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# CONSTITUTION

## ZESPRI GROUP LIMITED

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## UNDERSTANDING THE COLOUR CODING

- **The share cap and voting cap:** shaded in **blue**
  - The **dividend cap** applicable to future non-producers: **yellow**
  - The **dividend cap** applicable to current non-producer shareholders: **green**
- [ **Consequential and remedial matters:** uncoloured and marked in brackets and underlined.

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# CONSTITUTION

## ZESPRI GROUP LIMITED

### 1. EFFECT OF THIS CONSTITUTION

- 1.1 The Company, the Board, each Director and each shareholder of the Company have the rights, powers, duties and obligations set out in the Companies Act 1993 except to the extent that they are negated or modified, in accordance with that Act by this Constitution.
- 1.2 The provisions of this Constitution are subject to the provisions of the Kiwifruit Industry Restructuring Act 1999 and any Regulations made pursuant to section 26 of that Act.

### 2. INTERPRETATION

- 2.1 In this Constitution, unless the context otherwise requires:

**“Act”** means the Companies Act 1993;

**“B Share”** means a share having the rights described in clause 22.2;

**“Board”** means the Directors who number not less than the required quorum acting together as a board of directors;

**“Company”** means Zespri Group Limited;

**“Constitution”** means this constitution and includes any amendment or extension for the time being in force;

**“Deemed Production”** means the number of Trays that the Board estimates a Greenfield will produce annually, based on the area of the Greenfield and the average regional per hectare production for all varieties of kiwifruit as determined by the Board from time to time;

**“Directors”** means the directors for the time being of the Company;

**“Disqualifying Relationship”** means any direct or indirect interest or relationship that could reasonably influence, in

a material way, the Director's decisions in relation to the Company, including, without limitation:

- a) being a shareholder or employee of the Company;
- b) being a Producer or the registered owner of a property in New Zealand on which kiwifruit is produced for export;
- c) having a relationship (other than in his or her capacity as a Director) with the Company by virtue of which the person is likely to derive, in the current financial year of the Company, 10% or more of his, her or its~~her~~ annual revenue from the Company during such financial year; or
- d) being a director, trustee, employee, partner or immediate family relation of a person who fits within any of the sub-clauses (a) to (c) above;

["**Effective Date**"] means 14 March 2018;

**"Employee Share Ownership Plan"** means a plan under which shares are held on trust by a trustee and administered for the benefit of employees of the Company or its subsidiaries. For the purposes of this definition "employees" includes labour only contractors and consultants who contract with the Company, but does not include any persons solely by reason of the fact that they are Directors of the Company or any of its subsidiaries;

**"Existing Long Term Lease"** means a lease:

- a) with a term of 20 years or more;
- b) that is not a Glasgow Lease; and
- c) that is in effect on the Effective Date;

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

**"Glasgow Lease"** means a lease that:

- a) has a term of 21 years or more;
- b) is renewable at the option of the lessee; and

c) is a lease of bare land with lessee improvements;

**“Greenfield”** means a piece of land in New Zealand:

a) that has had a KPIN allocated to it for not more than 3 years;

b) upon which no kiwifruit was produced in the 5 years prior to it being allocated that KPIN; and

c) that is owned by a New Entrant and, if leased, is leased to a New Entrant;

**“Grandfathered Shareholder”** means a shareholder that:

a) was a shareholder and not a Producer on the Effective Date; and

b) has been a shareholder and not a Producer continuously from the Effective Date;

**“Historical Production”** means, subject to clause 25, the average of the highest numbers of Trays supplied to the Company at FOBS from the relevant Property in any 2 of the 5 most recent completed seasons, provided that the number of Trays supplied to the Company at FOBS in a season also includes any Trays of kiwifruit supplied and paid for on any other basis in accordance with a Board resolution;

**“Independent Director”** means a Director who has no Disqualifying Relationship at the time of recommendation or nomination for appointment and throughout such Director’s term of office;

**“KPIN”** means the number the Company allocates to a piece of land on which kiwifruit was, is, or is to be, produced;

**“Lessee”** means a person who leases all or part of a Property pursuant to a lease with a term of at least 1 year;

**“Lessee’s Theoretical Property”** is defined in clause 2(a) (iii) of Schedule 3;

**“Market Maker”** means a person appointed under a Market Maker Contract;

**“Market Maker Contract”** means a contract entered into by the Company for the provision of market maker services pursuant to clause 4.6;

