

Dated

2020

**CONSTITUTION OF
EASTPACK LIMITED**

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CONSTITUTION
EASTPACK LIMITED

1. PRINCIPAL ACTIVITY

The Company is registered as a co-operative company under the CC Act and intends to continue its business as a co-operative company. The principal activity of the Company is to grade, process, pack, store, transport and market fruit supplied or provided by Shareholders of the Company and to supply associated services to and enter into commercial transactions with or for the Shareholders concerning the growing, processing and marketing of fruit.

2. EFFECT OF THIS CONSTITUTION

The Company, the Board, each director and each Shareholder of the Company have the rights, powers, duties and obligations set out in the Act and the CC Act except to the extent that they are negated or modified, in accordance with the Act or the CC Act, by this Constitution.

3. INTERPRETATION

3.1 In this Constitution, unless the context otherwise requires:

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

"**Appointed Director**" means a director appointed pursuant to clause 23.9 of this Constitution;

"**Board**" means the directors of the Company who number not less than the required quorum acting together as a board of directors;

"**CC Act**" means the Co-operative Companies Act 1996;

"**Constitution**" means this constitution, as amended or replaced from time to time;

"**Company**" means EastPack Limited (company number 199417);

"**Directors**" means the directors for the time being of the Company;

"**Dispose**" includes any transfer, sale, grant or conferral of rights, assignment, alienation, or gift, and includes agreeing to do any of such things, and "disposal" has a corresponding meaning;

"**Employee Share Scheme**" means any share option programme, share incentive scheme, share trust or share ownership plan approved by the Board and established by the Company for the benefit of employees, Directors, consultants or contractors of the Company (or any Related Company of the Company) who may be invited by the Board to participate in any such programme, scheme, trust or plan from time to time;

"**Financial Year**" means the period of 12 months ending on expiration of the 31st day of December;

"**FMCA**" means the Financial Markets Conduct Act 2013;

"**Former Producer**" means a person who supplied fruit to the Company in the previous three years but is no longer supplying fruit to the Company;

"**Kiwifruit**" means Class 1 kiwifruit, as defined from time to time by Zespri Group Limited (company number 1027483);

"**KPIN**" means Kiwifruit Property Identification Number, which will be recorded with the Company in respect of each orchard property in relation to which Shares are held;

"**Minimum Shareholding**" has the meaning given in clause 5.12;

"**Ordinary Share**" means an ordinary share in the capital of the Company, issued on the terms set out in clause 4.2(d);

"**Ordinary Shareholder**" means a person whose name is entered in the Company's share register as the holder for the time being of at least one Ordinary Share;

"**Preference Share**" means a Share issued in accordance with clause 4.3;

"**Producer**" means a person who supplies fruit to the Company or, having ceased to supply fruit to the Company, is, in the reasonable opinion of the Board, likely to resume doing so;

"**Producer Controlled**" means transacting shareholders (as defined in section 4 of the CC Act) holding not less than 60% of the voting rights of the Company;

"**Producer Shareholder**" means any Shareholder who is a Producer;

"**Qualifying Lessors**" means a person who leases to the Company (or to a company affiliated with the Company) an orchard property on which fruit is provided for supply to the Company, provided that the Board may decide whether any person is at any time a Qualifying Lessor;

"**Registered Orchard**" means an orchard property for which the Company has a KPIN recorded;

"**Relevant Interest**" has the meaning in section 6 of the FMCA;

"**Security**" means a security in the Company (where "security" has the meaning given in section 6 of the FMCA);

"**Share**" means a share in the capital of the Company, and includes an Ordinary Share and a Preference Share;

"**Shareholder**" means any person who is shown on the Company's share register as the holder of a Share;

"**Share Standard**" has the meaning given in clause 5.12;

"**Special Resolution**" means a resolution approved by a majority of 75 percent of the votes of those Shareholders entitled to vote and voting on the question;

"**Tray**" means the equivalent of Kiwifruit represented by a tray equivalent as defined by Zespri Group Limited and containing approximately 3.6kg of fruit;

"**Vote**" means a right to vote at meetings of holders of the Company's Securities other than:

- (a) a right to vote solely upon matters of a nature immaterial or inconsequential to the control of the Company, or to the control of any material part of the Company's business or operations;
- or

- (b) a right to vote only when a payment in respect of the Security in questions is in arrears or some other default exists, or on a proposal to change the rights attaching to that Security, or in other circumstances of a special or remote nature;
- (c) a right to vote attaching to Securities which are not Equity Securities (as defined in section 8(2) of the FMCA), exercisable only at meetings of holders of those Securities; and

"Voting Security" means a Security which confers a Vote (but to avoid doubt, when determining whether a Security is a Voting Security, no account shall be taken of the possible application of any clause in this Constitution which temporarily suspends the voting rights attached to that Security under clause 9.1).

- 3.2 Unless the context otherwise required, expressions defined in the Act and the CC Act where used in this Constitution have the meanings so defined.
- 3.3 Subject to the provisions of the CC Act, the Board may decide whether any person is at any time a Producer.
- 3.4 Headings have been included for convenience only and shall not affect the interpretation of clauses in this Constitution.

4. SHARES

4.1 Classes of Shares

Subject to clause 4.2, the Board may issue Shares in different classes and may in the terms of issue of any or all classes of Shares negate, alter or add to the rights attaching to any Share specified in section 36(1) of the Act.

4.2 Ordinary Shares

- (a) Ordinary Shares will be issued at an issue price determined by the Board based on an independent valuation at the time of issue, and to avoid doubt, have no par or nominal value.
- (b) Ordinary Shares may be issued unpaid, fully paid up or partly paid up.
- (c) Ordinary Shareholders may only sell, transfer, assign, give or otherwise dispose of (whether by operation of law or otherwise) the Ordinary Shares in accordance with the provisions of this Constitution.
- (d) Subject to the terms of issue of any other class of Shares, each Ordinary Share confers on the holder the following rights (in addition to the rights set out elsewhere in this Constitution):
 - (i) subject to the restrictions set out in clause 7.1, the right to one vote on a poll at a meeting of the Company or any resolution;
 - (ii) the right to an equal share in dividends authorised by the Board; and
 - (iii) the right to an equal share in the Distribution of surplus assets of the Company.

4.3 Preference Shares

- (a) The Company may issue Preference Shares to any person approved by the Board.
- (b) The Board may determine the terms of issue of the Preference Shares (which may provide for the holders of Preference Shares to be paid a Distribution in priority to the Ordinary Shareholders), provided that the Preference Shares may not confer a right to Vote on their holders.

4.4 Issue of Voting Securities

Notwithstanding any other provision in this Constitution:

- (a) no Voting Security may be issued which confers on its holder more than one Vote, including a vote for the election of Directors;
- (b) no Voting Securities may be issued, and no voting rights attached to Securities may be used or changed, and no other change may be made to any provision in this Constitution, if such issue or use or change would result in the Company ceasing to be Producer Controlled.

4.5 Persons authorised to hold Securities

Notwithstanding any other provision in this Constitution Ordinary Shares may only be held by:

- (a) Producers (including Directors that are Producers);
- (b) certain Qualifying Lessors;
- (c) Former Producers;
- (d) the Company; and
- (e) participants in an Employee Share Scheme (or any trustee on behalf of the participants in an Employee Share Scheme).

4.6 Consolidation or subdivision of Shares

The Board may:

- (a) consolidate, or consolidate and divide or subdivide the Shares or Shares of any class in proportion to those Shares or the Shares in that class; or
- (b) subdivide the Shares or any class of Shares in proportion to those Shares or Shares in that class,

in each case without cancellation or issue of Shares and without requiring Shareholder consent, provided that:

- (c) following the consolidation, consolidation and division or the subdivision, the proportion between the amount paid and the amount, if any, unpaid on each Share shall be the same as it was in the case of the Share or Shares held prior to the capital restructure; and

- (d) the Share Standard and any applicable Minimum Shareholding is adjusted in proportion to the consolidation, consolidation and division, or subdivision.

4.7 Pre-Emptive Rights

The requirements of section 45 of the Act regarding the issue of shares do not apply.

