

Constitution

in relation to Kiwibank Limited

Constitution of Kiwibank Limited under the Companies Act 1993

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Agreed terms

1. Defined terms and interpretation

1.1 Definitions

In this Constitution unless the context otherwise requires the following words and expressions have the meanings given to them in this clause:

Act means the *Companies Act 1993*.

Alternate Director means a Director appointed pursuant to clause 25.

Banking Act means the *Banking (Prudential Supervision) Act 1989*.

Board means the Directors numbering not less than the required quorum acting as the board of directors of the Company and where one Director is a quorum it means that Director so acting alone.

Business means the business carried on by the Company and its subsidiaries, including the provision of banking and financial services.

Business Plan means the business plan prepared by the Company from time to time.

Call means a resolution of the Board under clause 10 requiring Shareholders to pay all or part of the unpaid amount of the issue price of any equity Securities and, where the context requires, means the obligation of a Shareholder to meet the amount due pursuant to such a resolution.

Company means Kiwibank Limited.

Conditions of Registration means the conditions to the registration of Kiwibank as a registered bank as imposed by RBNZ in accordance with the Banking Act.

Constitution means this constitution of the Company and all amendments to it from time to time.

Crown Entities Act means the *Crown Entities Act 2004*.

Direction has the meaning given in the Crown Entities Act.

Director means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company.

Independent has the meaning given to that term by section 10 of the RBNZ's "Corporate Governance" Prudential Supervision Document BS14, or any replacement thereof, in each case as it may be amended from time to time.

Independent Director means a Director who is Independent.

KGH means Kiwi Group Holdings Limited.

KGC means Kiwi Group Capital Limited.

Owner's Expectations Document means the "Owner's Expectations" document published by The Treasury, as updated or replaced from time to time.

NZ IFRS means the New Zealand Equivalents to International Financial Reporting Standards.

Public Finance Act means the *Public Finance Act 1989*.

RBNZ means the Reserve Bank of New Zealand.

Register means each share register maintained by the Company.

Registered Bank has the meaning given to that term in the Banking Act.

Regulatory Obligations means the Company's regulatory obligations that result from or are incidental to its status as a Registered Bank or the activities it undertakes as part of the Business, including but not limited to obligations under the Banking Act, the *Financial Markets Conduct Act 2013*, the *Credit Contracts and Consumer Finance Act 2003*, the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* and the *Financial Service Providers (Registration and Dispute Resolution) Act 2008*.

Reserved Matters means the matters set out in Schedule 1.

Security has the meaning given to the term "financial product" in the *Financial Markets Conduct Act 2013*.

Shareholder means a person:

- (a) registered in the Register as the owner of one or more equity Securities; or
- (b) until the person's name is entered in the Register, a person named as a shareholder in the application for registration of the Company at the time of registration of the Company; or
- (c) until the person's name is entered in the Register, a person who is entitled to have that person's name entered in the Register under a registered amalgamation proposal as a shareholder in an amalgamated company.

Solvency Test has the meaning given to it in section 4 of the Act.

Working Day means any day other than a Saturday, Sunday and statutory holiday on which registered banks in New Zealand are open for general banking business in Auckland and Wellington.

1.2 Interpretation

- (a) A reference to a clause means a clause of this Constitution.
- (b) The clause headings are included for convenience only and do not affect the construction of this Constitution.
- (c) Words or phrases defined in the Act have the same meaning in this Constitution unless the context otherwise requires.
- (d) A reference to a statute includes that statute as amended and includes any statute replacing that statute, and any regulations, orders in council and other instruments issued or made under that statute.
- (e) If there is any conflict between:
 - (i) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
 - (ii) 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.

- (f) If there is any conflict or inconsistency between a provision of this Constitution and the Conditions of Registration, the conflicting or inconsistent provision of this Constitution will be read down to the extent of that conflict or inconsistency.

