



greenfern
medicinal marijuana

CONSTITUTION OF

**GREENFERN MEDICINAL
MARIJUANA LIMITED**

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CONSTITUTION OF GREENFERN MEDICINAL MARIJUANA LIMITED

PART I - PRELIMINARY

1. PRELIMINARY

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

"**Act**" means the Companies Act 1993;

"**Alternate Director**" means a person appointed as an alternate of a Director in accordance with clause 11.5;

"**Board**" means the Directors who number not less than the required quorum acting together as a board of Directors or, if the Company has only one Director, that Director;

"**Change of Control**" means, in relation to a person (the "first person"), where a person acquires Control of the first person or where a person who Controls the first person ceases to do so (in each case whether directly or indirectly and whether by one or by a series of transactions);

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

"**Company**" means Greenfern Medicinal Marijuana Limited (company number 6804155);

"**Confidential Information**" has the meaning in clause 5.1;

"**Constitution**" means this constitution;

"**Control**" means, in relation to a person (the "first person"), the ability of a person (the "second person") to ensure that the activities and business of the first person are conducted in accordance with the wishes of the second person, whether through ownership of voting shares, contract or otherwise. Without limitation, the direct or indirect beneficial ownership of more than 50% of the voting shares of a body corporate is deemed to constitute Control;

"**Director**" means a person appointed as a director of the Company in accordance with this Constitution;

"**Employee Share Plan**" means an employee share ownership plan adopted by the Company in accordance with clause 2.7 and Schedule 1;

"**Founder Share**" means a Share of the Class described in clause 2.2;

"**Founder Shareholder**" means a holder of a Founder Share;

"**Investor Share**" means a Share of the Class described in clause 2.3;

"**Investor Shareholder**" means a holder of an Investor Share;

"**Nominee Company**" means a company incorporated and maintained for the purpose of holding Shares on trust for the benefit of some or all of the Company's Shareholders;

"**Share**" means a share in the Company, including both Founder Shares and Investor Shares; and

"**Shareholder**" means a shareholder in the Company.

1.2 **Interpretation:** In this Constitution, unless the context requires otherwise:

- (a) **capitalised words** or **expressions** have the same meaning as in the Act;
- (b) references to **clauses** are to clauses of this Constitution;
- (c) the **headings** to clauses are inserted for convenience only and shall be ignored in interpreting this Constitution;
- (d) a **person** includes any individual, company, corporation, firm, club, partnership, joint venture, association of persons (corporate or not), trust or governmental agency (in each case whether or not having separate legal personality);
- (e) the **plural** includes the **singular** and vice versa; and
- (f) a reference to a **statute** includes all regulations and other subordinate legislation made under that statute. A reference to a statute, regulation or other subordinate legislation includes that statute, regulation or subordinate legislation as amended or replaced from time to time.

1.3 **Constitution to prevail:** If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

1.4 **Alteration of this Constitution:** Subject to the Act, the Shareholders may alter or revoke this Constitution by Special Resolution.

PART II – SHARES AND DIVIDENDS

2. SHARES

2.1 **Board's power to issue Shares:** Subject to the Act, this Constitution and the terms of issue of any existing Shares at the time, the Board may issue additional Shares (and rights or options to acquire Shares) of any Class at any time, to any person, and in any number it thinks fit, including under any Employee Share Plan.

2.2 **Founder Shares:** Each Founder Share confers on the Shareholder:

- (a) subject to clause 11.2, the right to one vote on a poll at a meeting of Shareholders; and
- (b) subject to the rights of any other Class of Shares:
 - (i) the right to an equal share in Dividends and other Distributions made by the Company; and
 - (ii) the right to an equal share in the Distribution of the surplus assets of the Company.

2.3 **Investor Shares:** Each Investor Share confers on the Shareholder, subject to the rights of any other Class of Shares:

- (a) the right to an equal share in Dividends and other Distributions made by the Company; and
- (b) the right to an equal share in the Distribution of the surplus assets of the Company on wind-up.

Investor Shares do not confer on the Shareholder any voting rights except on an interest group vote under section 117(1) of the Act (i.e a resolution to approve an action by the Company that affects the rights attached to Investor Shares).

2.4 **Pre-emptive rights on the issue of Shares:** Section 45 of the Act shall not apply and the Board may issue further shares to any person the Board deems appropriate ranking equally with, or in priority to, existing Shares without approval of interest groups under section 117 of the Act, subject to the following pre-emptive rights:

- (a) Subject to clause 2.5 any Shares (whether Founder Shares or Investor 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 in priority to, Shares already issued by the Company must be offered first, to the Shareholders of the same Class of Share.
- (b) The offer to Shareholders under clause 2.4(a) must be pro-rata according to the number of Shares held by them and remain open for acceptance for a reasonable time.
- (c) Otherwise, the Board can determine the procedure for the offer, acceptance and issue of Shares and no irregularity in the process affects the validity of the allocation and issue of Shares.
- (d) Nothing in this clause 2.4 shall apply to the issue of Shares (or rights or options to acquire Shares) under any Employee Share Plan.