5. RIGHTS, PRIVILEGES AND OBLIGATIONS OF PRODUCER SHAREHOLDERS

5.1 Suppliers of fruit to first become Shareholders

Unless otherwise approved by the Board, every person desiring to supply fruit to or otherwise transact with the Company shall, before being permitted to do so, become a Shareholder upon such terms and conditions as the Board may decide and shall sign an application form as required by the Board. The supply of produce to the Company by any person is an irrevocable application by that person to become a Shareholder and hold the number of Securities from time to time as required by the Board (as notified to Shareholders). Any approval given by the Board to enable a person to supply fruit to or otherwise transact with the Company without becoming a Shareholder, may be amended or revoked by the Board at any time.

5.2 Requirement of Ordinary Shareholders to Contract to Supply Produce

The Board may from time to time determine:

- (a) The quantity of fruit to be supplied to the Company by each Producer Shareholder;
- (b) The services of the Company to be utilised by each Producer Shareholder, and the terms on which those services are to be utilised;
- (c) The terms of sale and purchase of goods between the Company and each Producer Shareholder.

5.3 Authorised Deductions

The Company is authorised to direct, on behalf of each Shareholder, that the proceeds of sale of all produce handled by the Company for any Shareholder be paid directly to the Company, without deduction. The Company is further authorised to deduct from such proceeds when received all expenses incurred by the Company in handling that produce, and all amounts owed by the Shareholder to the Company in relation to the handling of that produce.

5.4 Written Contract

The Board may from time to time require any Producer Shareholder or Shareholders to enter into a written contract to record the terms of the arrangements described in clauses 5.2 and 5.3. If any Producer Shareholder fails to sign such a contract, the Board can authorise the Company to sign it on the Producer Shareholder's behalf, and each Producer Shareholder appoints the Company as its agent and attorney to sign such a contract.

5.5 **Change in Terms**

The Board can from time to time change the terms of the arrangements described in clauses 5.2 and 5.3, and of the terms of the contract referred to in clause 5.4. With the further approval of a Special Resolution, such change may be made retrospective in its effect.

5.6 **Constitution Subject to Clauses**

The terms of this Constitution have effect subject to the terms of clauses 5.2 to 5.5 (inclusive) above.

5.7 **Shareholder's First Obligation to Supply Fruit to Company**

So long as the Company has the processing capacity to handle the fruit, every Producer Shareholder shall in good faith endeavour to supply the whole of his or her crop or crops of fruit to the Company. Should the Producer Shareholder be unable to fulfil this obligation they must give notice in writing to the Company under clause 5.10. All fruit supplied to the Company shall be supplied on the terms and conditions determined pursuant to this Constitution and the current EastPack Grower Guide from time to time, unless the Board otherwise agrees in writing.

5.8 **Board to Fix Quantities and Varieties of Fruit**

Notwithstanding the entitlement of Shareholders elsewhere appearing in this Constitution, no Shareholder shall be entitled to supply other varieties or greater quantities of fruit than the Board shall from time to time determine.

5.9 **Other Fruit**

Subject to the provisions of any existing contract or contracts with any person who is not a Shareholder, every Producer Shareholder shall have a prior right to supply other fruit produced by him or her to the Company for grading, packing and cool storage provided such other fruit conforms to the quality, tests and standards set by the Board or by any Government department or authority or other body which is entitled or obliged to set such quality, tests and standards.

5.10 **Cessation of Supply**

Every Producer Shareholder shall give the Company at least one (1) month's written notice of his or her intention to cease supplying part or all of his or her kiwifruit to the Company, provided that this provision shall not apply in the case of any Producer Shareholder who has entered into a contract for the sale of his or her orchard or orchards within this notice period.

5.11 **Terms of Supply**

All fruit supplied to the Company by any Producer Shareholder shall, except as may otherwise be agreed upon in writing, be deemed to be supplied upon the terms set out in this Constitution, the current EastPack Grower Guide from time to time and in any contract or contracts between that Producer Shareholder and the Company.

5.12 Share standard and minimum shareholding

The Board may from time to time determine:

- (a) the number of Shares that a Shareholder is expected to hold based on that Shareholder's trading with the Company (based on the number or value or volume of, or profit derived by the Company from, those trades) or on any other basis that the Board thinks fit ("**Share Standard**"). The Board may set different Share Standards for the supply of different fruit produce and for the supply of different varieties of the same fruit (including different varieties of kiwifruit) and
- (b) the minimum number of Shares that a Shareholder is required to hold in order to secure the Company's packing and processing services (based on the number or value or volume of, or profit derived by the Company from, those trades) or on any other basis that the Board thinks fit ("**Minimum Shareholding**").

The Board, without any application therefore, may allot to any Shareholder such number of additional Shares as he or she shall be required to hold to meet the Share Standard and/or Minimum Shareholding applicable to that Shareholder, and the Shareholder shall pay to the Company the amount payable on the Shares so allotted to him or her in the manner and at the time determined by the Board and all such moneys shall be recoverable as a debt due by the Shareholder to the Company. The Board will have the ability to alter the Share Standard and/or the Minimum Shareholding requirements from time to time and details of such will be communicated to Shareholders and detailed in the Grower Guide.

5.13 Additional Shares

If at any time it appears to the Board that any Shareholder has held a smaller number of Shares than is required to be held by him or her to meet the Share Standard and/or the Minimum Shareholding, the Board may immediately allot to him or her without any application by or on behalf of that Shareholder such further number of Shares as shall be required for that Shareholder to meet the Share Standard and/or the Minimum Shareholding (as applicable). The issue price for those Shares will be payable at a time specified by the Board.

5.14 Maximum number of Shares

Without limiting clause 8, the Board may from time to time determine, at its discretion, the maximum amount by which a Shareholder may exceed the Share Standard applicable to that Shareholder (whether as a number or a percentage of Shares) ("**Share Limit**"). If a Shareholder holds Securities in excess of his or her Share Limit, the Board may, at its discretion:

- (a) require that Shareholder to sell the relevant number of that Shareholder's Securities in accordance with clause 9;
- (b) suspend the rights attaching to the relevant number of that Shareholder's Securities in accordance with clause 9; or
- (c) reclassify the relevant number of that Shareholder's Securities as Preference Shares in accordance with clause 10.1.

5.15 Board Decision Final and Binding

The decision of the Board from time to time as to:

- (a) the minimum number of Shares (if any) which any Shareholder must hold (including any determination of the number or value or volume of, or profit derived by the Company from, a Shareholder's trading with the Company for the purposes of calculating the number of Shares a Shareholder must hold to meet the Share Standard); or
- (b) the maximum number of Shares that a Shareholder may hold,

will be final and binding (but to avoid doubt, this clause does not restrict the Board from making a new determination of minimum or maximum shareholdings from time to time in accordance with this Constitution). The Board may review and determine a Shareholder's compliance with this Constitution at any time.

6. ANNUAL CHARGES

6.1 Annual Charge

The Board shall in each year make a charge on the Producer Shareholders to cover the cost of grading, packing, cool storage, transport and any associated services for kiwifruit or other produce of the Shareholders and all other expenses of the Company.

6.2 Other Charges

The Board may from time to time, for the purpose of meeting or partly meeting the additional cost (if any) of the transport, handling, manufacture, marketing and administration of supplies of fruit of whatever kind, make such charge per Producer Shareholder or at such varying rates in respect of different quantities or varieties of fruit (including different varieties of the same type of fruit) supplied during the particular financial year, as it deems equitable.

6.3 Payment of Charges

Each Producer Shareholder shall pay the Company the annual charge referred to in clause 6.1 and any charge made pursuant to clause 6.2 at the time decided by the Board. The Company will be entitled to charge interest on overdue accounts at a rate set by the Board from time to time. The Company will also be entitled to claim a lien against the fruit held in coolstorage for the Producer Shareholder whose account for the annual charges remain unpaid, for such period after the date of completion of packing as shall be determined by the Board.

6.4 Irrevocable Authority/Assignment

The Board may in any year require that all of the Producers sign an Irrevocable Authority Form directing the exporters of their kiwifruit or other produce to pay direct to the Company any payments payable by the exporter to the Producer for kiwifruit or other produce supplied for export through that exporter, to cover the annual charges referred to in clauses 6.1 and the charges referred to in clause 6.2, provided that if the amount of such payments from the exporter is greater than the charges under clauses 6.1 and 6.2, the Company shall pay the difference to the Producers.