**“New Entrant”** means a person who:

- a) is the Owner or Lessee of one or more Greenfields;
- b) is not the Owner or Lessee of an Orchard;
- c) has not, within the past 5 years, been the Owner or Lessee of a Greenfield that has lost its Greenfield status under clause 21.9; and
- d) has been deemed by the Board to be a Producer;

**“Orchard”** means a piece of land in New Zealand that has a KPIN and on which kiwifruit is produced for supply to the Company at FOBS, but excludes a Greenfield;

**“Overshared”** means a Producer whose shareholding is greater than their Share Cap;

**“Owner”** means in respect of a Property, the person registered as landowner on that Property’s title;

**“Owner’s Theoretical Property”** is defined in clause 2(a)(ii) of Schedule 3;

**“Part Property”** is defined in clause 2(b) of Schedule 3;

**“Priority Allocation (Shares)”** means the Priority Producer’s ordinary shares allocated to a Property in accordance with Schedule 3;

**“Priority Allocation (Votes)”** means the Priority Producer’s votes allocated to a Property in accordance with Schedule 3;

**“Priority Producer”** means:

- a) the Owner, in the case of:
  - i) a Standard Property; and
  - ii) an Owner’s Theoretical Property;
- b) the Lessee, in the case of:
  - i) a Property subject to a Glasgow Lease; and
  - ii) a Lessee’s Theoretical Property;

**“Producer”** has the meaning in the Kiwifruit Export Regulations 1999;

**“Producer’s Property”**, in respect of a Producer, means a Property at which that Producer is an Owner or a Lessee;

**“Production Entitlement (Shares)”** means the maximum number of ordinary shares that can be held based on a Property’s production, being, in respect of:

- a) an Orchard, 4 ordinary shares for each Tray of that Orchard’s Historical Production;
- b) a Greenfield, the higher of:
  - i) 4 ordinary shares for each Tray of that Greenfield’s Historical Production; or
  - ii) 1 ordinary share for each Tray of that Greenfield’s Deemed Production,

subject to any adjustment under clause 4.7(a);

**“Production Entitlement (Votes)”** means the maximum number of votes that can be cast in respect of a Property’s production under clause 20.1, being 1 vote for each Tray of that Property’s Historical Production;

**“Property”** means an Orchard or a Greenfield (and, where the context requires, includes a Theoretical Property and a Part Property);

**“Relevant Interest”** has the meaning in section 6 of the Financial Markets Conduct Act 2013;

**“Share Cap”** is defined in clause 21.2;

[ “Shareholder’s Statement” has the meaning given in clause 28.1;

**“Standard Property”** means a Property that is not leased under a Glasgow Lease or Existing Long Term Lease;

**“Substantial Holding”** means a Relevant Interest in 5% or more of the Company’s shares;

**“Substantial Security Holder”** means a person who has a Substantial Holding in the Company;

**“Theoretical Property”** is defined in clause 2(a) of Schedule 3;

**“Tray”** means a tray equivalent of kiwifruit;



**“Voting Cap”** is defined in clause 20.1(a).

- 2.2 Expressions defined in the Act where used in the Constitution have the meanings so defined.
- 2.3 Headings have been included for convenience only and shall not affect the interpretation of clauses in the Constitution.

### 3. COMPANY NAME

An application to change the name of the Company shall not be made without the prior approval of a special resolution.

### 4. SHARES

#### 4.1 Classes of Shares

Subject to clauses 4.3 to 4.5, 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 Shares to be Issued to Producers

- a) ~~The~~ Subject to clause 21.3, the Board may at any time offer ordinary shares to any Producer, in any number it thinks fit.
- b) The Board shall not issue any share to any person who is not a Producer except for shares issued to a trustee of an Employee Share Ownership Plan under clause 4.5.

#### 4.3 Initial Shares

Section Other than as provided for in the Kiwifruit Export Regulations 1999, section 36(2) of the Companies Act 1993 shall not apply to the shares in the Company issued pursuant to section 20(1)(c) of the Kiwifruit Industry Restructuring Act 1999 which, unless converted to B Shares in accordance with clause 22.1, shall be ordinary shares. For the avoidance of doubt, those shares shall not be redeemable.

#### 4.4 Notice of issue

The Board must notify shareholders of the purpose and principal terms of any proposed offer of shares under clause 4.2(a) not less than 60 days before the date on which shares would be issued as a result of the offer.

#### **4.5 Employee Share Ownership Plan**

The Board may issue shares which do not carry voting rights to the trustee of an Employee Share Ownership Plan to be held as trustee for the benefit of employees of the Company or its subsidiaries or associates, provided that following the issue of shares the aggregate number of shares issued to the trustee does not exceed 5% of the total number of shares of the Company issued, and such shares shall be called “E shares”.

