- (i) A proxy shall (to the extent that the subject matter of the relevant resolution reasonably permits) allow the Shareholders to instruct the proxy to vote either for or against any resolution.

Postal Votes

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

Minutes

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

Shareholder Proposals

- 7.14 (a) A Shareholder or a Beneficial Owner may give written notice to the Board of a matter the Shareholder or the Beneficial Owner (as the case may be) proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote, or in the case of a Beneficial Owner, attend.
- (b) 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 proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- (c) If the notice is received by the Board not less than 5 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 or the Beneficial Owner (as the case may be), give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- (d) If the notice is received by the Board less than 5 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 or the Beneficial Owner (as the case may be), give notice of the proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- (e) If the directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder or the Beneficial Owner (as the case may be) 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 or the Beneficial Owner (as the case may be) in support of the proposal, together with the name and address of the proposing Shareholder or the Beneficial Interest Owner (as the case may be).
- (f) The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder or the Beneficial Owner (as the case may be) which the directors consider to be defamatory, frivolous or vexatious.
- (g) Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder or the Beneficial Owner (as the case may be), the proposing Shareholder or the Beneficial Owner (as the case may be) 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

- 7.15 A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

Votes of Joint Holders and Personal Representatives

- 7.16 (a) Where 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- (b) Where two or more persons are entitled under s.93 of the Act to be registered as holder of shares of a deceased or bankrupt Shareholder, the right of one of them to vote shall be determined by the order in which their names appear in the register of Shareholders.

Loss of Voting Rights if Calls Unpaid

- 7.17 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.

Appointment of Attorney

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

Powers to Adjourn Meetings

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

Powers to Dissolve Meetings

- 7.20 (a) If any meeting shall become so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may in his or her sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the meeting.
- (b) If any meeting is dissolved by the chairperson pursuant to Regulation 7.20(a) the unfinished business of the meeting shall be dealt with as follows:

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- (i) in respect of any resolution not voted upon by the meeting concerning a distribution, the Board in the exercise of the powers conferred on it by this Constitution may make such distribution;
 - (ii) in respect of any resolution not voted upon by the meeting concerning the remuneration of the Auditor, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the Auditor; and
 - (iii) the chairperson may direct that any item of business which is uncompleted at the meeting and which in his or her opinion requires to be voted upon be put to the vote by a poll without further discussion in accordance with Regulation 7.10(a).

8.0 Directors' Duties

- 8.1 A director of the Company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the Company.
- 8.2 A director must exercise a power for a proper purpose.
- 8.3 A director of the Company must not act, or agree to the company acting, in a manner that contravenes the Act or this Constitution.
- 8.4 A director of the Company must not:
 - (a) Agree to the business of the Company being carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors; or
 - (b) Cause or allow the business of the Company to be carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors.
- 8.5 A director of the company must not agree to the Company incurring an obligation unless the director believes at that time on reasonable grounds that the Company will be able to perform the obligation when it is required to do so.
- 8.6 A director of the Company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation:
 - (a) The nature of the Company; and
 - (b) The nature of the decision; and
 - (c) The position of the director and the nature of the responsibilities undertaken by him or her.

Reliance on Information and Advice

- 8.7 Subject to Regulation 8.8, a director of the Company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
 - (a) An employee of the Company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

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- (b) A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
 - (c) Any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.

8.8 Regulation 8.7 applies to a director only if the director:

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

9.0 Self Interest Transactions

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

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

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

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

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

9.3 Nothing in Regulations 9.1 and 9.2 applies in relation to:

- (a) Remuneration or any other benefit given to a director in accordance with Regulations 13.1 and 13.2; or
- (b) An indemnity or any other benefit given to a director in accordance with Regulations 14.1 to 14.6.

9.4 (a) If all entitled persons have agreed to or concur in the Company entering into a transaction in which a director is interested, nothing in Regulations 9.1 and 9.2 shall apply in relation to that transaction.

(b) Subject to the Act, Shareholders may, by ordinary resolution, ratify or approve any act or omission of a director or the Board.