2. Nature of Company

- 2.1 The Company is a Registered Bank, and its purpose is to carry on the Business and maintain its status as a Registered Bank., whilst having an overall positive impact on society and the environment.
- 2.2 With effect from the later of the date KGC acquires KGH and the date KGC is added to Schedule 4A to the Public Finance Act, the Company is a subsidiary of a company named in Schedule 4A to the Public Finance Act.
- 2.3 Without limiting the Company's ability to do anything necessary or desirable to maintain its status as a Registered Bank or to comply with its Regulatory Obligations, or to do anything incidental to meeting its Regulatory Obligations, while the Company is a subsidiary of a company named in Schedule 4A to the Public Finance Act, the Company must:
 - (a) not do anything that KGC itself does not have the power to do;
 - (b) act consistently with KGC's objectives and current statement of intent (to the extent they relate to the Company);
 - (c) exercise its powers only for the purposes of performing, or assisting KGC to perform, KGC's functions;
 - (d) not contravene the Crown Entities Act or the Public Finance Act to the extent that either of those Acts relates to the Company;
 - (e) comply with a Direction given to KGC (to the extent that it relates to the Company);
 - (f) not pay directors of the Company any compensation or other payment or benefit, on any basis, for ceasing for any reason to hold office; and
 - (g) comply with the statutory requirements as to employees that apply to KGC.
- 2.4 For the avoidance of doubt, clause 2.3 does not:
 - (a) subject to clause 4, limit the Company's power to be listed or to have shares or other financial products quoted on a recognised exchange; or
 - (b) require the Company to comply with the Directions to support a whole of government approach given by the Minister of State Services and the Minister of Finance under section 107 of the Crown Entities Act on 22 April 2014.

3. Share registers

- 3.1 Subject to the Act, the Company may divide its share register into two or more registers kept in different places.

4. Board may issue equity securities

- 4.1 Subject to the Act and this Constitution and the terms of issue of any existing equity Securities, the Board may issue equity Securities of any class, including redeemable shares (or create any options, convertible Securities or other rights to subscribe for or to convert into equity Securities), at any time, to any person and in such numbers and on such terms as the Board thinks fit.

- 4.2 Subject to clauses 4.1 and 31, unless the terms of issue of any class of equity Securities specifically otherwise provide, the Board may issue equity Securities that rank or would rank as to voting or distribution rights or both, equally with or prior to existing equity Securities without any requirement that the equity Securities be first offered to the existing Shareholders.

5. Amount owing on issue of equity securities

Where money or other consideration is due at a fixed time to the Company on equity Securities in accordance with their terms of issue, that amount does not comprise a Call and no notice is required to be given to the Shareholders (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.

6. Purchase by Company of its securities

- 6.1 The Company may purchase or otherwise consolidate, subdivide, repurchase, cancel, or vary the rights attaching to any of its Securities, in accordance with the Act, provided that, to the extent that the consolidation, subdivision, repurchase, cancellation, or variation of rights attaching to its Securities constitutes a Reserved Matter, that action been approved in accordance with this Constitution.
- 6.2 The Company may hold Securities acquired in accordance with section 67A of the Act.

7. Transfer of equity securities

Subject to clause 8, equity Securities may be transferred by entry of the name of the transferee on the Register.

8. Form of transfer

The form of transfer may be in the form set out in schedule 18 to the *Financial Markets Conduct Regulations 2014* or in any usual or common form, or any other form approved by the Board.

9. Board's right to refuse registration of transfer

- 9.1 The Board may, within 30 Working Days of the receipt of a transfer of equity Securities, refuse or delay the registration of the transfer if the Board considers that it is not in the best interests of the Company to register the transfer.
- 9.2 A resolution of the Board to refuse or delay a transfer of equity Securities must set out in full the reasons for doing so and must be sent to the transferor and transferee within 5 Working Days of the date of the resolution.