2.5 **Exception to pre-emptive rights:** Notwithstanding clause 2.4, the Board may issue Investor Shares to any person and in any number it thinks fit provided that:

- (a) such issue has been approved by a majority of the Board; and
- (b) the aggregate number of Investor Shares issued pursuant to this clause 2.5 in any 12-month period does not exceed 30% of the total number of Investor Shares on issue at the beginning of that 12 month period.

2.6 **Issue of further shares:** The issue of further Shares ranking equally with, or in priority to, any existing Shares, whether as to voting rights, Distributions or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares of that Class.

2.7 **Employee Share Plans:**

- (a) The Company may establish one or more employee share ownership plans for the benefit of the persons permitted under clause 8, Schedule 1 of the Financial Markets Conduct Act 2013 on such terms as the Board may determine, provided that the Shares (or rights or options to

acquire Shares) ("**ESP Securities**") issued under the plan do not exceed 10% of the total number of Shares on issue in any Class (whether on conversion or otherwise).

- (b) Subject to the limitations in clause 2.7(a), the Company may implement an Employee Share Plan in such manner, and pursuant to such terms, as it may determine from time to time in its absolute discretion, and (without limitation) may, for the purposes of an Employee Share Plan, do all things set out in Schedule 1.
- (c) Section 45 of the Act shall not apply and the Board may issue ESP Securities ranking equally with, or in priority to, existing Shares without approval of interest groups under section 117 of the Act.

2.8 **Redeemable Shares:** The Company may issue Shares that are redeemable within the meaning of section 68 of the Act.

3. **PURCHASE BY COMPANY OF ITS OWN SHARES AND TREASURY STOCK**

3.1 **Acquisition of own Shares:** The Company may acquire its own Shares in accordance with the Act. The Company may make an offer to all Shareholders or to one or more Shareholders to acquire Shares.

3.2 **Treasury stock:** The Company may hold its own Shares in accordance with the Act. The transfer of treasury stock held by the Company is deemed to be an issue of new Shares and is subject to the provisions of the Act and this Constitution relating to the issue of new Shares.

4. **TRANSFER OF SHARES**

4.1 **Transfers of Investor Shares:** Subject to clause 4.16, a Shareholder may transfer its Investor Shares to any third party. To avoid doubt, clauses 4.2 to 4.10 do not apply to the transfer of Investor Shares.

4.2 **Pre-emptive rights on the transfer of Founder Shares:** The Company may only register a transfer from a Founder Shareholder to a third party of any of its Founder Shares (the "**Transfer Shares**") in accordance with this clause 4.

4.3 **Notice:** The Founder Shareholder must give a written notice (a "**Transfer Notice**") to the Board appointing the Board as the Founder Shareholder's agent, and must specify in the Transfer Notice:

- (a) the number of Transfer Shares that it wishes or is required to sell;
- (b) the price per Share for which it wishes to sell the Transfer Shares, which must be a single instalment cash price; and
- (c) whether the Founder Shareholder has received any offers or interest regarding the purchase of the Transfer Shares from any third parties. If so, the Founder Shareholder must provide the names of such third parties and full details of their offer or stated interest.

4.4 **Offer:** Within 5 Business Days of receipt of a Transfer Notice, the Board must then offer the Transfer Shares to all other Shareholders of the same Class of Shares (the "**Remaining Shareholders**"). The Board must make each offer in writing (the "**Offer Notice**"), specifying:

- (a) the contents of the Transfer Notice; and
 - (b) the closing date of the offer, which must be at least 20 Business Days after the date of the Offer Notice (the "**Transfer Closing Date**").
- 4.5 **Revocation:** A Transfer Notice may be revoked by a Founder Shareholder, subject to approval by the Board, at any time between the giving of the Transfer Notice and the Transfer Closing Date.
- 4.6 **Application:** Following receipt of an Offer Notice, a Remaining Shareholder may apply to purchase all or some of the Transfer Shares by giving written notice to the Board on or before the Transfer Closing Date (a "**Transfer Purchase Application**"). If no Transfer Purchase Application has been received by the Board from a Remaining Shareholder on or before the Transfer Closing Date, the Remaining Shareholder will be deemed to have rejected the offer set out in the Offer Notice.
- 4.7 **Pro-rata allocation:** If on the Transfer Closing Date, the desired number of Transfer Shares in each Transfer Purchase Application cannot be allocated in full to the Remaining Shareholders who have made a Transfer Purchase Application (the "**Purchasing Shareholders**") by reason that the number of Transfer Shares accepted is greater than the number of Transfer Shares available, the Transfer Shares shall be allocated by the Board on a pro-rata basis according to the number of Shares held by each Purchasing Shareholder at the Transfer Closing Date.
- 4.8 **Allocation of Transfer Shares:** Subject to clause 4.7, no later than 5 Business Days after the Transfer Closing Date the Board must:
- (a) allocate the Transfer Shares to the Purchasing Shareholders; and
 - (b) notify each Purchasing Shareholder of:
 - (i) its allocation of Transfer Shares;
 - (ii) the total price payable for those Shares;
 - (iii) the names of the other Purchasing Shareholders (if any) and the number of Transfer Shares allocated to them; and
 - (iv) the number of unsold Transfer Shares (if any).
- 4.9 **Repurchase by the Company:** If the procedure set out in clauses 4.2 to 4.8 has been complied with, and not all of the Transfer Shares have been accepted for purchase by the Remaining Shareholders, the Company may (to the extent permitted by law and the Constitution) repurchase the remaining Transfer Shares. Any Transfer Shares repurchased by the Company will be deemed cancelled immediately on settlement of the repurchase of those Shares by the Company.
- 4.10 **Approval by parties:** Where clause 4.9 applies:
- (a) the Company shall have 20 Business Days from the date of the Board's notification to purchase the Transfer Shares; and
 - (b) the Shareholders are deemed to have given consent to the repurchase for the purposes of sections 107(1)(c) and 107(5)(b) of the Act.
- 4.11 **Transfer to a third party:** If the procedure set out in clauses 4.2 to 4.9 has been complied with,

and not all of the Transfer Shares have been accepted for purchase by the Remaining Shareholders or the Company, the Founder Shareholder may, subject to clause 4.16, transfer the unallocated Transfer Shares to a third party at any time before the expiry of 6 months after the date of the Transfer Notice, provided that such transfer is made on terms which are not more favourable to the third party than those set out in the Transfer Notice.

- 4.12 **Conversion of Founder Shares:** If the sale of the Founder Shares to a third party does not comply with the procedure set out in clauses 4.2 to 4.9, those Founder Shares shall automatically and immediately be converted into Investor Shares immediately prior to sale. That transfer shall be recorded on the share register as the transfer of Investor Shares, subject to clause 4.16.
- 4.13 **Change of Control:** A Change of Control of a Founder Shareholder will be deemed to be a transfer of the Founder Shareholder's Shares, and the provisions of clauses 4.2 to 4.11 (modified as necessary) shall apply. Upon any Change of Control, the Founder Shareholder must give the Board a Transfer Notice in accordance with clause 4.3, and:
- (a) if the price per Share can be accurately determined to the Board's reasonable satisfaction from the terms of the Change of Control (the "**see-through price**") then the Transfer Notice shall include the see-through price pursuant to clause 4.3(b); or
 - (b) if the see-through price cannot be accurately determined to the Board's reasonable satisfaction, then the price per Share pursuant to clause 4.3(b) shall be the 'fair value' for the Shares as determined by an independent expert appointed by the Board.
- 4.14 **Registration of transfers:** A transferor is deemed to remain a holder of a Share until the name of the transferee is entered on the Share Register.
- 4.15 **Form and execution of transfer:**
- (a) Subject to the restrictions in this Constitution, Shares may be transferred by:
 - (i) any usual or common form of transfer; or
 - (ii) any other form approved by the Board.
 - (b) The instrument of transfer of any Share must be executed by or on behalf of the transferor and, if required by the Act or the Board, by the transferee.
- 4.16 **Right to refuse registration of transfer**
- (a) The Board may within 30 Working Days of receipt of any transfer of Shares, resolve to refuse to register that transfer if:
 - (i) the Company has a lien on the share;
 - (ii) the Share is not fully paid up;
 - (iii) the transferee is a person of unsound mind;
 - (iv) permitted to do so by the Act;
 - (v) the requirements of this Constitution relating to the transfer of Shares have not been complied with;

- (vi) the Board considers that the transfer is to a competitor company or an associate of a competitor company, and that the transfer is therefore not in the best interests of the Company as it could affect (or be seen to affect) the operational independence of the Company; or
 - (vii) the transferee refuses to agree to restrain itself from competing against the Company on terms that the Board considers to be reasonable.
- (b) If the Board resolves to refuse the registration of the transfer:
- (i) the resolution must set out in full the reasons for doing so; and
 - (ii) notice of the resolution, including those reasons, must be sent to the transferor and to the transferee within 5 Working Days of the resolution being passed.