Actions by Interested Directors

- 9.5 A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company, may:
- (a) Not vote on a matter relating to the transaction nor be counted for the purposes of consideration of that matter as amongst the directors present at the meeting for the purpose of a quorum; but may:
 - (b) Attend the meeting; and
 - (c) Sign a document relating to the transaction on behalf of the Company; and
 - (d) Do any other thing in his or her capacity as a director in relation to the transaction as if the director were not interested in the transaction.
- 9.5A Notwithstanding the restrictions set out in Regulation 9.5, a director may vote and will count toward a quorum:
- (e) in respect of a matter in which the director is interested if the matter is one, in respect of which pursuant to an express provision of the Act, directors are required to sign a certificate; or
 - (f) in respect of a matter in which the director is interested if the matter is one in respect of which he or she is interested solely by virtue of his or her holdings of shares in the Company and the fact that the transaction may have an impact upon the value of shares.

Use of Company Information

- 9.6 A director of the Company who has information in his or her capacity as a director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
- (a) For the purposes of the Company; or
 - (b) As required by law; or
 - (c) In accordance with Regulations 9.7 or 9.8 of this Constitution; or
 - (d) In complying with Regulation 9.1 of this Constitution.

Disclosure - Nominee Director of Appointor

- 9.7 A director of the Company may, unless prohibited by the Board, disclose information to a person whose interests the director represents or in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register. For the avoidance of doubt, each Appointed Director is entitled to disclose information relating to the Group to his or her appointing Shareholder and such disclosure may not be prohibited by the Board.

Disclosure & Use of Information Generally

- 9.8 A director of the Company may disclose, make use of, or act on the information if:

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

10.0 Share Dealing by Directors

Disclosure

- 10.1 Forthwith after the reregistration of the Company under the Act a director who has a relevant interest in any shares issued by the Company must:
- (a) Disclose to the board the number and class of shares in which the relevant interest is held and the nature of the relevant interest; and
 - (b) Ensure that the particulars disclosed to the board under Regulation 10.1(a) are entered in the interests register; and
 - (c) Trade in compliance with the FMCA.
- 10.2 A director of the Company who acquires or disposes of a relevant interest in shares issued by the Company must, forthwith after the acquisition or disposition:
- (a) Disclose to the Board:
 - (i) The number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be; and
 - (ii) The nature of the relevant interest; and
 - (iii) The consideration paid or received; and
 - (iv) The date of the acquisition or disposition; and
 - (b) Ensure that particulars disclosed to the Board under Regulation 10.2(a) are entered in the interests register.
- 10.3 For the purposes of Regulations 10.1 and 10.2 above, the term "relevant interest" has the meaning set out in s.146 of the Act.

11.0 Appointment and Removal of Directors

Minimum Number & Residence

- 11.1 The number of directors shall not at any time be less than five nor more than nine (or such greater number in order to ensure that at least half of the directors are Independent Directors). At least two directors shall be ordinarily resident in New Zealand. At least half of the directors must be Independent Directors. All directors (including any alternate director) must comply with the Fit and Proper Policy. For clarity, an Appointed Director may be an Independent Director.

Appointment

- 11.2 (a) Each Large Shareholder may by notice in writing to the Company appoint and remove or replace:
- (i) one director; and
 - (ii) one further director for every complete 20% of ordinary shares in the Company held by that Large Shareholder over 20%.
- (b) If Fidelity Trust holds 20% or less (and accordingly ceases to be a Large Shareholder), but at least 10%, of the total ordinary shares in the Company, Fidelity Trust may nevertheless continue to appoint and remove one director.
- (c) The directors shall have the power at any time, and from time to time, to appoint any person who has been unanimously approved by the Company's nominations committee to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors shall not at any time exceed the number fixed in accordance with this Constitution. Any director so appointed shall hold office only until the next following Annual Meeting, and shall then be re-eligible for appointment under Regulation 11.2(d).
- (d) Other than those directors holding office pursuant to the provisions of the Act or this Constitution (including Regulation 11.2(a)), all directors of the Company must be unanimously approved by the Company's nominations committee and appointed by an ordinary resolution of the Shareholders or by written notice to the Company from Shareholders holding over 50% of the ordinary shares in the Company.
- (e) A person must not be appointed a director of the Company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the Company.