#### **4.6 Market Maker**

- a) The Board may, from time to time and on such terms as it thinks fit, by resolution deem one or more persons to be a Producer for the purposes of tradeability of shares to enable such person(s) to provide market maker services intended to enhance and facilitate the operation and liquidity of trading in Company shares and such other services as the Company may from time to time require for such purpose. The terms on which any such person is appointed shall be set out in a Market Maker Contract. Any such Market Maker Contract:
  - i) must contain provisions which reflect, or give effect to, the restrictions contained in this clause 4.6; and
  - ii) may be varied, supplemented or replaced at any time.
- b) Notwithstanding that the Board may appoint, engage or authorise a Market Maker pursuant to clause 4.6(a), none of the Company, any Director or any employee of the Company shall have any liability to any person for, or in connection with, anything done or not done by the Market Maker or any termination or variation of the Market Maker Contract.
- c) If any Market Maker ceases to perform the role described in the Market Maker Contract (whether as a result of termination of that contract or otherwise), the Market Maker must transfer all shares held by it to such persons as the Board may by notice in writing to the Market Maker direct.
- d) Each Market Maker Contract shall contain such provisions as the Board thinks fit to ensure the Market

Maker holds shares in the Company for the purposes described in clause 4.6(a) and to prohibit the Market Maker from exercising, controlling or exerting any influence over any voting rights attached to any shares held by the Market Maker or appointing any proxy or representative to do so on its behalf. No exercise or purported exercise by any Market Maker, or by any person for or on behalf of such Market Maker, whether as proxy, representative or otherwise) of any voting rights attached to shares shall be recognised or of any effect.

- [ e) The Company shall not enter into any Market Maker Contract that allows the aggregate number of shares which may be held by any (or all) Market Makers at any time shall notto exceed an amount equal to 0.2% of the total number of shares then on issue in the capital of the Company excluding any shares which are, at the relevant time, on issue but have been surrendered to, or acquired by, the Company and have not been cancelled.

f) Clause 20.3 does not apply to the Market Maker.

#### **4.7 Consolidation and Subdivision of Shares**

a) The Board may:

- i) consolidate and divide the shares or shares of any class in proportion to those shares or the shares in that class; or
- ii) subdivide the shares or any class of shares in proportion to those shares or shares in that class,

[ provided that:-

- iii) following the consolidation and division or the subdivision the proportion between the amount paid and the amount, if any, unpaid on each replacement share shall be the same as it was in the case of the share or shares which that share replaces; and

[ iv) the ratio of Trays to ordinary shares (as provided for in the definition of Production Entitlement (Shares) in clause 2.1) is adjusted in proportion to the consolidation or subdivision.

- b) Clause 4.2(b) shall not apply to a consolidation division or a subdivision of shares pursuant to paragraph (a).

#### **4.8 Clearing and depository organisations**

Clause 20.3 does not apply to New Zealand Central Securities Depository Limited, New Zealand Clearing and Depository Corporation Limited, or to any other person that the Board deems to be a Producer for the purpose of that person facilitating the transfer of shares.

### **5. PRE-EMPTIVE RIGHTS**

The requirements of section 45 of the Act shall not apply to any issue of shares made by the Company.

### **6. ALTERATION OF SHAREHOLDER RIGHTS**

Any issue of shares, which rank equally with but not in priority to existing shares, whether as to voting rights or distributions is deemed not to be an action which affects the rights attached to existing shares for the purposes of section 117(3) of the Act.

### **7. ACQUISITION BY THE COMPANY OF ITS OWN SHARES**

#### **7.1 Acquisition by Company**

The Company may purchase or otherwise acquire shares issued by it in accordance with the Companies Act 1993.

#### **7.2 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 to acquire shares issued by it without making such an offer to any other shareholder or shareholders in the Company.

### **8. REDEMPTION OF SHARES**

#### **8.1 Redeemable Shares**

The Company may issue shares which are redeemable:

- a) at its option; or
- b) at the option of the holder of the share; or
- c) on a date for redemption specified in this Constitution or the terms of issue of the shares,

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.

## **8.2 Section 69(1)(b) of the Act**

The Company may exercise an option to redeem shares in relation to one or more shareholders in accordance with section 69(1)(b) of the Act.

## **9. COMPANY MAY HOLD ITS OWN SHARES**

### **9.1 Company may hold its own Shares**

The Company may hold any of its own shares acquired under sections 59 or 112 of the Act.