4.17 **Drag along rights:** If Founder Shareholders who together hold not less than 75% of the issued Founder Shares in the Company ("**Special Drag Along Majority**") agree to sell all of their Shares in the Company in a bona fide sale to an arm's length third party, they may give all of the remaining Shareholders (including Investor Shareholders) ("**Remaining Drag Along Shareholders**") a written notice specifying the name of the third party, the sale price per Share, all other material terms of the sale agreed with the third party, and the date on which the sale is intended to be completed ("**Drag Along Notice**"). The Special Drag Along Majority may, in the Drag Along Notice, require the Remaining Drag Along Shareholders to sell all of the Remaining Drag Along Shareholders' Shares to the third party on the same terms and conditions (including price) and if they do so, the Remaining Drag Along Shareholders will sell all of their Shares to the third party on the same terms and conditions (including price) and at the same time that the Special Drag Along Majority sell their shares to the third party.

4.18 **Tag along rights:** If a Shareholder, or Shareholders acting together, ("**Special Tag Along Majority**") agree to sell not less than 50% of the Shares in the Company to a third party, the Special Tag Along Majority must give the remaining Shareholders ("**Remaining Tag Along Shareholders**") written notice of the sale and such notice shall include the sale price per Share and other material terms agreed with the third party (the "**Tag Along Notice**"). Any Remaining Tag Along Shareholders may, by giving notice to the Special Tag Along Majority within 10 business days of the date of the Tag Along Notice, require the Special Tag Along Majority to use their reasonable endeavours to procure that the third party acquire all of the relevant Remaining Tag Along Shareholder's Shares on the same terms and conditions (including price). If the third party does not agree to acquire all of the Remaining Tag Along Shareholders' Shares, then the Special Tag Along Majority may not sell any of their Shares to the third party without all Remaining Tag Along Shareholders' prior approval.

4.19 **Exclusion of pre-emptive rights:** Clauses 4.2 to 4.11 shall not apply to the sale of Shares by:

- (a) a Special Drag Along Majority and any Remaining Drag Along Shareholders under clause 4.17; or
- (b) a Special Tag Along Majority and any Remaining Tag Along Shareholders (if any) under clause 4.18.

4.20 **Exempt transfers:** Other than clause 4.16, nothing in this clause 4 applies to a transfer of Shares:

- (a) expressly permitted pursuant to the rules of an Employee Share Plan (including as between any trustee holding Shares on behalf of a participant in the Employee Share Plan and that participant);
- (b) by a Shareholder, or by the trustees of any trust created by a former Shareholder, to any child, spouse (which includes any person with whom the relevant Shareholder is living in a relationship in the nature of marriage), father, or mother of the Shareholder or former Shareholder, or to the trustees of any trust which is, in the opinion of the Board, exclusively or principally for the benefit of any of such persons;
- (c) by a Personal Representative of a deceased Shareholder in accordance with the will of that deceased Shareholder or to any child, widow or widower of the deceased Shareholder, or to the trustees of any trust which is, in the opinion of the Board, exclusively or principally for the benefit of any of such persons;
- (d) on a change of a Personal Representative or of a trustee of any trust of a kind referred to in this clause; or
- (e) to a Related Company of that Shareholder,

and the Board shall register such transfer.

4.21 **Obligatory transfer:** If the Company:

- (a) is a code company as defined in the Takeovers Code Approval Order 2000;
- (b) is, in the reasonable view of the Board, at risk of becoming a code company in the next 12 months; or
- (c) has 30 or more Share parcels (other than Investor Share parcels),

the Company may require any Shareholder that holds less than 5% of the Shares in any Class (other than Investor Shares) to transfer all of that Shareholder's Shares in that Class to a Nominee Company.

4.22 **Transfer to Nominee Company:** Within 5 working days of request under clause 4.21 the Shareholder must deliver to the Company executed transfer forms transferring all of its Shares in the relevant Class to the Nominee Company, along with any reasonable deed of declaration of trust or similar document required by the Nominee Company in order for it to hold the relevant Shares on trust.

4.23 **Obligatory transfer exempt from restrictions:** Clauses 4.2 to 4.19 do not apply to a transfer of Shares required by clauses 4.21 and 4.22.

5. CONFIDENTIALITY

5.1 **Confidentiality:** A Shareholder, both while a Shareholder and after ceasing to be a Shareholder, is not permitted to divulge or communicate to any third party, or use or exploit for any purpose whatsoever, without the prior written consent of the Company any confidential knowledge or

information, or any other financial or business information, relating to the Company (including any trade secrets) which the Shareholder receives or obtains as a result of being a Shareholder ("**Confidential Information**").