Voting

- 11.3 (a) Shareholders of the Company may vote on a resolution to appoint a director of the Company only if the resolution is for the appointment of one director and a separate resolution is moved in respect of each director proposed to be appointed.
- (b) Nothing in Regulation 11.3(a) prevents the election of two or more directors by ballot or poll.

Removal

- 11.4 Unless unanimously agreed by the Board otherwise if a Shareholder ceases to be entitled to appoint one or more Appointed Directors under Regulation 11.2(a) or 11.2(b), that Shareholder must immediately serve notice in writing on to the Company to remove such number of its Appointed Directors that the number of any remaining Appointed Director(s) appointed by it does not exceed its appointment entitlement under Regulation 11.2(a) or 11.2(b).
- 11.5 Other than a director appointed under Regulation 11.2(a) or 11.2(b), a director of the Company may be removed from office by an ordinary resolution of the Shareholders passed at a meeting called for the purpose of or for purposes that include the removal of the director, or by written notice to the Company from Shareholders holding over 50% of the ordinary shares in the Company.

Vacation of Office

- 11.6 The office of director of the Company is vacated if the person holding that office:
- (a) Resigns by signing a written notice of resignation and delivering it to the address for service of the Company, such notice to be effective when it is received at that address or at a later time specified in the notice; or
 - (b) is removed from office in accordance with Regulation 11.2(a) or 11.2(b) or Regulation 11.4; or
 - (c) Becomes disqualified from being a director pursuant to s.151 of the Act, or Regulation 11.7(c); or
 - (d) Dies; or
 - (e) Being an executive director, ceases for any reason to be in salaried employment of the Company or any of its subsidiaries unless the Board decides otherwise; or
 - (f) Absents himself or herself from attendance at meetings of the Board continuously for the space of six months without special leave of absence from the Board.

Alternates

- 11.7 At the request of any director (the "nominating director") an individual who is not already a director of the Company may be appointed as an alternate director (hereafter called "alternate director") to act in the place of the nominating director when he or she is unable to do so. The following provisions shall apply to the appointment of an alternate director:
- (a) An alternate director must be approved by:
 - (i) in the case of an Appointed Director, the Shareholder who appointed that Appointed Director; and
 - (ii) in all other cases, unanimously by the Company's nominations committee.
 - (b) Without limiting Regulation 11.4, the office of the alternate director shall be vacated if the relevant nominating director no longer holds office, or if the appointment of the alternate is revoked under Regulation 11.7(a).
 - (c) A nominating director and his or her alternate director shall be counted as one director for the purposes of Regulation 11.1 and Regulation 12.4.
 - (d) An alternate director may be paid expenses, and shall be entitled to be indemnified by the Company to the same extent, with any necessary modifications, as if he or she were a director but he or she shall not be entitled to receive from the Company, in respect of his or her appointment as alternate director, remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointor as such appointor may by notice in writing to the Company from time to time direct.

Observers

- 11.8 Each Shareholder entitled to appoint a director under Regulation 11.2(a) or 11.2(b) may appoint an observer in respect of the Company, and each observer:

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- (a) may attend and speak at meetings of the Board, and receive all documents and notices provided to directors;
 - (b) will not be a director, and will not have any right to vote at meetings of the Board; and
 - (c) must enter into with the Company appropriate agreements to protect the confidentiality of information of the Company.

11.9 An observer's appointment shall automatically cease upon his or her appointor ceasing to be a Shareholder entitled to appoint a director under Regulation 11.2(a) or 11.2(b).

Shareholder May Propose Person as a Director

11.10 A Shareholder may propose a person for appointment as a director by giving written notice of the proposal to the Board in accordance with Regulation 7.14 of this Constitution.

12.0 Directors' Meetings

Chairperson

- 12.1
- (a) The directors may elect one of their number as chairperson of the Board to hold office until he or she dies or resigns or until the directors elect a chairperson in his or her place.
 - (b) The chairperson shall be an Independent Director.
 - (c) If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 10 minutes after the time appointed for the meeting, the directors present may choose one of their number to be chairperson of the meeting.

Notice of Meeting

- 12.2
- (a) 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 this Regulation 12.2.
 - (b) Not less than 10 days' written notice of a meeting of the Board must be given either by hand, pre-paid post, or email to every director who is in New Zealand and every alternate director who is in New Zealand and whose nominating director is absent from New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
 - (c) An irregularity in the notice of a meeting or a failure to give notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors agree to the waiver.