### **9.2 Transfer of own shares**

- a) The provisions of the Act and the Constitution relating to the issue of shares shall apply to the transfer of shares by the Company in itself.
- b) When issuing shares, the Company may transfer shares in itself in substitution for the issue of some or all the shares which would otherwise be issued and section 45 of the Act will not apply.

## **10. TRANSFER OF SHARES**

### **10.1 Form of Transfer**

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

### **10.2 Execution of Form of Transfer**

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

### **10.3 Delivery of Form of Transfer**

The form of transfer must be delivered to the registered office of the Company or to such other person or place as is determined by the Board and notified to shareholders from time to time.

## 10.4 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 a Producer; 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.

## 10.5 Delay or Refusal to Register Transfers

Subject to the Kiwifruit Industry Restructuring Act 1999 and any regulations made pursuant to section 26 of that Act, the Board may delay or refuse to register a transfer where:

- [** a) any person has not complied with the requirement by the Board under clause 10.4 to lodge with the Company a statutory declaration or other disclosure; or evidence;
- b) the Company has a lien on a share or shares 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 share or shares included in the transfer;
- d) the form of transfer and any other documentation required has not been provided or has not been duly executed;

and must refuse to register a transfer where:

- e) the Board is of the reasonable opinion that the transfer is to a person who is not a Producer;
  - f) a share included in the transfer was originally issued to the trustee of the Employee Share Ownership Plan;
  - g) the Board is otherwise authorised by the Constitution or the terms of issue of the share to refuse to register the transfer of a share included in the transfer to the transferee or by the transferor;
- [**

h) the Board is of the reasonable opinion that the transfer is in breach of clause 21.3.

## **10.6 Closure of Share Register**

The share register may be closed during such times as the Board thinks fit not exceeding in aggregate 20 working days in each year.

## **10.7 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.

## **10.8 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.

# **11. DISCLOSURE BY SUBSTANTIAL SECURITY HOLDERS**

## **11.1 Substantial Security Holders to Notify Relevant Interests in the Company**

Every person who begins to have a Substantial Holding in the Company must give notice of that fact to the Company in accordance with clause 11.5 as soon as the person knows, or ought reasonably to know, that the person has the Substantial Holding.

## **11.2 Substantial Security Holder to Notify if Subsequent Movement of 1% or More in Holdings**

- a) A Substantial Security Holder must notify the Company in accordance with clause 11.5 of any movement of 1% or more in the Substantial Holding as soon as the Substantial Security Holder knows, or ought reasonably to know, that the movement has occurred.
- b) There is a movement of 1% or more in a Substantial Holding if:
  - i) there is a change in the number of shares of the Company in which the Substantial Security Holder has a Relevant Interest; and

- ii) the difference between the number of such shares immediately after the change and the number of shares stated in the last notice given by the Substantial Security Holder to the Company under this clause 11 is equal to 1% or more of the total number of issued shares of the Company

### **11.3 Substantial Security Holders to Notify if Ceases to have Substantial Holding**

A person who ceases to have a Substantial Holding in the Company must give notice of that fact to the Company in accordance with clause 11.5 as soon as the person knows, or ought reasonably to know, that the person has ceased to have a Substantial Holding.

### **11.4 Substantial Security Holders to Notify Changes in Nature of Relevant Interests**

A Substantial Security Holder must notify the Company in accordance with clause 11.5 of any change in the nature of any Relevant Interest in the Substantial Holding as soon as the person knows, or ought reasonably to know, of the change.

### **11.5 Form of Notices**

Every notice given under clauses 11.1 to 11.4 shall:

- a) be in the form;
- b) contain the information;
- c) be accompanied by, or have annexed, such documents, certificates, and statements; and
- d) be given in the manner,

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

### **11.6 Additional Provisions Relating to Notice by Substantial Security Holders**

- a) If a person is required to comply with clause 11.1, 11.2, or 11.3 solely by reason of the fact that that person is the trustee of a testamentary trust or the executor or administrator of the estate of a deceased person, the time limit for notification in those clauses does not apply,



and the notice must instead be given before the expiry of 14 days after the grant of administration under the Administration Act 1969.