10. Board may make calls

Subject to the terms of issue of any equity Securities, the Board may resolve to require the holders of unpaid or partly paid equity Securities to pay all or part of the amount unpaid on the equity Securities. The terms of the resolution of the Board will constitute the terms of the obligation to pay the Call including payment by instalments. The Call may be revoked or postponed at any time by the Board.

11. Notice of calls

- 11.1 Subject to the terms of issue of any class of equity Securities, unless all the holders of a class of equity Securities subject to a Call unanimously agree, a Call or the postponement or revocation of a Call will apply to all the holders of equity Securities of the class equally.

- 11.2 Notice of the Call should be given to the holder of the equity Securities at the time of the Call or to a subsequent holder. Failure to give notice to a Shareholder will not invalidate a Call but it will not be payable by that Shareholder until the notice has been served on the Shareholder.
- 11.3 Notice of a Call sent by post to a Shareholder to the address recorded in the Register as the address of the Shareholder will be deemed to have been received by the Shareholder the Working Day following the date of the posting of the notice to the Shareholder.

12. Liability for calls

- 12.1 The joint holders of equity Securities are jointly and severally liable to pay all Calls in respect of the equity Securities.
- 12.2 If a Call is not paid before or on the day appointed for payment the person from whom the sum is due will be liable to pay interest on the sum, from the day appointed for payment to the time of actual payment, at such rate as the Board determines either at the time of the Call or subsequently.

13. Notice of suspension of right to dividends

- 13.1 If a Shareholder fails to pay any Call or instalment of a Call on the day appointed for payment, the Board may, at any time after that date, while any part of the Call or instalment payable by the Shareholder remains unpaid, suspend payment of any dividends or other distributions payable to the Shareholder until the amount owing under the Call or instalment has been paid to the Company in full.
- 13.2 The amount owing under the Call may include any interest which may have accrued and all expenses which may have been incurred by the Company by reason of non-payment by the Shareholder of the amount owing under the Call.

14. Application of suspended dividends

All dividends and other distributions which would have been payable in respect of equity Securities which are subject to a suspension of the right to dividends or distributions, must be withheld and applied by the Company to reduce the amount owing under the Call.

15. Lifting of suspension of right to dividends

When the total dividends and distributions withheld and applied under clause 14 equal the total amount owing under the Call, including amounts owing under clause 13.2 the suspension of the right to dividends and distributions will be lifted, and all rights to be paid dividends and distributions on the equity Securities will resume.

16. Lien

- 16.1 The Company has a first and paramount lien upon every share registered in the name of a Shareholder (whether solely or jointly with others) and upon the proceeds of sale of those equity Securities, for all money (whether presently payable or not) payable in respect of equity Securities held by the Shareholder and for all other money payable by the Shareholder to the Company on any account whatever and also for such amounts (if any) as the Company may be called upon to pay under any statute or regulation in respect of equity Securities of a deceased or other Shareholder, whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.
- 16.2 The lien extends to all distributions from time to time declared in respect of the equity Securities.

17. Sale on exercise of lien

- 17.1 The Company may sell in such manner as the Board thinks fit any equity Securities on which the Company has a lien but no sale may be made unless a sum in respect of which the lien exists is due and payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of the amount due and payable in respect of which the lien exists, has been given to the registered holder for the time being of the share or the person entitled to that share by reason of the registered holder's death or bankruptcy.
- 17.2 The net proceeds of the sale of any equity Securities sold for the purpose of enforcing a lien, are to be applied in or towards satisfaction of any unpaid Calls, instalments or any other money in respect of which the lien existed and the residue, if any, paid to the former holder of the equity Securities.
- 17.3 A certificate signed by a Director stating that the power of sale provided in this clause 17 has arisen, and is exercisable by the Company under this Constitution, will be conclusive evidence of the facts stated in the certificate.
- 17.4 For giving effect to any sale enforcing a lien in purported exercise of the powers given in this Constitution, the Board may authorise some person to transfer the equity Securities sold to the purchaser. The purchaser will be registered as the holder of the equity Securities comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the equity Securities be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the Company exclusively. If the certificate (if any) for the equity Securities is not Delivered up to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered up.