5.2 **Permitted disclosure:** A Shareholder may disclose Confidential Information to its representatives, investors and advisors, but only:

- (a) on a need-to-know basis and to the extent necessary; and
- (b) where that Shareholder's representatives have been made fully aware of the Shareholder's obligations of confidence and where each of them agrees in writing to comply with those obligations.

5.3 **Exclusions:** The Shareholders will not have to observe the duty of confidentiality concerning Confidential Information:

- (a) to the extent it is required to be disclosed by law or any legislative or regulatory authority;
- (b) which a Shareholder can show it already knew at the time of disclosure and which came into the Shareholder's possession otherwise than by breach of any confidentiality obligation;
- (c) which at the time of disclosure is in, or subsequently enters, the public domain otherwise than by breach of any duty of confidentiality; or
- (d) which is disclosed to the Shareholder on a non-confidential basis by a third party who is not bound by a confidentiality obligation.

6. DISTRIBUTIONS TO SHAREHOLDERS

6.1 **Dividends:**

- (a) The Board may issue Dividends at its discretion subject to the Act and this clause 6.
- (b) A transfer of any Share does not pass the right to any Dividend authorised for payment in respect of that Share where the entitlement date for payment has passed before the date of registration of the transfer.
- (c) Where several persons are registered as joint holders of any Share in respect of which a Dividend is payable, any one of the holders may give effectual receipts for any Dividend payment in respect of the Share so held.

6.2 **Deductions:** The Board may deduct from any Distribution payable to a Shareholder monies payable by the Shareholder to the Company on account of:

- (a) debts, liabilities or other obligations in respect of which the Company has a lien over specific Shares on which the Dividend or other Distribution is payable; and
- (b) any amount it is required to deduct by law, including withholding and other taxes.

6.3 **Interest:** No Dividend shall bear interest against the Company.

6.4 **Manner of payment:** Any Distribution payable in cash may be paid in the manner directed by the person entitled to it. In any event, payment may be made by cheque posted:

- (a) to the registered address of the Shareholder;
 - (b) in the case of joint holders, to the registered address of any one of the joint holders; or
 - (c) to the person or address as the Shareholder or joint Shareholder may direct,
- and the Company will not be responsible for any loss arising from the mode of transmission.

6.5 Unclaimed Distributions: Any Distribution unclaimed for one year after the due date for payment may be:

- (a) intermingled with other money of the Company;
- (b) invested or otherwise made use of by the Board for the general benefit of the Company until claimed; and
- (c) if unclaimed for five years from the due date for payment, forfeited by the Board for the benefit of the Company,

provided that at any time after forfeiture the Board may, subject to compliance with the Solvency Test, annul the forfeiture and pay the Distribution to any person producing evidence satisfactory to the Board that he or she is entitled to the amount claimed.

7. CALLS ON SHARES

7.1 Powers of Directors to make calls:

- (a) The Board may make calls upon the Shareholders in respect of any money that is:
 - (i) unpaid on their Shares; and
 - (ii) not made payable at a fixed time or times by the terms of issue of the Shares.
- (b) Subject to receiving at least 10 Working Days' notice specifying the time and place of payment, each Shareholder must pay to the Company the amount called on that Shareholder's Shares, in the manner specified in the notice.
- (c) A call may be revoked or postponed.
- (d) A call may be required to be paid by instalments.
- (e) Unless the Board resolves to the contrary, a call will be deemed to have been made at the time the Board resolution authorising the call is passed.

7.2 Liability of joint holders and interest:

- (a) The holders of any Share are jointly and severally liable to pay all calls in respect of that share.
- (b) If the call in respect of a Share is not paid when due, the person from whom the sum is due must pay interest on the sum from the due date for payment to actual payment, at a rate not exceeding five percent above the Company's prime overdraft rate as certified by the Board. The Board may waive payment of all or part of that interest.

7.3 **Payment required by terms of issue of Shares:** If the terms of issue of a Share require a sum to be paid on issue or at any fixed date, for the purpose of this Constitution a call will be deemed to be duly made and the sum will become payable on the date specified in the terms of issue.

7.4 **Proof of liability:** The amount of any unpaid call or instalment may be recovered as a debt from the Shareholder at any time after the debt becomes payable. In any proceedings the proof of the following matters is conclusive evidence of the debt:

- (a) the name of the Shareholder is entered on the Share Register as a holder of the Shares in respect of which the debt accrued;
- (b) the resolution making the call is duly recorded in the minute book; and
- (c) notice of the call was duly given to the Shareholder.