7. CAP ON VOTING RIGHTS

7.1 Voting Cap

- (a) Subject to the terms of issue of the Shares held by the Shareholder, the maximum number of votes for each Shareholder is the lesser of:
- (i) the number of Ordinary Shares held by that Shareholder; and
 - (ii) the aggregate number of votes that Shareholder is entitled to, being 1 vote for each Tray submitted (based on the average of the highest number of Trays submitted to the Company in any 3 of the 4 most recent seasons, or as determined by the Board), provided that the maximum aggregate number of votes permitted to be exercised by a Shareholder and that Shareholder's associates (as defined in section 12(1) of the FMCA) is no more than 7.5% of the total voting rights in the Company ("**Voting Cap**"). For the purposes of this clause 7.1, the Board may determine, in its discretion, whether two or more Shareholders are associates, and the Board's determination will be final.
- (b) Notwithstanding clause 7.1(a), in the event of an interest group vote, each Shareholder in the interest group is entitled to one vote per Share.

7.2 Date of calculation of Voting Cap

The Board will, prior to each occasion on which Shareholders may exercise voting rights, fix a date, in accordance with section 125 of the Act, on which each Shareholder's maximum voting rights are to be calculated in accordance with this clause 7, and such date will be as close as reasonably possible to the date on which Shareholders are to exercise their voting rights.

7.3 Takeovers Act 1993

For so long as the Company is a Code Company, Shareholders (and their Associates) should be aware of the restrictions on becoming a holder or controller of more than 20% of the voting rights in the Company. For the purposes of this provision the definitions of Code Company and Associates can be found in the Takeovers Regulations 2000 or any subsequent revision to these regulations.

8. CAP ON SHAREHOLDING

8.1 Cap on Securities

The Board may, at its discretion, set and amend from time to time, a limitation on the maximum number of Shares in each class that may be held by any Shareholder. Any such limitation or limitations shall apply in the manner specified by the Board.

8.2 Prohibited purchases

A Shareholder may not acquire Securities if:

- (a) the Shareholder holds Securities in excess of a cap (or caps) under clause 8.1; or

- (b) the acquisition would result in the Shareholder holding Securities in excess of a cap (or caps) under clause 8.1.

8.3 **Board powers**

If any Shareholder has held Shares in excess of any cap under clause 8.1 for a continuous period of five years or longer, ("**excess Securities**"), the Board will have all powers set out in this Constitution to reduce that Shareholder's shareholding below the relevant cap, including the powers outlined in clause 9 of this Constitution to require and effect a sale of excess Securities, and the powers set out in clause 10 to reclassify the excess Securities so that the relevant cap is not exceeded. The number of excess Securities to be sold or reclassified will be the lowest number of Securities by which that Shareholder has continuously exceeded the relevant cap in the previous three years.

9. **DISPOSAL OF SECURITIES**

9.1 **Power of Directors to Require Disposal of Securities**

Where the Board is satisfied on reasonable grounds that any holder of Securities is not or has ceased to be entitled to hold some or all of those Securities in accordance with the terms of this Constitution (including under clause 8.1 or because the Shareholder is no longer entitled to hold those Securities under clause 4.5), the Board may call upon such Shareholder by written notice to dispose of some or all of that Shareholder's Securities as required to comply with the terms of this Constitution, and until the Shareholder has disposed of such Securities the Board may suspend:

- (a) the voting rights attaching to those Securities (if applicable); and
- (b) any right to receive dividends and distributions attaching to those Securities.

9.2 **Failure to Transfer**

If the recipient of a notice under clause 9.1 fails to transfer his or her share or Securities within 20 Working Days from service of that notice, the Board may arrange the sale of the Securities in accordance with clauses 9.3 to 9.5.

9.3 **Sale at Best Price Reasonably Obtainable**

Where the Board is entitled under this Constitution to arrange for the sale of Securities, the Board shall arrange for the sale at the best price reasonably obtainable at the relevant time.

9.4 **Board Authorised to Sell**

For the purposes of any sale referred to in clause 9.3 the holder of the Securities and any other person having a Relevant Interest in those Securities shall be deemed to have authorised and agreed to indemnify, and does hereby authorise and indemnify the Board, to act on its behalf in relation to the sale of the relevant Securities, and to have appointed a representative of the Board to sign all documents relating to such sale and transfer as may be required to give effect to the same as that Shareholder's agent and attorney.

9.5 Proceeds Held on Trust

The net proceeds of any such sale shall be held on trust by the Company for and paid (together with interest at such rate as the Board deems appropriate) to the Shareholder on surrender of any certificate relating to the relevant Securities so sold. The Board shall be entitled to cancel existing share certificates (if any) and reissue replacements in order to enable the sale of such Securities but shall not be obliged to do so.

10. RECLASSIFICATION OF SHARES

10.1 Reclassification as Preference Shares

The Board may reclassify a Shareholder's Ordinary Shares as Preference Shares:

- (a) at the Board's sole discretion, at any time following a request from the Shareholder for its Ordinary Shares to be reclassified as Preference Shares; or
- (b) at any time after the date that is 20 Working Days from service of a notice under clause 9.1, if the Shareholder has failed to transfer his or her Securities within that period.

10.2 Share ratios upon reclassification

At the time of reclassification of Ordinary Shares as Preference Shares the Board will take such actions as it determines to be necessary or desirable to ensure that the aggregate value of the Shares after they are reclassified is equal to the aggregate value of the Shares immediately before reclassification (in each case as those values are determined by the Board). Without limitation, the Board will be authorised to subdivide or consolidate the relevant Shares, or selectively cancel, buy back and/or issue Shares for nil consideration, as the Board in its discretion determines to be appropriate to reflect the principles set out in this clause. The aggregate value of a Shareholder's Ordinary Shares prior to reclassification will be determined by reference to the market value of the Ordinary Shares and the extent to which those Ordinary Shares are paid up. The Board may look at such indicators of market value as it sees fit, including any recent valuations of the Company and the recent trading price of Ordinary Shares.

11. INFORMATION AND ENSURING COMPLIANCE

11.1 Shareholder to provide information on request

Each Shareholder will provide such information as the Board may from time to time require to determine whether the Shareholder is complying with this Constitution, including whether the Shareholder holds the number of Shares it is required to hold or more Shares than it is permitted to hold and the number of shares in which that Shareholder and its Associates (as defined in the Takeovers Code) have a Relevant Interest. Each Shareholder must ensure that the information it provides to the Board under this clause:

- (a) is in the form;
- (b) contains the information;
- (c) is accompanied by, or have annexed, such documents, certificates, and statements; and

(d) is given in the manner,

as may be prescribed by the Board from time to time.

11.2 Declaration

The Board may, at any time, by notice in writing to any Shareholder, require that Shareholder to give a statutory declaration (or other disclosure in a form acceptable to the Board) confirming such matters or information requested by the Board in accordance with clause 11.1.

11.3 Ensuring compliance

If at any time the Board determines, in its discretion, that any Shareholder has arranged its affairs to circumvent, or is attempting to circumvent, any provision in this Constitution (including in relation to the minimum and maximum shareholdings applicable to a Shareholder), the Board may declare the Shareholder to be in breach of this Constitution and exercise any powers available to the Board under the Act, the CC Act or this Constitution.

12. ACQUISITION BY THE COMPANY OF ITS OWN SHARES

12.1 Acquisition by Company

The Company may purchase or otherwise acquire Shares of any class issued by it in accordance with the Act.

12.2 Special Offers by Company

For the purposes of section 60(1)(b)(ii) of the Act, the Company may make an offer to one or more Shareholders (including participants or a trustee in any Employee Share Scheme) to acquire Shares issued by it without making such an offer to any other Shareholder or Shareholders in the Company.

13. REDEMPTION OF SHARES

13.1 Redeemable Shares

The Company may issue a class of Securities which are redeemable:

- (a) at its option; or
- (b) at the option of the holder of the Security; or
- (c) on a date for redemption specified in the terms of issue of the relevant Securities;

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified and independent person as provided by section 68 of the Act.

- 13.2 For the purposes of section 69(1)(b)(ii) of the Act, the Company may exercise an option to redeem Securities in relation to one or more Shareholders in accordance with section 69(1)(b) of the Act.

14. COMPANY MAY HOLD ITS OWN SHARES

14.1 Company may hold its own Shares

The Company may hold any of its own Shares of any class acquired under the Act or surrendered in terms of the CC Act.

14.2 Transfer of own Shares

All the provisions of the Act, the CC Act and this Constitution applying to the issue of Shares by the Company shall apply to the transfer of a share in the Company held by the Company in itself.