Methods of Holding Meetings

- 12.3 A meeting of the Board may be held either:
- (a) By a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - (b) By the contemporaneous linking together by telephone or other means of communication of the directors constituting a quorum, whether or not any one or

more of the directors are absent from New Zealand and such meeting shall be deemed to be properly held provided the following conditions are met:

- (i) all the directors including alternate directors entitled to receive notice of a meeting of the directors shall have received notice of the meeting and be entitled to be linked by telephone or such other means of communication for the purposes of such meeting;
- (ii) each of the directors taking part in the meeting by telephone or other means of communication must throughout the meeting be able to hear each of the other directors taking part;
- (iii) at the commencement of the meeting each director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other directors taking part;
- (iv) a director may not leave the meeting by disconnecting the telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting, and a director shall be presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting to leave the meeting.

Quorum

- 12.4 (a) Until otherwise determined by the Board a quorum for a meeting of the Board, other than an adjourned meeting, shall be a majority of the directors, including an Appointed Director appointed by each Large Shareholder which has appointed an Appointed Director.
- (b) No business may be transacted at a meeting of the Board if a quorum is not present.
- (c) If a quorum is not present within 15 minutes of the time appointed for the commencement of the meeting, the meeting shall then stand adjourned for seven days. The quorum for an adjourned meeting of the Board shall be those present.

Voting

- 12.5 (a) Every director has one vote. An alternate director shall not vote at a meeting at which the person for whom he or she is an alternate director attends.
- (b) In the case of an equality of votes the chairperson shall not be entitled to a second and casting vote.
- (c) A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.
- (d) A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly abstains from voting or dissents from or votes against the resolution at the meeting.

Minutes

- 12.6 The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

Unanimous Resolution

- 12.7 (a) A resolution in writing, signed or assented to by letter, email, facsimile or other written form by all directors including alternate directors (when the person for whom he or she is appointed is unable to act), then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- (b) A resolution pursuant to Regulation 12.7(a) may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors (or alternate directors, as the case may be).
- (c) A copy of any such resolution must be entered in the minute book of Board proceedings.

Presence by Telephone

- 12.8 A director may attend any meeting of the Board by telephone or other instantaneous audio (or audio and visual) communication. Any such director:
- (a) must throughout the meeting be able to hear each of the other directors taking part;
- (b) must at the commencement of the meeting, acknowledge his or her presence for the purpose of the meeting, to all the other directors taking part;
- (c) may not leave such meeting by disconnecting his or her telephone or other means of communications unless he or she has first obtained the express consent of the chairperson;
- (d) shall (for the purposes of this Constitution) be conclusively presumed to have been physically 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 as aforesaid. Neither the meeting, nor any business conducted thereat, shall be invalidated if a director does leave a meeting conducted as aforesaid, without the express consent of the chairperson.

Other

- 12.9 (a) The provisions in Regulation 12.0 of this Constitution replace those contained in the Third Schedule to the Act.

Proceedings in Case of Vacancy

- (b) The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of directors, the continuing directors or director may act only for the purposes of increasing the number of directors to the said minimum number or to summon a meeting of the Company but for no other purpose.
- (c) Except as provided in this Constitution, the Board may regulate its own procedure.

13.0 Remuneration and Other Benefits

13.1 The Board may authorise the:

- (a) Payment of remuneration or the provision of other benefits by the Company to a director for services in any capacity other than as a director;
- (b) Payment by the Company to a director or former director of compensation for loss of office other than as a director;
- (c) Making of loans by the Company to a director;
- (d) Giving of guarantees by the Company for debts incurred by a director;
- (e) Entering into of a contract to do any of the things set out in paragraphs (a) to (d) of this Regulation 13.1;

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

13.2 If a payment, benefit, loan, guarantee or contract is authorised under Regulation 13.1:

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

Directors' Remuneration Fixing Remuneration

13.3 (a) 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 of the Company. Each such resolution shall express directors' remuneration as either:

- (i) a monetary sum per annum payable to all directors taken together; or
- (ii) a monetary sum per annum payable to any person who from time to time holds office as a director.