8. SUSPENSION OF DISTRIBUTIONS, FORFEITURE AND LIEN ON SHARES

8.1 **Suspension of Distributions:** If a Shareholder fails to pay any call or instalment of a call on the date appointed for payment the Board may suspend payment of any Distributions payable to that Shareholder until payment of:

- (a) the call or instalment;
- (b) any interest accrued on that amount; and
- (c) all expenses incurred by the Company by reason of the non-payment.

All suspended Distributions must be applied to reduce the amount owing under the call or instalment together with any interest and expenses.

8.2 **Forfeiture:**

- (a) If a Shareholder fails to pay any call or instalment of a call or amount which (by the terms of issue of a share) becomes payable at a fixed time on the day appointed for payment, the Board may serve notice on that Shareholder requiring payment of:
 - (i) the unpaid call, instalment or amount;
 - (ii) any interest accrued on that amount; and
 - (iii) all expenses incurred by the Company by reason of the non-payment.

The notice must:

- (iv) name a further day (not earlier than the expiration of 10 Working Days from the date of service of the notice) on or before which payment is to be made; and
 - (v) state that if payment is not made by that date the Shares are liable to be forfeited.
- (b) If the requirements of the notice are not complied with, any Share that is the subject of the notice may, at any time after expiry of the notice and before payment, be forfeited by the Board. The forfeiture will include any Distributions or interest relating to the forfeited Shares that have not actually been paid before the forfeiture.

- (c) If a Share is forfeited the Board must:
 - (i) give notice of the forfeiture to the Shareholder in whose name it stood immediately prior to the forfeiture; and
 - (ii) enter the forfeiture and its date on the Share Register,and the Shareholder ceases to be a Shareholder in respect of the forfeited Shares but remains liable to pay all money payable to the Company at the date of forfeiture in respect of the Shares.
- (d) A forfeited Share is deemed the Property of the Company and may be sold, reissued or otherwise disposed of on terms and in such manner (but subject to the terms of this Constitution governing the transfer of Shares) as the Board thinks fit. The Board may cancel the forfeiture at any time before a sale or disposition on such terms as the Board thinks fit.

8.3 Lien on Shares:

- (a) The Company has a first and continuing lien on all Shares registered in the name of each Shareholder (whether solely or jointly) for that Shareholder's joint and several debts, liabilities and obligations to or with the Company on any account whatsoever. The lien is effective whether:
 - (i) the debts, liabilities or obligations were incurred before or after any notice of any equitable interest of any person other than the Shareholder; or
 - (ii) the period for payment, fulfilment or discharge of the debts, liabilities or obligations has actually arrived or not.
- (b) The lien extends to the sale proceeds of the Shares and all Dividends and other Distributions declared in respect of the Shares.
- (c) Unless otherwise agreed, the registration of a transfer of Shares operates as a waiver of the lien.
- (d) The Company may sell in such manner as the Board thinks fit (but subject to the terms of this Constitution governing the transfer of Shares) any Shares over which the Company has a lien if:
 - (i) an amount is presently payable to the Company on those Shares or by the holder of those Shares; and
 - (ii) the Company has demanded the amount in writing and payment has not been made within 10 Working Days after the demand.

8.4 Sale of forfeited Shares and Shares over which the Company has a lien:

- (a) To give effect to the power of sale arising from the forfeiture of Shares or a lien over Shares the Company may:
 - (i) sign or authorise a Director to sign a transfer of the Shares in favour of the purchaser;
 - (ii) receive the proceeds of sale (the receipt of a Director being a sufficient discharge to

- the purchaser);
- (iii) enter the purchaser's name on the Share Register; and
 - (iv) issue a new share certificate for the Shares.
- (b) A certificate signed by a Director that the power of sale has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.
- (c) The purchaser is not bound to see to the application of the purchase money nor is the purchaser's title to the Shares affected by any irregularity or invalidity in the forfeiture of the Shares, the enforcement of the lien or the sale proceedings and the remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.
- (d) The proceeds of sale must be applied:
- (i) first, in payment of the costs and expenses in exercising the right of forfeiture or enforcing the lien and selling the share;
 - (ii) second, (in the case of a forfeited share) in or towards satisfaction of any unpaid calls, instalments amounts, interest and expenses on that share, or (in the case of a lien) in payment of the amount secured by the lien; and
 - (iii) to the balance (if any) to the former Shareholder.

8.5 **Contracting out:** Sections 108, 109, 116, 120(2) and 133 of the Personal Property Securities Act 1999 shall not apply on the enforcement of the Company's rights under this clause 8.

PART III – SHAREHOLDERS' RIGHTS AND OBLIGATIONS

9. POWERS OF SHAREHOLDERS

9.1 **Exercise of powers reserved to Shareholders:** Unless otherwise specified in the Act or this Constitution, or the terms of issue of the relevant Shares, the powers reserved to the Shareholders by this Constitution, the Act or the terms of issue of the relevant Shares may be exercised only:

- (a) at a meeting of Shareholders pursuant to section 120 or section 121 of the Act; or
- (b) by a resolution in lieu of a meeting pursuant to section 122 of the Act.