15. TRANSFER OF SHARES

15.1 Restrictions on Transfer

No Shareholder may assign, transfer, Dispose of, or confer control over its Shares except in accordance with this Constitution. The Board may determine that the appointment of a proxy or a representative has conferred control over a Shareholders' Shares if the Board determines that it is not a bona fide appointment or the arrangement involves the giving or receipt of commercial benefits or rights.

15.2 Form of Transfer

The Board may from time to time prescribe the form of transfer of Securities.

15.3 Execution of Form of Transfer

The form of transfer shall be executed by or on behalf of the transferor and the transferee.

15.4 Delivery of Form of Transfer

The form of transfer must be delivered to the registered office of the Company.

15.5 Disclosure of Relevant Interests Prior to Registration

Prior to registering any transfer of Shares, the Board may, by notice in writing, require the transferee of the Shares or any other person to lodge with the Company a statutory declaration or other disclosure or evidence:

- (a) demonstrating that the transferee is entitled to hold the Shares under clause 4.5; and/or
- (b) setting out to the best of that person's knowledge details of all Relevant Interests that the transferee and any other persons with a Relevant Interest in the shares to be transferred have in shares in the Company.

15.6 Delay or Refusal to Register Transfers of Securities

The Board may delay or refuse to register a transfer of Securities where:

- (a) the transfer has not received the prior approval of the Board;
- (b) the Company has a lien on a Security or Securities included in the transfer;

- (c) a call is due and unpaid or any other money is due to the Company and unpaid in respect of a Security or Securities included in the transfer;
- (d) the form of transfer and any other documentation required has not been provided or has not been duly executed;
- (e) the Board is of the opinion that the proposed transferee is not a desirable person to become a Shareholder of the Company;
- (f) the Board resolves that it is not in the best interests of the Company to register the transfer;

and must refuse to register a transfer where:

- (g) the transferee is not entitled, and it is not likely that the transferee will become entitled, to hold the relevant Securities pursuant to clause 4.5 (or, if applicable, the relevant terms of issue of the Securities to be transferred);
- (h) the transfer would result in the Company ceasing to be Producer Controlled; or
- (i) the transfer would cause the Company to breach any regulatory or statutory provisions.

15.7 Closure of Share Register

The share register may be closed during such times as the Board think fit not exceeding in aggregate 30 working days in each year.

15.8 Custody of Form of Transfer

All forms of transfer shall when registered be retained by the Company, but any form of transfer which the Board refuses to register shall be returned to the person who delivered the form to the Company within one month after the date on which the form was lodged with the Company.

15.9 Share Register

The Company may divide its share register into two or more registers kept in different places and shall maintain any such registers in accordance with the relevant law in force.

16. ANNUAL SHARE STATEMENTS

16.1 Annual Share Statement

The Board shall at least once in each year give (or make available) a share statement to all Shareholders detailing as at a specified date the name of all Shareholders, the KPIN of any orchard in respect of which Securities are held or required to be held, the number of Securities held by each of them, the number of Securities required to be held by each of them in terms of this Constitution, and the class to which the Securities belong. This share statement may be delivered or made available through electronic means (including by making the information available on a website).

16.2 Delivery to Joint Holders

In respect of a Security or Securities held jointly by two or more persons, the Company shall not be bound to issue more than one Annual Share Statement, and delivery of an Annual Share Statement to one of the joint holders shall be sufficient delivery to all.

16.3 No Recognition of Trusts

The Company shall be entitled to treat the person whose name appears on the register as the absolute owner of that Security, and shall not be under any obligation to recognise any trust or equity, or partial, equitable, or other claim to or interest in any Security whether or not it has express notice of such claim or interest.

16.4 Receipts from Joint Holders

If two or more persons are registered as joint holders of any Security, any one of those persons may give receipts for any money payable in respect of that Security.

17. CALLS

17.1 Power to Call

- (a) Subject to clause 17.2, the Board may from time to time make such calls as it thinks fit upon the Shareholders in respect of all money unpaid on the Securities held by them respectively and which is not by the conditions of allotment made payable at fixed times.
- (b) Such calls:
 - (i) may be based on a Shareholder's kiwifruit production; and
 - (ii) may differentiate between Shareholders and Shares as to the amount to be paid and the time of payment.
- (c) Each Shareholder shall pay the amount of every call so made on him or her to the persons and at the times and places appointed by the Board.
- (d) A call may be made payable by instalments and may be revoked or postponed as the Board may determine.

17.2 Notice and Arrears of Call

Fourteen days' notice of any call shall be given specifying the time and place of payment and the person or persons to whom the call shall be paid.

17.3 Joint Holders

The joint holders of a Security shall be jointly and severally liable to pay all calls.

17.4 Call Made

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

17.5 Interest

If the call payable in respect of any Security is not paid on or before the day appointed for payment, the holder for the time being of the Security shall be liable to pay interest on the same at such rate as the Board may determine from the day appointed for payment to the time of actual payment. However, the Board may waive payment of that interest wholly or in part.

17.6 Proof of Liability

In any proceedings for the recovery of any money due for any call, it shall be sufficient to prove that:

- (a) the name of the Shareholder sued is entered in the register of Shareholders of the Company as the holder or one of the holders of the Securities 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,

and it shall not be necessary to prove the appointment or qualification of the directors who made the call nor any other matter whatsoever. Proof of the matters above will be conclusive evidence of the debt.

17.7 Different Terms

The Board may make arrangements on the issue of Securities for a difference between the holders in the amount of calls to be paid and in times for payment.

17.8 Different Amounts

Notwithstanding anything in this Constitution but subject to any applicable rule of law, the Board may, if it deems it advisable so to do, call up the balance due by any Shareholder upon his or her shares without the necessity of making a similar call on all or any of the other Shareholders for the time being.

17.9 Calls in Advance

The Board may, if it thinks fit, receive from any Shareholder willing to advance the same, all or any part of the money uncalled and unpaid upon any Securities held by him or her, and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate as may be agreed upon between the Board and the Shareholder paying the sum in advance. The Board may agree with the Shareholder that the Shareholder may participate in profits upon the amount so advanced, and the Board may at any time repay the amount so advanced upon giving to the Shareholders three months' notice in writing. No Shareholder shall be entitled as of right to any notice in writing. No Shareholder shall be entitled as of right to any payment on any amount paid in advance unless agreed as contemplated by this clause and the Board shall be under no obligation to agree to pay interest or allow participation.

18. FORFEITURE OF SECURITIES

18.1 Failure to Pay

If any Shareholder fails to pay any call or instalment of a call on or before the day appointed for payment the Board may serve notice upon the Shareholder requiring him or her to pay the call or instalment, together with interest and any expenses that may have accrued by reason of the non-payment.

18.2 Notice

The notice shall:

- (a) name a further day (not being less than 14 days from the date of the notice) on or before which the call or instalment, and all interest and expenses (if any) that have accrued by reason of the non-payment, are to be paid;
- (b) name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable; and
- (c) state that, in the event of non-payment at or before the time and at the place appointed, the Securities in respect of which the call or instalment is made will be liable to be forfeited.

18.3 Non-Compliance

If the Shareholder does not comply with requirements of any such notice, any Securities in respect of which the notice has been given may at any time thereafter, before payment of all calls or instalments, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all distributions authorised in respect of the forfeited Securities.

18.4 Forfeited Securities

Any Security or Securities so forfeited shall be deemed to be the property of the Company and may be disposed of in such manner as the Board think fit and as this Constitution permits.

18.5 Ceasing to be a Shareholder

Any Shareholder whose Securities have been forfeited shall cease to be a Shareholder in respect of the forfeited Securities, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable by the Shareholder to the Company in respect of the Securities and interest thereon to the date of payment. The Shareholder's liability shall cease if and when the Company receives payment in full of the amount so owing by the Shareholder.

18.6 Evidence of Forfeiture

A record in the minute book of the Company that a Security in the Company has been duly forfeited on a date stated in the record shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the Security.

18.7 Sale of Securities

The Company may receive the consideration, if any, given for the Security on any sale or disposition thereof, and may execute a transfer of the Security in favour of the person to whom the Security is sold or disposed of, and he or she shall thereupon be registered as the holder of the Security, and shall not be bound to see to the application of the purchase money, if any, nor shall his or her title to the Security be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the Security.