(b) If remuneration is expressed in accordance with Regulation 13.3(a)(i), 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.

(c) No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a meeting of the Company unless notice of the amount of increase has been given in the notice of meeting. Nothing in this Regulation 13.3 shall affect the remuneration of executive directors in their capacity as executives.

Payments Upon Cessation of Office

13.4 (a) The Company may make a payment to a director or former director, or his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that director, only if:

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- (i) 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 any three years chosen by the Company; or
 - (ii) the payment is authorised by an ordinary resolution of the Shareholders.
- (b) Nothing in this Regulation 13.4 shall affect any amount paid to an executive director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a director to a superannuation scheme.

14.0 Indemnity and Insurance

14.1 Except as provided in Regulations 14.2 to 14.6, the Company must not indemnify, or directly or indirectly effect insurance for, a director or employee of the Company or a Related Company in respect of:

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

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

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

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

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

not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in Regulation 8.1 of this Constitution or, in the case of an employee, of any fiduciary duty owed to the Company or Related Company.

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

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

14.5 The directors who vote in favour of authorising the effecting of insurance under Regulation 14.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

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

15.0 Method of Contracting

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

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

(i) Two or more directors of the Company; or

(ii) A director, or other person or persons authorised to do so by the Board whose signature or signatures must be witnessed; or

(iii) One or more attorneys appointed by the Company in accordance with s.181 of the Act.

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

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

15.2 The directors shall provide for the safe custody of the seal, which shall only be used by the authority of the directors, and every instrument to which the seal is affixed shall be signed by two directors or by some other person appointed for that purpose.

16.0 Auditor

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

(a) Hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and

(b) Audit the financial statements of the Company for the accounting period next after the meeting.

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

17.0 Alteration of Constitution - Change of Name

17.1 Subject to the Act, this Constitution may be altered at any time by special resolution.

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

18.0 Business Plan

Conduct of Business

- 18.1 The Board shall, in managing the business and affairs of the Company, have regard to the current Business Plan, and endeavour to carry on business in accordance with the current Business Plan. However, subject to Regulation 2.8, the Board may in its discretion depart from the current Business Plan if the Board is of the view that there is good reason to do so.

Preparation of Business Plan

- 18.2 Subject to Regulation 2.8, the Company must prepare and distribute to the Board a draft Business Plan for each financial year, which is to be submitted to the Board for adoption before the start of the relevant financial year.

Relevant Business Plan

- 18.3 If the Board does not adopt a Business Plan, clause 18.1 shall apply on the basis of the then current Business Plan, until a new Business Plan is adopted pursuant to Regulation 2.8.

19.0 Accounts

- 19.1 The Board must, subject to the Financial Reporting Act 2013 and the Act, ensure that, within 5 months after the balance date of the Company, financial statements that comply with the Financial Reporting Act 2013 and the Act are:

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

20.0 Annual Report

- 20.1 The Board must comply with Part 12 of the Act, in relation to the Company's annual report.

21.0 Records and Reporting

Maintenance of records

- 21.1 The Company must ensure that the Group maintains books and records:
- (a) in accordance with applicable law including the Act and the Tax Administration Act 1994; and
 - (b) which enable a Large Shareholder to incorporate the Group's financial results in its accounts so as to comply with any applicable law and generally accepted accounting practices and principles.

22.0 Manner of Service on Shareholders and Creditors

- 22.1 A notice, statement, report, accounts, or other document to be sent to a Shareholder or creditor who is a natural person may be:
- (a) Delivered to that person; or
 - (b) Posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or
 - (c) Sent by email to an email address used by that person for the transmission of documents by email.
- 22.2 A notice, statement, report, accounts, or other document to be sent to a Shareholder or creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in s.388 or s.390, as the case may be, of the Act.
- 22.3 A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or an overseas company, may be:
- (a) Delivered to a person who is a principal officer of the body corporate; or
 - (b) Delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
 - (c) Delivered in such manner as the court directs; or
 - (d) Delivered in accordance with an agreement made with the body corporate; or
 - (e) Posted to the address of the principal office of the body corporate or delivered to a box at a document exchange which the body corporate is using at the time; or
 - (f) Sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate.