9.2 **Management review by Shareholders:** A meeting of Shareholders may pass a resolution under this clause relating to the management of the Company but this does not bind the Board.

10. MEETINGS OF SHAREHOLDERS

10.1 **Proceedings at meetings of Shareholders:** Schedule 1 of the Act shall apply to all meetings of Shareholders.

PART IV - DIRECTORS

11. APPOINTMENT AND REMOVAL OF DIRECTORS

11.1 **Number of Directors:** The minimum number of Directors is 1.

11.2 **Appointment of Directors:**

- (a) Each Founder Shareholder holding not less than 5% of the Founder Shares may at any time by written notice to the Company appoint one person to be a Director.
- (b) Up to 3 Directors may be appointed by majority resolution of the Board (the "**Independent Directors**"), to ensure that the Board as a whole has an appropriate mix of skills and diversity, based on criteria set by the Board from time to time.

11.3 **Voting:** A resolution to appoint two or more Directors may be voted on as one resolution without each appointment being voted on individually.

11.4 **Notice of appointment and removal:** Any notice to the Company pursuant to this section appointing or removing a Director or Alternate Director must:

- (a) be signed, or purport to be signed, by the person exercising such right;
- (b) in the case of joint Shareholders, be signed, or purport to be signed, by all of those Shareholders;
- (c) if given by a Shareholder which is a corporation, be signed, or purport to be signed, on behalf of the corporation by any Director or other person holding equivalent office; and
- (d) be given to the Company by delivering the notice, or by sending the notice through the post or by other electronic means of communication, to its registered office,

and may be comprised in one or more separate notices, each signed or purporting to be signed by one or more persons. A notice shall be effective from the time of receipt of the notice by the Company at its registered office.

11.5 **Alternate Directors:**

- (a) Any Director may, by written notice to the Company, appoint another person (who is either a Director or has been approved for that purpose by a majority of the Directors) to be an Alternate Director.
- (b) An Alternate Director is entitled to:
 - (i) notice of all meetings of the Board;
 - (ii) any minutes or Documents sent to Directors; and
 - (iii) attend and vote at meetings of the Board in place of the Director for whom he or she is an Alternate Director.
- (c) An Alternate Director is not entitled to remuneration otherwise than out of the remuneration of the appointing Director.

- (d) An appointment as Alternate Director may be revoked at any time by:
 - (i) the appointing Director giving written notice to the Company; or
 - (ii) a resolution passed by a majority of the Directors.
- (e) If a Director ceases to be a Director any Alternate Director appointed by him or her ceases to hold office.

11.6 Casual vacancy: The Board may appoint any person who is not disqualified under the Act to be a Director to fill a casual vacancy as an addition to the existing Directors. Any Director appointed under this clause may hold office only until the next annual meeting.

11.7 Vacancies and reduction of numbers: Directors may act notwithstanding any vacancy in their body. However, if their number is reduced below the minimum number fixed by this Constitution, the continuing Directors may act only for the purpose (and for no other) of increasing the number of directors to the minimum number or for calling a general meeting of the Company.

11.8 Removal:

- (a) A Founder Shareholder which has the right to appoint a Director in accordance with clause 11.2(a), may remove and replace such a Director by notice to the Company in accordance with clause 11.4.
- (b) If at any time a Founder Shareholder ceases to hold at least 5% of the Founder Shares, then:
 - (i) the Founder Shareholder will cease to be entitled to appoint a Director pursuant to clause 11.2(a); and
 - (ii) the Director appointed by the Founder Shareholder may be removed as a Director at any time by:
 - (1) written notice signed by a majority of the Directors (excluding the Director appointed by the Founder Shareholder); or
 - (2) an Ordinary Resolution of the Shareholders.
- (c) An Independent Director appointed pursuant to clause 11.2(b) may be removed from office by an Ordinary Resolution of the Shareholders or by a majority of Directors (excluding the Independent Director in question).
- (d) The office of a director of a company is vacated if the person holding that office:
 - (i) resigns by written notice to the Company; or
 - (ii) is removed from office in accordance with this Act or the constitution of the company; or
 - (iii) becomes disqualified from being a Director pursuant to section 151; or
 - (iv) dies; or

- (v) otherwise vacates office in accordance with the constitution of the company; or
- (vi) becomes permanently incapacitated and the remaining Directors resolve that he or she is no longer capable of carrying out his or her powers and duties as a Director by reason of that incapacity

11.9 **Existing Directors to continue:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been validly appointed pursuant to this Constitution.