18.8 Fixed Time Payments

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

18.9 Cancellation of Forfeiture

If all calls, instalments, and interest due in respect of any forfeited Security are paid before the Security has been disposed of, together with such sum as the Board may require to repay expenses incurred in respect of non-payment, the forfeiture may be cancelled by the Board at its discretion; and if the forfeiture is cancelled and an entry thereof made in the minutes of the Board, the Security shall then revert to the person entitled to it before the forfeiture and be held by him or her thereafter in the same manner as if no such forfeiture had taken place.

19. TRANSMISSION OF SECURITIES

19.1 Transmission on Death of Shareholder

In the event of the death of a Shareholder, the legal personal representative of a deceased sole holder of a Security shall be the only person recognised by the Company as having any title in the Security. In the case of a Security registered in the names of two or more persons, the survivor or survivors, or, where all survivors of the first deceased joint holder are later deceased, the legal personal representative of the last surviving joint holder on his or her death, shall be the only person recognised by the Company as having any title to the Security.

19.2 Assignee in Bankruptcy

Any person becoming entitled to a Security in consequence of the bankruptcy of a Shareholder shall, upon such evidence being produced as may from time to time be properly required by the Board, have the right to make such transfer of the Security as the bankrupt person could have made; but the Board shall have the same right to decline or delay registration as they would have had in the case of a transfer of the Security by the person before the bankruptcy.

19.3 Right of Personal Representative or Assignee

Where the registered holder of any Security dies or becomes bankrupt, his or her personal representative or the assignee of his or her estate, as the case may be, shall, upon the production of such evidence as may from time to time be required by the Board, be entitled to the same rights

(whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been entitled to if he or she had not died or become bankrupt. Where two or more persons are jointly entitled to any Security in consequence of the death of the registered holder, they shall for the purposes of this Constitution be deemed to be joint holders of the Security.

20. LIEN ON SECURITIES

20.1 Lien on Securities

The Company shall have a first lien for all debts, obligations and liabilities of any Shareholder of the Company, owed to the Company or to any subsidiary of the Company, upon all Securities held by the Shareholder, whether alone or jointly, and upon all money payable to the Shareholder.

20.2 Discharge of Lien

If the Company shall register any transfer of any Security upon which it has such a lien without giving to the transferee notice of its claim, the Security will be freed and discharged from the lien of the Company.

20.3 Sale of Securities

The Company may sell, in such manner as the Board thinks fit, any Security on which the Company has a lien, if

- (a) some sum in respect of which the lien exists is presently payable; and
- (b) fourteen (14) days' notice in writing, demanding payment of such, has been given to the Shareholder or the person entitled thereto by reason of the Shareholder's death or bankruptcy.

20.4 Execution of Sale

For giving effect to any such sale the Board may authorise some person to transfer the Security sold to the purchaser. The purchaser shall be registered as the holder of the Securities comprised in any such transfer, and he or she shall not be bound to see to the application of the purchase money, nor shall his or her title to the Securities be affected by any irregularity or invalidity in the sale proceedings.

20.5 Proceeds

The proceeds of the sale shall be received by the Company and applied in payment of:

- (a) First, in and towards the satisfaction of the amount in respect of which the lien exists;
- (b) Secondly, in payment of all costs and expenses of such sale and any attempted sale; and
- (c) Thirdly, (subject to a like lien for sums not presently payable as existed upon the Securities prior to the sale) in payment to the person entitled to the Securities at the date of the sale.

20.6 Discharge from Calls

Upon registration of the transfer to the purchaser of Securities sold by the Company pursuant to clause 18.7 (the "**Transferee**"), the Transferee shall hold such Securities free from all calls due prior to such purchase.

20.7 Former Shareholder's Remedy

The remedy of the former Shareholder and of any person claiming under or through the former Shareholder shall be against the Company exclusively and in damages only.

21. ALTERATION OF SHAREHOLDER RIGHTS

Subject to clause 4.4, the Company may issue Securities which rank equally with or in priority to existing Securities, whether as to voting rights or distributions and any such issue is deemed not to be an action which affects the rights attached to existing Securities.

22. MEETINGS OF SHAREHOLDERS

22.1 Annual Meetings

The annual meeting of the Company shall be held once in every calendar year, at such time (not being more than 15 months after the holding of the last preceding meeting) and place as may be determined from time to time by the Board.

22.2 Special Meeting

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

- (a) may be called at any time by the Board or if at any time there are not in New Zealand sufficient directors to form a quorum, by any director or any two Shareholders of the Company; and
- (b) must be called by the Board at the written request of Shareholders holding Securities carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

22.3 Shareholder Request for Special Meeting

Any request by Shareholders to hold a special meeting must specify the issue to be voted on at the meeting and shall be signed by the persons making the same and shall be deposited at the registered office of the Company. It may consist of several documents in the like form each signed by one or more of the requisitionists.

22.4 Alteration of Shareholder Rights by Special Resolution

The Company may not take action except as specifically allowed under this Constitution that affects the rights attached to Securities unless that action has been approved by a Special Resolution of each interest group and further as set out in section 117 of the Act. To avoid doubt, the ability to enter into a supply contract and/or supply produce to the Company is not a right attaching to the

Shares, and the Company may amend the form of any supply agreement under clause 5.4 at any time without the approval of interest groups.

22.5 Alteration of Company Status by Special Resolution

The Company may not take action that alters the status of this company under the CC Act unless that action has been approved by a Special Resolution.

22.6 Proceedings at Meetings

The proceedings of meetings of Shareholders shall be governed by the First Schedule of this Constitution.

23. DIRECTORS

23.1 Existing Directors

The current directors as at the date of adoption of this Constitution shall hold office as if they had been elected under clause 23.3 or appointed under clause 23.9 (as the case may be). For the purposes of clause 23.4 (rotation) where a director is deemed to have been elected under clause 23.3 (and not appointed under clause 23.9), his or her time in office in the Company shall be calculated from the time that Director last took office as director of the Company.

23.2 Number

- (a) Unless altered in accordance with clause 23.2(b), the number of directors (including the Managing and/or Executive Director(s) and any Appointed Director) for the time being shall be not less than 6 nor more than 9.
- (b) The Company at a meeting may from time to time increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.

23.3 Shareholder Directors

Not less than 6 directors shall be elected by the shareholders and unless otherwise determined by the shareholders by ordinary resolution each such director shall be a shareholder (including shareholders of company/s that hold shares within EastPack) and all such directors are herein referred to as "shareholder directors". Of those shareholder directors, not less than 4 shall hold Ordinary Shares.

23.4 Rotation of Shareholder Directors

At each annual general meeting, one third of the shareholder directors or, if their number is not a multiple of 3, the number nearest to one third shall retire from office. Those to retire shall be those who have been longest in office. As between 2 or more of such directors who have been in office an equal length of time, the director to retire shall, in default of agreement between them, be determined by lot. The length of time a director has been in office shall be computed from his or her last election or appointment where he or she has previously vacated office. The identity of the

retiring directors and (if the information is available) whether they intend to stand for re-election shall be notified to the Shareholders not later 31 January in the year of the annual meeting at which they are to retire.

23.5 Eligibility for Election as a Director

- (a) A retiring director shall be eligible for re-election. Subject to clause 23.6 he or she shall retain office until the dissolution or adjournment of the meeting at which his or her successor is elected.
- (b) No person (not being a retiring director) shall be eligible for election to the office of director at any meeting unless he or she has been nominated in writing provided that such nomination shall not be required if that person is recommended by the Board. Every nomination must be made and signed by a shareholder entitled to attend and vote at the meeting (other than the person nominated) and must be signed by the nominee to confirm acceptance of the nomination. In relation to any annual meeting, nominations will open on the preceding 31 January and close at 4pm on the preceding 28 February or if 28 February is a Saturday, a Sunday, or a public holiday in Edgecumbe, then at 4pm on the following working day ("closing date for nominations"). Every nomination paper must be left at the registered office of the Company by 4pm on the closing date for nominations. Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.
- (c) No person may take office as a director 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 in a form approved by the Board.

23.6 Election of Directors

- (a) Subject to clause 23.3, the Company at any meeting at which any directors retire by rotation shall fill up the vacated offices by electing a like number of directors and, without notice may fill up any other vacancies.
- (b) If a vacated office is not filled by such an election, the retiring director shall if offering himself or herself for re-election be deemed to have been re-elected unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for the re-election of that director is put to the meeting and lost.

23.7 Election of Directors by Postal Ballot

- (a) The Board may hold a postal ballot for the election of directors in accordance with section G of Schedule 1 of this Constitution with such modifications as the Board may determine and the names of the directors who have been elected shall be announced at the conclusion of the relevant annual meeting.