18. Distributions

- 18.1 The Board may, if it is satisfied on reasonable grounds that the Company will, immediately after the distribution, satisfy the Solvency Test, authorise distributions by the Company to Shareholders at times, and of amounts, and to any Shareholders, and in such form as it thinks fit.
- 18.2 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 stating the grounds for that opinion.

19. Financial assistance on acquisition of equity securities

Subject to and in accordance with sections 76 to 80, 107(1)(e) and 108 of the Act, the Company may, if approved by the holders of ordinary shares in the Company as a Reserved Matter, give financial assistance to a person for the purpose of, or in connection with, the purchase of equity Securities issued, or to be issued by the Company, or by its holding company, whether directly or indirectly.

20. Annual meeting of Shareholders

- (a) Subject to section 120(2) of the Act, the Board must call an annual meeting of Shareholders entitled to attend or vote at meetings to be held:
- (i) not later than 6 months after the balance date of the Company; and
 - (ii) not later than 15 months after the date of the previous annual meeting of Shareholders.

However, no annual meeting need be called and held if everything required to be done at the meeting is done by resolution passed in accordance with clause 22.

- (b) The Company must hold the meeting on the date on which it is called by the Board to be held.

21. Proceedings at meeting of Shareholders

Meetings of Shareholders entitled to attend or vote at meetings will be conducted in accordance with the first schedule to the Act.

22. Written Shareholders' resolution instead of holding a meeting

- (a) Without limiting section 122 of the Act, a written resolution signed by at least 75 per cent. of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders, and who together hold at least 75 per cent. of the votes entitled to be cast on that resolution is as valid as if it had been passed at a meeting of those Shareholders. Any such resolution may consist of several copies of the resolution, each signed by one or more Shareholders. A copy of a resolution, which has been signed and sent by email or any similar means of communication, will satisfy the requirements of this clause.
- (b) Unless this constitution expressly provides otherwise, the powers reserved to the Shareholders of the Company by this constitution or the Act may be exercised only:
 - (i) at a meeting of Shareholders pursuant to clauses 20 or 21; or
 - (ii) by a resolution in lieu of a meeting pursuant to clause 22.

23. Number of directors

The number of Directors must be not less than the minimum required or expected by the Conditions of Registration of which at least half (or such other proportion as is required or expected by the Conditions of Registration) of the Directors must be Independent Directors.

24. First directors

The persons who are Directors on the date of the adoption of this constitution will continue to be the Directors and will be deemed to have been appointed in accordance with clause 25.

25. Appointment and removal of directors

- 25.1 The Directors are the persons appointed from time to time as Directors in accordance with this Constitution by notice in writing to the Company signed by each holder of ordinary shares in the Company.
- 25.2 Directors and the Chairperson will be appointed having regard to the Conditions of Registration and any other requirements relating to the appointment of a director or a chairperson to a Regulated Bank.
- 25.3 The Chairperson of the Board will be an Independent Director appointed by each holder of ordinary shares in the Company.
- 25.4 A Director may be removed from office at any time by notice in writing to the Company signed by each holder of ordinary shares in the Company.
- 25.5 A notice given under clauses 25.1 or 25.4 takes effect upon receipt of it at the registered office of the Company unless the notice specifies a later time at which the notice will take effect.
- 25.6 Each Director will be appointed for a term of three years, unless a different term is specified in his or her notice of appointment, and must retire from office on the expiry of such term, unless automatically reappointed in accordance with this Constitution.

25.7 At the conclusion of the term applicable to a Director, the Director will be automatically reappointed for a further term of the same duration unless:

- (a) the Director is removed from office in accordance with clause 26; or
- (b) clause 25.8 applies.