12. PROCEEDINGS OF BOARD

12.1 **Meetings of the Board:** Schedule 3 of the Act shall apply to all meetings of the Board.

13. POWERS OF DIRECTORS

13.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

13.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

13.3 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in Schedule 2 of the Act.

14. INDEMNITY AND INSURANCE

14.1 Indemnifying Directors and employees:

- (a) The Company may indemnify a Director or employee of the Company or a Related Company for any costs incurred by him or her in any proceeding:
 - (i) that relates to liability for any act or omission in his or her capacity as a Director or employee; and
 - (ii) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- (b) The Company may indemnify a Director or employee of the Company or a Related Company in respect of:
 - (i) 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
 - (ii) 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 section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the Company or Related Company.

14.2 Insurance:

- (a) 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:
- (i) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee;
 - (ii) costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability; or
 - (iii) costs incurred by that Director or employee in defending any criminal proceedings:
 - (1) that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee; and
 - (2) in which he or she is acquitted.
- (b) The Directors who vote in favour of authorising the effecting of insurance under paragraph (a) of this clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

14.3 Definitions: In clauses 14.1 to 14.2:

"**Director**" includes a former Director;

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

"**employee**" includes a former employee; and

"**indemnify**" includes relieve or excuse from liability, whether before or after the liability arises and

"**indemnity**" has a corresponding meaning.

PART V – ADMINISTRATION

15. CONTRACTING BY THE COMPANY

- 15.1 Method of Contracting:** In addition to the other methods of contracting set out in section 180 of the Act, an obligation which, if entered into by a natural person would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by a single Director, or by any other person or class of persons authorised by the Board for that purpose, whose signature or signatures must be witnessed.

PART VI – LIQUIDATION

16. LIQUIDATION

- 16.1 Surplus Assets:** Subject to the terms of issue of any Shares, upon the liquidation of the Company the Surplus Assets of the Company (if any) must be distributed among the Shareholders in proportion to the Shareholding.

16.2 **Distribution in specie:** With the approval of an Ordinary Resolution of Shareholders, the liquidator of the Company may divide the whole or any part of the assets of the Company among the Shareholders in kind (whether or not they are of the same kind) and for that purpose the liquidator may:

- (a) attribute such values to assets as the liquidator considers appropriate; and
- (b) determine how the division will be carried out as between the Shareholders or different Classes of Shareholders.

16.3 **Vesting in trust:** With the approval of an Ordinary Resolution of Shareholders, the liquidator of the Company may vest the whole or any part of any Surplus Assets of the Company in trustees upon trust for the benefit of the Shareholders. The liquidator may determine the terms of the trust.

17. REMOVAL FROM THE REGISTER

17.1 **Directors may remove the Company from the Register:** If the Company:

- (a) 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) has no Surplus Assets after paying its debts in full or in part and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation,
- the Board may request the Registrar to remove the Company from the New Zealand Register.

SCHEDULE 1

- (a) Subject to clause 2.7(a), the Employee Share Plan may include the offer of any options, convertible notes or other convertible securities of any nature whatsoever (being the ESP Securities).
- (b) The ESP Securities may be issued by the Company at the same time or from time to time.
- (c) The ESP Securities may consist of both shares issued and credited as fully paid ("**Fully Paid ESP Shares**") and/or partly paid shares (paid to such amount as the Company may determine from time to time) ("**Partly Paid ESP Shares**").
- (d) The value of each Fully Paid ESP Share, and total amount due on each Partly Paid ESP Share, shall be determined by the Company from time to time.
- (e) The Company may acquire ESP Securities from an employee at any time if and to the extent that the terms of the Employee Share Plan permit or require it to do so.
- (f) The issue price of any ESP Security may be the subject of such discount (or premium) as the Company may from time to time determine.
- (g) The Company may make loans to any eligible person in connection with the acquisition of ESP Securities on such terms as the Company may from time to time determine (including as regards any interest payable in respect of such loans).
- (h) The Company may pay any amounts due on account of an eligible person's tax obligations in connection with his, her or its participation in the Employee Share Plan.
- (i) The Employee Share Plan may entitle participants to hold ESP Securities (or entitlements thereto) both directly and/or indirectly through a trust or other holding structure (and whether or not such ESP Securities are primarily held by a trustee appointed under the Employee Share Plan or otherwise).
- (j) The Company may allocate Distributions payable in respect of the ESP Securities towards repayment of any loan made by the Company to eligible persons in relation to those ESP Securities.
- (k) Subject to the matters specified in clause 2.7 and this Schedule 1, the Company may implement the Employee Share Plan in such manner, and pursuant to such terms, as it may determine from time to time in its absolute discretion.