- (b) Subject to the provisions of the preceding clauses, a postal ballot shall be conducted in such a manner as the Board shall determine.

23.8 Casual Vacancies

- (a) Any casual vacancy occurring among the directors may be filled up by the Board, but any person so appointed shall hold office only for the remainder of the term for which the vacating director would have held office if no vacancy had occurred.
- (b) The remaining directors may continue to act notwithstanding any vacancy in their number; but if the number of directors falls below the minimum fixed by this Constitution the Board shall not, except for the purpose of filling vacancies, or calling a meeting of shareholders, act so long as the number is below the said minimum.

23.9 Appointed Directors

In addition to the shareholder directors, the Board may at any time and from time to time appoint not more than 2 persons, whether or not such persons are shareholders, to be directors of the Company for such period as the Board shall think fit and such directors are herein referred to as "Appointed Directors". An Appointed Director shall not be taken into account in determining the number of directors who are to retire by rotation at any annual meeting and he or she shall cease to hold office as a director at the expiration of the period for which he or she was appointed.

23.10 Status of Appointed Director

All the provisions of this Constitution shall apply to Appointed Directors except:

- (a) Clause 23.4 relating to rotation of directors;
- (b) Clause 23.5(a) and 23.5(b) relating to eligibility for election as directors;
- (c) Clause 23.6 relating to election of directors;
- (d) Clause 23.7 relating to election of directors by postal ballot.

23.11 Remuneration of Directors

- (a) The Board may determine and authorise payment of remuneration or the provision of other benefits by the Company to a director for services as a director or in any other capacity if the Board is satisfied that to do so is fair to the Company.
- (b) The directors shall be entitled to be paid their reasonable travelling, accommodation and other expenses incurred in consequence of their attendance at Board meetings or otherwise in the execution of their duties as directors.

23.12 Retirement of Directors

A director may retire from his or her office at any time on giving notice in writing to the Company. His or her retirement shall take effect upon receipt by the Company of the notice or at a later time specified in the notice.

23.13 Disqualification of Directors

The office of a director shall be vacated:

- (a) If he or she ceases to be a shareholder, unless the shareholders have resolved otherwise;
- (b) If he or she becomes bankrupt; or
- (c) If he or she becomes a mentally disordered person as defined by the Mental Health (Assessment and Treatment) Act 1992 or a personal order relating to his or her property is made under the Protection of Personal and Property Rights Act 1988, or
- (d) If he or she resigns his or her office in accordance with the provisions of section 157(2) of the Act; or
- (e) If he or she becomes a person to whom section 151(2) of the Act applies; or
- (f) If he or she is absent from two consecutive meetings of the Board without special level of absence from the Board; or
- (g) If he or she fails to pay any call on shares held by him or her within 2 months of the due date.

23.14 Removal of Director

The shareholders may by ordinary resolution remove any director before the expiration of that director's period of office and elect another person in that director's place. The notice of meeting for the meeting must specify that one of the purposes for the meeting is to vote on such a resolution. In default of the election of a new director at the meeting, a vacancy may be filled as a casual vacancy under clause 23.8. A person so elected or appointed shall hold office only for the remainder of the term for which the director in whose place he or she is appointed had been appointed or elected.

23.15 Proceedings at Meetings

The proceedings of meetings of the Board shall be governed by the Second Schedule of this Constitution.

23.16 Managing and/or Executive Director

- (a) The Board may from time to time appoint one or more of its members, whether a shareholder director or an Appointed Director, to be Managing and/or Executive Director or Managing and/or Executive Directors of the Company, either for a fixed term or without any limitation as to the period for which he, she or they is or are free to hold such office, and may from time to time remove or dismiss him, her or them from office and appoint another or others in his, her or their place or places.
- (b) The remuneration of a Managing and/or Executive Director shall from time to time be fixed by the Board and may be by way of salary, or commission or participation in profits or by any or all of those modes.

- (c) The Board may from time to time entrust to and confer upon a Managing Director and/or Executive Director for the time being such of the powers exercisable by the Board as it may think fit and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as it thinks expedient, and it may confer such powers, either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Board and may from time to time revoke, withdraw, alter or vary all or any of such powers. However, the Board shall not have power or authority to confer upon the Managing and/or Executive Director or Directors the power to make calls, forfeit shares, borrow money or issue debentures.
- (d) A Managing and/or Executive Director shall not while he or she continues to hold that office be subject to retirement by rotation and he or she shall not be taken into account in determining the rotation or retirement of directors, but shall be subject to the same provisions as to resignation and removal as the other directors of the Company, and if he or she ceases to hold the office of director from any cause, he or she shall, ipso facto, and immediately cease to be a Managing and/or Executive Director.

24. REBATES, DIVIDENDS AND DISTRIBUTIONS

24.1 Deductions from Revenue

The Board will, at such time or times it deems best, deduct, retain or set aside from the revenue earned by the Company in any financial year either the whole or a part of that revenue as the Board may consider necessary or desirable for the following:

- (a) First, the costs, charges, expenses, payments and outgoings connected with or in anywise pertaining to or incidental to, the handling, storing, packing, rendering marketable and disposing of produce entrusted to the Company for any such purpose.
- (b) Secondly, the costs, charges, expenses, payments and outgoings (which the Company will be liable for or has already made or incurred or requires or has been required to make provision for) in the construction, maintenance, upkeep, and running of any of the buildings, factories, works, machinery, plant and other properties of the Company or in any way connected with incidental or pertaining thereto, or in carrying out any of the objects, powers, or authorities of the Company or incidental thereto, or in doing any act or thing done by the Board or by the Company in and about its business, including all payments for wages and salaries, interest, depreciations of the Company's assets or any part of them, and all other payments and liabilities shown to have become due or to have been paid or for which provision has to be made by the Company in its annual balance sheet.
- (c) Thirdly, such sum as the Board may consider necessary or desirable to deduct from time to time and set aside to be utilised for the purposes of a reserve fund or for meeting contingencies of any description or of payments for the surrender or redemption of Securities or for rebuilding or establishing, repairing, improving and maintaining any buildings, factories, works, machinery plant or any of the property and assets of the Company, or for such other purposes as the Board may think fit, or for carrying forward in whole or in part as a credit

balance in the accounts of the ensuing year, and the Board may also in turn use any of the moneys in any reserve account for all or any of the foregoing purposes.

24.2 Rebates and Dividends

If it is satisfied on reasonable grounds that the Company will immediately after the distribution, meet the solvency test, and after such deductions as aforesaid have been made, the Board may distribute the revenue (if any) remaining and also any surplus revenue from previous years:

- (a) By way of rebate among the Producer Shareholders in such amounts determined by the Board in accordance with the CC Act. If any Shareholder is not holding his or her full quota of Securities required to meet the Share Standard applicable to that Shareholder, any rebate otherwise due in such circumstances may, at the Board's discretion, be fully or partially credited against the amount outstanding in respect of those Securities remaining to be purchased by that Shareholder.
- (b) By way of dividend among the Shareholders, in such amounts determined by the Board in accordance with the Act and having regard to the terms of issue of each class of Security.

24.3 Bonus Issues

Without limiting the Board's rights under any enactment, the Board may resolve to apply any amount which is available for distribution:

- (a) in paying up in full Shares or other Securities to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; or
 - (ii) Shareholders who hold Shares of the same Class, in proportion to the Shares held by those Shareholders of that Class; or
 - (iii) Shareholders who hold Shares of the same Class, in proportion to the trading by each such Shareholder (based the number or value or volume of, or profit derived by the Company from, the Shareholders' trading with the Company); or
 - (iv) the holders of any other Securities who are entitled by the terms of issue of such Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by any Shareholder, or partly in one way and partly in the other.

24.4 Notice of Rebate or Dividend

The Board will give notice of any cash rebate or dividend to be paid to each Shareholder entitled to the same, and any such rebate or dividend will be paid or credited to such Shareholder. The Board will also give notice to each Shareholder whose rebates have been credited towards Shares.

24.5 **No Dividend**

The Board must not authorise a dividend:

- (a) in respect of some but not all the Shares in a class; or
- (b) that is of greater value per share in respect of some Shares of a class than it is in respect of other Shares in that class,

Notwithstanding the above any Shareholder may waive his or her entitlement to receive a dividend by notice in writing to the Company signed by or on behalf of the Shareholder.