25.8 A Director will be eligible to be appointed for a maximum of three terms.

25.9 A Director holds office until his or her retirement, disqualification or removal in accordance with this Constitution.

26. Vacation of office

A person will cease to hold the office of Director if he or she:

- (a) is removed in accordance with clause 25.4; or
- (b) is not re-appointed in accordance with this Constitution at the end of any term applicable to that Director; or
- (c) resigns by notice in writing to the Company; or
- (d) becomes disqualified from being a director pursuant to the Act; or
- (e) is removed by RBNZ.

27. Alternate directors

27.1 The holders of ordinary shares in the Company may:

- (a) appoint any person who is not disqualified by the Act from being a director to act as an Alternate Director in the place of a Director who is not an Independent Director either until the appointment is rescinded, or for a particular meeting, or for some other defined period set out in the notice; and
- (b) remove that person from that office,

by giving written notice to that effect to the Company.

27.2 While acting in the place of the Director in respect of which he or she is appointed, an Alternate Director:

- (a) has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, and, except where that Director is present, be counted as part of the quorum of, participate in, and vote at a meeting of the Board and to sign any document, including a written resolution but excluding the right to appoint an Alternate Director);
- (b) will not attend a meeting (in his or her capacity as an Alternate Director), if the Director for which he or she is an alternate is present at the meeting unless the chairperson agrees otherwise;
- (c) is also subject to the same terms and conditions of appointment as that Director, except in respect of remuneration;
- (d) if that Director is chairperson of the Board, the Alternate Director may act as chairperson;
- (e) may only act as an Alternate Director for one Director at any time; and

- (f) may already be a Director.
- 27.3 The appointment of an Alternate Director terminates automatically if the Director in respect of which the Alternate Director is appointed ceases to be a Director.
- 27.4 The notice of appointment of an Alternate Director must include an address for service of notice of meetings of Directors. Failure to give an address will not invalidate the appointment but notice of meetings of the Board need not be given to the Alternate Director until an address is provided to the Company.
- 27.5 It is not necessary to give notice of a meeting of the Board to any Director for the time being absent from New Zealand or another usual country of residence unless the Director supplies the Company with an email address to which notices are to be sent during his or her absence. However, if, to the knowledge of the Company, a Director is temporarily absent from New Zealand or his or her usual country of residence and the Director has appointed an Alternate Director under the provisions of this Constitution, notice must (subject to clause 27.4) be given to the Alternate Director.

28. Indemnity of directors and employees

- 28.1 The Board may cause the Company to indemnify a Director or employee of the Company or a related company for 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.
- 28.2 The Board may cause the Company to indemnify a Director or an 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 the Director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above:

not being a 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 (duty to act in good faith and in the best interests of the company) or, in the case of any employee, of any fiduciary duty owed to the Company or related company.

29. Insurance of directors and employees

- 29.1 The Board may, subject to section 162 of the Act, cause the Company to effect insurance for Directors and for employees 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 such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or
 - (c) costs incurred by a Director or employee in defending any criminal proceedings 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 in which he or she is acquitted.
- 29.2 The Directors who vote in favour of authorising the effecting of insurance under clause 29.1 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

- 29.3 The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related company are forthwith entered in the interests register.
- 29.4 For the purpose of this clause 29, 'Director' includes a former Director and 'employee' includes a former employee.

30. Powers of the Board

- 30.1 Subject to any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- 30.2 Subject to clause 31, the Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of, the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the Shareholders, the holders of ordinary shares in the Company, or any other person.

31. Reserved matters

- 31.1 Notwithstanding any other provision of this Constitution (other than clause 32.1 and except as expressly stated otherwise), the Board will not authorise or permit the Company to take any action that constitutes a Reserved Matter:
- (a) unless that action has been approved by the holders of ordinary shares in the Company; or
 - (b) if that action is required following the issuing of a direction from RBNZ to the Company in accordance with applicable legislation.