23.0 Removal from the Register

- 23.1 Those Shareholders entitled to vote and voting on the question, by special resolution, or the Board, or any person or persons authorised by the Board, may, subject to s.318, request the removal of the Company from the Register on the ground that:
- (a) The Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
 - (b) The Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under s.241 of the Act for an order putting the company into liquidation.

24.0 Transfer of Place of Incorporation

- 24.1 Subject to Part 19 of the Act, the Company may be removed from the New Zealand register in connection with becoming incorporated under the law in force, in or in any part of, another country.
- 24.2 The application to be removed from the New Zealand register must be approved by special resolution.

25.0 Registered Office and Address for Service

- 25.1 Subject to the Act, the Board may change the registered office of the Company at any time.
- 25.2 Subject to the Act, the Board may change the address for service of the Company at any time.

Schedule 1: Special Approval Matters

1 In this schedule:

"**Related Party**" means:

- (a) a shareholder holding 5% or more of the total shares in the Company or a Beneficial Owner beneficially owning 5% or more of the total shares in the Company (each, a "**Substantial Shareholder**"); or
- (b) a person which controls, or is controlled by, a Substantial Shareholder.

2 The following are Special Approval Matters:

- (a) (**Change in Business**) a material change to the scope or nature of the business of the Group;
- (b) (**Business Plan**) the adoption or variation by the Board of the Business Plan for the Group and any deviation from the Business Plan with a value in excess of the greater of: (i) \$4,000,000; and (ii) 15% of projected NPAT (being the projected net profit after tax for the then current financial year, as set out in the Business Plan). For clarity, a mere failure to achieve targets or objectives in the Business Plan is not a "deviation";
- (c) (**Material Capex/Expenditure**) the entry into any transaction or series of related transactions by the Company and/or any other member of the Group (whether at one time or over a period of time) involving the incurring of capital expenditure materially in excess of the capital expenditure provided for in the Business Plan;
- (d) (**Material Transactions**) the entry into any transaction or series of related transactions by the Company or any member of the Group (whether at one time or over a period of time) involving the acquisition, sale, exchange or other disposal (including by way of lease, licence, charge or encumbrance) (other than accordance with the Business Plan) of an asset or assets having a purchase or sale price in excess of \$5,000,000;
- (e) (**Indebtedness**) an increase in the amount of borrowing (or other liability in the nature of a borrowing, guarantee, letter of comfort, performance bond or transaction creating any mortgage, charge, pledge or other security interest over any asset or undertaking) by the Group (on a consolidated basis) other than in accordance with the Business Plan, of an amount in excess of \$5,000,000 in any 12 month period;
- (f) (**Related Party Transactions**) the entry into of any transaction between a member of the Group and a Related Party (other than transactions to which all Shareholders are a party or are offered participation on the same basis (unless excused under an express term of this Constitution));
- (g) (**Dividend Policy**) a change to any dividend policy adopted by the Board or the payment, determination or declaration of any distribution on account of shares that is inconsistent with the dividend policy;
- (h) (**Equity Securities**) the offer or issue of Shares or other equity securities (as defined in the FMCA) by the Company;

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- (i) **(Share capital)** the alteration of the share capital of any member of the Group, including by way of consolidating, subdividing or converting any share capital or reducing share capital, or buying back, purchasing or redeeming any share capital;
 - (j) **(DRP)** the introduction of a dividend reinvestment plan for the Company;
 - (k) **(Constitution)** any alteration to or revocation of the constitution, or any adoption of a replacement constitution, of the Company or any material subsidiary of the Company;
 - (l) **(Merger)** any merger, consolidation, restructure, reorganisation or amalgamation involving any member of the Group (other than as part of a liquidity event);
 - (m) **(Legal Proceedings)** instituting or settling any legal or arbitration proceedings other than debt collection in the ordinary course of business which involves or might involve an amount (including related costs) of more than the greater of:
 - (i) \$4,000,000; and
 - (ii) 15% of projected NPAT (being the projected net profit after tax for the then current financial year, as set out in the Business Plan); and
 - (n) **(Liquidation)** the making of an application or commencement of any proceedings or the taking of any other steps for the winding up, dissolution, or appointment of an administrator or liquidator in respect of the Company or any material subsidiary of the Company;