24.6 **No Entitlement**

No Shareholder will be entitled as of right to any rebate or dividend and the Company or the Board may decline to make any such rebate or dividend.

24.7 **Joint Holders**

If several persons are registered as joint holders of any Security any one of them may give effectual receipts for any rebate or other moneys payable on or in respect of the Security.

24.8 **Payment**

Any cash rebate or dividend may be paid by direct credit, cheque or warrant sent through the post to the registered address of the Shareholder or person entitled to the rebate or dividend, or in the case of joint holders of any Share, to any one of such joint holders at his or her registered address or to such person and such address as the Shareholder or person entitled, or such joint holders (as the case may), be directs. Every such direct credit, cheque or warrant will be made payable to the order of the person to whom it is sent or to the order of such other person as the Shareholder or person entitled or such joint holders as the case may be direct.

24.9 **Interest**

No distribution, dividend or rebate will bear interest against the Company, unless the applicable terms of issue of a Security expressly provide otherwise.

24.10 **Unclaimed Distributions**

All distributions, dividends and rebates 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. All distribution dividends and rebates unclaimed for five years after having been declared may be forfeited by the Board for the benefit of the Company, provided always that the Board may, at any time after such forfeiture, annul the same and pay the distribution dividend or rebate so forfeited to any person producing evidence that he or she is entitled to the same, and will do so unless in the opinion of the Board such payment would embarrass the Company.

25. INDEMNITY AND INSURANCE

25.1 The Company may give such indemnities and effect such insurances as are referred to in section 162 of the Act to the fullest extent permitted by that section.

26. NOTICES

26.1 Notice to Joint Holders

A notice may be given by the Company to the joint holders of a Security by giving the notice to the joint holder named first in the share register in respect of the Security. The Company will be entitled to rely on instructions or notices provided by any one of the joint holders named in the share register in respect of the Share.

26.2 Notice to Personal Representative or Assignee of Shareholder

A notice may be given by the Company to any person entitled to a Security in consequence of the death or bankruptcy or other incapacity of a member by any method specified in section 391 of the Act addressed to him or her by name or by the title of representative of the deceased or assignee of the bankrupt or otherwise, as the case may require, at the address (if any) or to the telephone number (if any) within New Zealand supplied for the purpose by the person claiming to be so entitled, or (until such an address or telephone number has been so supplied) by giving notice in any manner in which the same might have been given if the death or bankruptcy or incapacity had not occurred.

26.3 Period of Notice

Where a given number of days' notice extending over any period is required to be given, the day of service shall not be, but the day upon which the notice will expire shall be, included in the number of days or other period.

26.4 Notice to Overseas Shareholders

Each Shareholder whose place of address is not in New Zealand must notify in writing to the Company a place in New Zealand which will be deemed his or her registered place of address. In the absence of any such notification the registered office of the Company shall be deemed the registered address of the member for all purposes, and all proceedings taken without other notice to any such member will be as valid as if he or she had due notice of such proceedings.

27. DEDUCTIONS

The Board may deduct from any money payable by the Company to any Shareholder any sums of money presently payable by him or her to the Company, including on account of any or all of the following:

- (a) calls or instalments or otherwise or any debt, liability or engagement; and
- (b) debts, liabilities or obligations in respect of which the Company has a lien on the Securities on which such money is payable; and

- (c) such amounts as the Company may be called upon to pay under any legislative enactment in respect of the Securities of a deceased or other Shareholder.

28. LIQUIDATION

- (a) If the Company is put into liquidation and the assets available for distribution among the Shareholders is insufficient to repay the whole of the amounts paid up on Shares, such assets shall be distributed so that, as nearly as may be, the amount available for distribution to Shareholders shall be distributed to Shareholders in proportion to the amounts paid up at the commencement of the liquidation on the Shares held by them respectively, and otherwise in accordance with the terms of issue of the Securities.
- (b) This clause is without prejudice to the rights of the holders of Shares issued upon special terms and conditions.
- (c) If the Company is put into liquidation, the liquidator may, with the sanction of a Special Resolution of the Company and any other sanction required by the Act:
 - (i) divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as he or she deems fair upon any property to be divided and may determine how the division shall be carried out as between the Shareholders or different classes of Shareholders; and
 - (ii) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder shall be compelled to accept any Shares or other Securities to which any liability attaches.

To avoid doubt, all Ordinary Shares are Shares of the same class and rank pari-passu and without priority or preference among themselves on liquidation, notwithstanding that they may have been issued at different issue prices.

SCHEDULE 1 - PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

A. CHAIRPERSON

The Chairperson of the Board shall take the chair at every general meeting, or if there is no such Chairperson, or if at any meeting he or she is not present within 15 minutes after the time appointed for holding the meeting, the Deputy Chairperson of the Board will take the chair, or if there is no such Deputy Chairperson or if at any meeting he or she is not present, the Ordinary Shareholders present will choose another director as Chairperson of the meeting; and if no director is present, or if all directors present decline to take the chair, then the Ordinary Shareholders present shall choose one of their number to be Chairperson of that meeting.

B. NOTICE OF MEETING

- B.1 Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every director and auditor of the Company not less than 10 working days before the meeting.
- B.2 The notice must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any special resolution to be submitted to the meeting.
- B.3 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.
- B.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.
- B.5 The Chairperson of any meeting at which a quorum is present may, with the consent of the meeting (and will if so directed by the meeting), adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of the original meeting. When a meeting is adjourned for less than 30 days, notice of the time and place of the adjourned meeting may be given by announcement at the meeting which is adjourned.
- B.6 A notice of meeting may be delivered by email.

C. METHODS OF HOLDING MEETINGS

A meeting of Shareholders may be held by a number of Shareholders who constitute a quorum:

- (a) being assembled together at the place, date, and time appointed for the meeting; or
- (b) participating in the meeting by means of audio, or audio and visual, or electronic communication; or
- (c) by a combination of the methods described in paragraphs (a) and (b) above .

D. QUORUM

- D.1 Subject to clause D.3, no business may be transacted at any general meeting if a quorum is not present.
- D.2 A quorum for a meeting of Shareholders is present if not less than 7 Shareholders or their proxies are present, who between them represent not less than 25 percent of the Shares held by all Shareholders of the Company, except in the case of the appointment of a chairperson or the adjournment of the meeting in which cases the quorum is 3 Shareholders.
- D.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting covered under section 121(b) of the Act, the meeting is dissolved;
 - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint and for which notice has been given in accordance with clause B.5. If, at the adjourned meeting, a quorum is not present within 30 minutes of the time appointed for the meeting, the Shareholders or their proxies present are a quorum.
- D.4 To avoid doubt, a Shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

E. VOTING

- E.1 In the case of a meeting of Shareholders held under clause C(a) of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the Chairperson of the meeting:
- (a) Voting by voice; or
 - (b) Voting by show of hands.
- E.2 In the case of a meeting of Shareholders held under clause C(b) or C(c) of this Schedule, unless a poll is demanded, voting at the meeting shall be by any method permitted by the Chairperson of the meeting.
- E.3 A declaration by the Chairperson of the meeting that a resolution is carried by the requisite majority and having taken into account the voting rights allocated to each class of Shares is conclusive evidence of that fact unless a poll is demanded in accordance with clause E.4.
- E.4 At a meeting of Shareholders, a poll may be demanded by:
- (a) not less than 3 Shareholders having the right to Vote at the meeting;
 - (b) a Shareholder or Shareholders representing not less than 5 percent of the total voting rights of all Shareholders having the right to Vote at the meeting;
 - (c) a Shareholder or Shareholders holding Shares in the Company that confer a right to Vote at the meeting and on which the aggregate amount paid up is not less than 5 percent of the total amount paid up on all Shares that confer that right; or
 - (d) the Chairperson of the meeting.

- E.5 A poll may be demanded either before or after the Vote is taken on a resolution.
- E.6 If a poll is taken, Votes must be counted according to the Votes attached to the Shares of each Shareholder present in person or by proxy and voting.
- E.7 The Chairperson of a Shareholders' meeting is entitled to a casting vote.
- E.8 For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.
- E.9 Subject to clause E.10, if a poll is demanded it shall be taken in such manner and at such time and place as the Chairperson of the meeting may direct and either at once or after an interval of adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.
- E.10 Any poll duly demanded on the election of a Chairperson of a meeting or on any question of adjournment shall be taken at the meeting and without adjournment.
- E.11 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- E.12 Voting at meetings of Shareholders may be by way of secret ballot and may be by electronic means. Votes cast at the meeting or by valid proxy shall be counted by any person authorised by the Board.