32. Duties of the Board

- 32.1 The Directors are to act in good faith and in the best interests of the Company.
- 32.2 Subject at all times to clause 31.1, in the exercise of their powers and the discharge of their duties the Directors will have regard to any expectations of the holders of ordinary shares in the Company as communicated to the Company in writing from time to time (for example in the form of a letter of expectations).
- 32.3 In discharging their duties under this Constitution, applicable company legislation, and the general law, the directors of the Company:
- (a) will include in their consideration the following factors:
 - (i) the likely consequences of any decision or act of the Company in the long term; and
 - (ii) the interests of the Company's employees; and
 - (iii) the need to foster the Company's business relationships with suppliers, customers and others; and
 - (iv) the impact of the Company's operations on the community and the environment; and
 - (v) the desirability of the Company maintaining a reputation for high standards of business conduct; and
 - (vi) the interests of the Shareholders of the Company; and
 - (vii) the ability of the Company to create an overall positive impact on society and the environment; and

- (b) need not give priority to a particular factor referred to in paragraph (a) above over any other factor (included in paragraph (a) above or otherwise).

32.4 A Director is entitled to pass all information which may come into his or her possession as a Director to the person which appointed him or her in accordance with this Constitution.

33. Delegation by the Board

33.1 The Board may delegate to a committee of the Board, a Director, or an employee of the Company or any other person any one or more of its powers, other than the powers referred to in the second schedule to the Act.

34. Proceedings of the Board

34.1 The proceedings of the Board will be conducted in accordance with the third schedule to the Act, except as varied by clauses 34.2 to 34.4.

34.2 The chairperson will not have a second or casting vote.

34.3 The Directors may by majority vote appoint one of their number to be deputy chairperson and remove any person so appointed by majority vote. If there is a deputy chairperson of Directors, he or she may, in the absence of the chairperson, act as the chairperson, and any reference in this constitution to a chairperson will include a reference to the deputy chairperson acting as chairperson in accordance with this clause.

34.4 Any Director may grant a right of proxy, in writing, in favour of another member of the Board to vote for and on his or her behalf at any meeting of the Board.

35. Distribution of surplus assets on liquidation

35.1 Subject to the terms of issue of any equity Securities, upon the liquidation of the Company, the assets of the Company, if any, remaining after payment of the debts and liabilities of the Company, and the costs of winding-up will be distributed among the holders of equity Securities in proportion to their share-holding, provided however, that the holders of equity Securities not fully paid up will receive only a proportionate share of their entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholders to the Company in respect of the equity Securities either under the Constitution or pursuant to the terms of issue of the equity Securities.

36. Distribution in specie

36.1 Upon the liquidation of the Company, the liquidator, with the sanction of an ordinary resolution and any other sanction required by law, may divide amongst the Shareholders entitled to a distribution under clause 35.1 in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any assets to be divided as aforesaid and may determine how the division will be carried out as between the Shareholders holding different classes of equity Securities, subject to clause 35.1. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit, but so that no Shareholders will be compelled to accept any Securities whereon there is any liability.

37. Remuneration

37.1 Subject to clause 37.2 but notwithstanding section 161(1) of the Act, Directors will be entitled to receive directors' fees.

37.2 The amount of directors' fees payable to each Director will be set by the holders of ordinary shares in the Company as a Reserved Matter, having regard to (to the extent that the holders of ordinary

shares in the Company acting reasonably determine necessary) the requirements of the Owner's Expectations Document in relation to the amount of directors' fees that may be payable.

- 37.3 The Company will be responsible for the payment of the fees to Directors.
- 37.4 The Board will authorise the reimbursement by the Company of reasonable travelling, accommodation, and other expenses incurred by Directors:
- (a) when travelling to or from meetings of the Board or any committee of the Board; and
 - (b) when otherwise engaged on the business of the Company
- 37.5 The Board may authorise instalment payments to be made to a Director under an indemnity given by the Company in accordance with clause 28, including on terms that if it is subsequently established that the Company was not required or able to indemnify the Director, the amount paid to that Director must be reimbursed to the Company.