F. PROXIES

- F.1 A Shareholder may exercise the right to vote either by being present in person, by electronic means or by proxy.
- F.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- F.3 A proxy must be appointed by notice in writing signed, or, in the case of an electronic notice, sent, by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- F.4 In the case of Shares held by joint shareholders, a proxy signed, or in the case of an electronic notice, sent, in accordance with clause 26.1 of the Constitution, will be valid.
- F.5 In the case of Shares held by a company, a proxy signed by, or in the case of an electronic notice, sent by, a Director or authorised signatory of the company, will be valid.
- F.7 A proxy is not effective in relation to a meeting unless it and the power of attorney (if any) under which it is signed, or a certified copy, is produced at least 48 hours before the start of the meeting.
- F.8 The notice appointing a proxy shall be in any form that the Board approves.
- F.9 A vote given in accordance with the terms of a notice of appointment of proxy shall be valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of any 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 before the start of the meeting or adjourned meeting.

- F.10 Any notice appointing a proxy given by a Shareholder shall be deemed to be revoked on receipt from the Shareholder of a notice in writing to that effect at the registered office of the Company not less than one hour before the time fixed for the holding of the meeting or of the adjourned meeting for which the proxy is given.

G. POSTAL VOTES

- G.1 The Board may decide in respect of a particular meeting on a particular resolution or resolutions at a meeting that the Shareholders may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause. To avoid doubt, a postal vote may be cast using electronic means approved by the Board.
- G.2 The notice of a meeting at which Shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting.
- G.3 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- G.4 A Shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her Shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- G.5 It is the duty of a person authorised to receive and count postal votes at a meeting:
- (a) to collect together all postal votes received by him or her or by the Company; and
 - (b) in relation to each resolution to be voted on at the meeting, to count:
 - (i) the number of Shareholders voting in favour of the resolution and the number of votes cast by each Shareholder in favour of the resolution; and
 - (ii) the number of Shareholders voting against the resolution, and the number of votes cast by each Shareholder against the resolution;
 - (c) to sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) of this subclause and which sets out the results of the counts required by paragraph (b) of this subclause; and
 - (d) to ensure that the certificate required by paragraph (c) of this subclause is presented to the Chairperson of the meeting.
- G.6 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the Chairperson of the meeting must:
- (a) on a vote by show of hands, count each Shareholder who has submitted a postal vote for or against the resolution; and

- (b) on a poll, count the votes cast by each Shareholder who has submitted a postal vote for or against the resolution.

G.7 The Chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.

G.8 The Chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

H. MINUTES

H.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders and are tabled at the subsequent meeting.

H.2 Minutes which have been signed correct by the Chairperson of the meeting are prima facie evidence of the proceedings.

I. SHAREHOLDER PROPOSALS

I.1 A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.

I.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

I.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

I.4 If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

I.5 If the Board intends that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

I.6 The Board is not required to include in or with the notice given by the Board:

- (a) any part of a statement prepared by a Shareholder which the directors consider to be defamatory, frivolous, or vexatious; or
- (b) any part of a proposal or resolution prepared by a Shareholder that the directors consider to be defamatory.

I.7 Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

J. CORPORATIONS MAY ACT BY REPRESENTATIVES

J.1 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.

K. VOTES OF JOINT HOLDERS

K.1 Where two or more persons are registered as the holders of a Security, 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 other joint holders.

L. LOSS OF VOTING RIGHTS IF CALLS UNPAID

L.1 If a sum due to the Company in respect of a Security has not been paid, that Security may not be voted at a Shareholder's meeting other than a meeting of an interest group.

M. PRIVATE MEETINGS

M.1 The meetings of the Company shall be regarded as private meetings. Except as provided in clause M.2 persons other than Shareholders or persons holding proxies for members may be present there only during the pleasure of the Chairperson of the meeting.

M.2 A director who is not a Shareholder of the Company is entitled to attend and speak at meetings of Shareholders.

N. VOTING BY ADMINISTRATOR ETC

N.1 If any person otherwise entitled by this Constitution to a vote is a minor, a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment & Treatment) Act 1992, or a person subject to a property order under the Protection of Personal and Property Rights Act 1988 he or she may vote by his or her guardian or committee or manager or administrator or attorney under an enduring power of attorney, as the case may be.

O. OTHER PROCEEDINGS

O.1 Except as provided in this Schedule, and subject to the constitution of the Company, a meeting of Shareholders may regulate its own procedure.

P. SHAREHOLDER PARTICIPATION BY ELECTRONIC MEANS

P.1 For the purposes of this Schedule, a Shareholder, or the Shareholder's proxy or representative, may participate in a meeting of Shareholders by means of audio, audio and visual, or electronic communication if:

(a) the Board approves those means; and

(b) the shareholder, proxy, or representative complies with any conditions imposed by the Board in relation to the use of those means (including, for example, conditions relating to the identity

of the shareholder, proxy, or representative and that person's approval or authentication (including electronic authentication) of the information communicated by electronic means).

- P.2 To avoid doubt, participation in a meeting of shareholders includes participation in any manner specified in this Schedule or permitted by the Constitution.

SCHEDULE 2 - PROCEEDINGS OF MEETINGS OF THE BOARD

A. PROCEEDINGS OF DIRECTORS

- A.1 The Board may meet together for the dispatch of business, adjourn, and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the Chairperson shall have a second or casting vote. A director may, and the Company on the requisition of a director will, at any time summon a meeting of the Board.
- A.2 No business may be transacted at any meeting of the Board unless at least four Shareholder Directors are personally present at the commencement of the business.
- A.3 The Board may elect a Chairperson and determine the period for which he or she is to hold office, but if no such Chairperson is elected or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be Chairperson of the meeting.
- A.4 The Board may delegate any of its powers to committees consisting of such director or directors as it thinks fit. Any committee so formed shall in the exercise of the powers so delegated conform to any requirements that may be imposed on it by the Board.
- A.5 A committee may elect a Chairperson of its meetings. If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be Chairperson of the meeting.
- A.6 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the Chairperson shall have a second or casting vote.
- A.7 All acts done by any meeting of the Board or of a Committee of the Board, or by any person acting as a director, shall, notwithstanding that it is later discovered that there was some defect in the appointment of that director or person, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

B. MINUTES

- B.1 The Board will cause minutes to be duly entered in books provided for the purpose:
- (a) Of all appointments of officers made by the Board;
 - (b) Of the names of the directors present at each meeting of the Board and of any committee of the Board;
 - (c) Of all resolutions and proceedings of the meetings of the Board and committees;
- and any such minutes of any meeting of the Board or of any committee, if purporting to be signed by the Chairperson of the meeting, or by the Chairperson of the next succeeding meeting, will be receivable as prima facie evidence of the matters stated in the minutes.

C. UNANIMOUS RESOLUTION

- C.1 A resolution in writing signed or assented to by all directors then entitled to receive notice of a Board meeting by means of facsimile or otherwise is valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- C.2 Any such resolution may consist of several documents (including facsimile or other means of communication) in like form each signed or assented to by one or more directors.
- C.3 A copy of any such resolution must be entered in the minute book of Board proceedings.

D. TELECOMMUNICATIONS

- D.1 The contemporaneous linking together by audio, or audio and visual, communication of a number of directors not less than a quorum, whether or not any one or more of the directors is out of New Zealand, will be deemed to constitute a meeting of the Board and all the provisions in this Constitution as to meetings of the Board shall apply to such meetings so long as the following conditions are met:
 - (a) All the directors will be entitled to notice of such a meeting and to be linked for the purposes of such meeting;
 - (b) Each of the directors taking part in the meeting must, throughout the meeting, be able to hear each of the other directors taking part;
 - (c) At the commencement of the meeting each director must acknowledge his or her presence, for the purpose of a meeting of the Board of the Company, to all the other directors taking part.
- D.2 A director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by audio communication unless he or she has advised the Chairperson of the meeting that he or she is leaving the meeting.
- D.3 A minute of the proceedings at such meeting will be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson.
- D.4 All directors must be given the option of participating in a meeting by audio, or audio and visual, communication, at any meeting of the Board.
- D.5 Notice of a director or committee meeting may be delivered by email.