38. Interested directors

- 38.1 Subject to clauses 28, 29, 34, 37.2, 37.5, and 38.2 of this Constitution, a Director who is interested in a transaction entered into, or to be entered into, by the Company must declare that interest and attend and be counted in a quorum for any part of a meeting in which the transaction is discussed or voted on but may not:
- (a) vote on a matter relating to the transaction; or
 - (b) sign any document relating to the transaction on behalf of the Company; or
 - (c) do anything else as a Director in relation to the transaction,
- except that a Director may vote in respect of a matter relating to the transaction in which that Director is interested if the matter is one in respect of which, pursuant to the Act, Directors are required to sign a certificate.
- 38.2 The holders of ordinary shares in the Company may, waive the application of all or part of clause 38.1 to any transaction.

39. Method of contracting

- 39.1 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 person authorised by the Board, whose signature must be witnessed; or
 - (iii) an attorney appointed by the Company in accordance with clause 39.2,
 - (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.

- 39.2 The Company may, by an instrument in writing executed in accordance with clause 39.1(a), appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with an instrument binds the Company.

40. Good employer

- 40.1 The Company will, if it employs employees:
- (a) operate a personnel policy that complies with the principle of being a good employer;
 - (b) make that policy (including the equal employment opportunities programme) available to its employees; and
 - (c) ensure its compliance with that policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance.
- 40.2 For the purposes of clause 40.1, “good employer” and “equal employment opportunities programme” have the meaning set out in section 118 of the Crown Entities Act.

41. Information

- 41.1 The Company must maintain books and records in accordance with applicable law including, but not limited to, the Companies Act, the *Income Tax Act 2007* and the *Goods and Services Tax Act 1985*.
- 41.2 The Company must provide information to the holders of ordinary shares in the Company as they request from time to time in a letter of expectations, or as required under the Owner’s Expectations Document.

Schedule 1 – Reserved Matters

Major transactions and changes to the Business

- (a) The approval of a “major transaction” (as that term is defined in the Act) by the Company.
- (b) Any material change to the nature or scope of the Company’s Business.
- (c) Borrowing by the Company, including refinancing, financial restructuring, security arrangements and guarantees, outside the projected borrowing set out in the Company’s current Business Plan.
- (d) Any acquisition, disposal or transaction by the Company outside the usual course of the Company’s business, other than as contemplated in the Company’s current Business Plan.

Shares and dividends

- (e) The issue of equity Securities of any class, including redeemable shares (or create any options, convertible Securities or other rights to subscribe for or to convert into equity Securities) in the Company.
- (f) The provision of financial assistance for the acquisition of equity Securities of any class, including redeemable shares (or options, convertible Securities or other rights to subscribe for or to convert into equity Securities) in the Company.
- (g) Any purchase, consolidation, subdivision, repurchase, cancellation, or variation of the rights attaching to any equity Securities.
- (h) The adoption of, or any change to, the dividend or distribution policy of the Company.

Director remuneration

- (i) The determination of Directors’ remuneration.

Changes to the company’s governing documents or structure

- (j) The formation or incorporation of any subsidiary of the Company.
- (k) The entry by the Company into any formal partnership (as defined in the *Partnership Law Act 2019*), limited partnership (as defined in the *Limited Partnerships Act 2008*) or joint venture.
- (l) The entry by the Company into any merger, amalgamation, or disposal of all or substantially all of the Company’s assets (or a material part of the Company’s assets).
- (m) The Company ceasing to carry on its Business or any substantial part of it.
- (n) The taking of any steps to wind up the Company (including by way of liquidation, administration, or dissolution of the Company, or otherwise) or remove the Company from the New Zealand Companies register.