- b) A person (A) does not have to comply with clauses 11.1 to 11.4 in relation to a Substantial Holding if:
  - i) another person (B) is required to comply, and does comply, with those clauses; and
  - ii) A has a Substantial Holding merely for 1 or more of the following reasons:
    - 1) A has a power to exercise, or control the exercise of, the right to vote attached to 20% or more of the shares of B;
    - 2) A has a power to acquire or dispose of, or control the acquisition or disposition of, 20% or more of the shares of B; and/or
    - 3) A and B are related bodies corporate (as defined in section 12(2) of the Financial Markets Conduct Act 2013);
  - iii) A has that Substantial Holding merely because A acts for other persons in the ordinary course of business as a corporate trustee or a nominee company and A has previously provided written notice to the Company of such relationship, and:
    - 1) A keeps under continuing review the transactions of all persons for whom A holds, in A's name, shares in the Company; and
    - 2) if any of clauses 11.1 to 11.4 applies to any of those persons, A gives notice in respect of that person's Substantial Holding to the Company in accordance with clause 11.5.
- c) The Company shall, at the request of a person by whom a notice is given, give to that person an acknowledgement of the notice in the prescribed manner.

## **11.7 Company to Publish Identity of Substantial Security Holders**

- a) The Company shall, in a note accompanying its statement of financial position laid before the annual meeting, state:
  - i) the names of all persons who, according to the Company's records and disclosures made under this clause 11, are Substantial Security Holders in the Company, as at a date not earlier than 3 months before the statement of financial position is laid before the annual meeting; and
  - ii) the number of shares of the Company that, according to the Company's records and disclosures made under this clause 11, form part of each Substantial Holding as at that date; and
  - iii) the total number of issued shares of the Company as at that date.

## **11.8 Company may Require Disclosure of Relevant Interests**

- a) The Company may, and at the written request of a shareholder or shareholders holding in aggregate not less than 5% of the shares of the Company shall, by written notice to a person who is registered as the holder of shares in the Company or a person who was named in a disclosure under clause 11 as having a Relevant Interest in the shares of the Company, require that person to disclose to the Company:
  - i) the name and address of every person who holds a Relevant Interest in those shares and the nature of that interest; and
  - ii) to the extent that the registered holder is unable to supply any of that information in relation to a person holding a Relevant Interest, other particulars that will, or are likely to, assist in identifying that person and the nature of that interest.
- b) A person must disclose the information required under clause 11.8(a) in writing to the Company as soon as practicable after receiving the notice.

## **11.9 Company may Require Person who Holds Relevant Interest to Disclose Information**

- a) The Company may, and at the written request of a shareholder or shareholders holding in aggregate not less than 5% of the shares of the Company shall, by written notice to any person who the Company believes has, or may have, a Relevant Interest in the shares of the Company, require that person, for the purpose of assisting the Company to ascertain who is, or may be, a Substantial Security Holder, to supply such information as it may specify.
- b) A Relevant Interest holder must disclose the information required under clause 11.9(a) in writing to the Company as soon as practicable after receiving the notice.

## **11.10 Failure to Comply with Disclosure Requirements**

If any person does not comply with clauses 11.1 to 11.4 or does not supply information requested by the Board under clause 11.8 or 11.9, the Board may:

- a) suspend the right to vote attaching to the shares of the Company in which the person has a Relevant Interest;
- b) refuse to issue any shares in addition to, or in substitution for, or in replacement of, any shares in which the person has a Relevant Interest, or to offer shares which section 45 of the Act would otherwise require to be offered to the holder or holders of the shares in which the person has a Relevant Interest;
- c) arrange for the sale of any shares in which the person has a Relevant Interest in accordance with clause 12, where the non-compliance or failure to supply information has not been remedied for 12 months.

## **12. ARRANGEMENT BY BOARD FOR SALE OF SHARES**

### **12.1 Sale at Best Price Reasonably Obtainable**

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

## **12.2 Board Authorised to Sell**

For purpose of any sale referred to in clause 12.1 the holder of the shares and any other person having a Relevant Interest in those shares 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 shares, 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.

## **12.3 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 shares so sold. The Board shall be entitled to cancel existing share certificates and reissue replacements in order to enable the sale of such shares but shall not be obliged to do so.

## **13. CERTIFICATES**

### **13.1 Certificate**

A shareholder in the Company may apply to the Company for a certificate relating to some or all of the shareholder's shares in the Company. Subject to clause 13.3 the cost of providing a share certificate shall be met by the Company.

### **13.2 Delivery to Joint Holders**

In respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

### **13.3 Lost Certificates**

If a share certificate is defaced, lost or destroyed it may be replaced on such terms (if any) as to evidence and indemnity and the payment of such charges as the Board may in each case think fit.

### **13.4 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 share, and shall not be under any obligation to recognise any trust or equity, or partial, equitable, or other claim to or interest in any share whether or not it has express notice of such claim or interest.

### **13.5 Receipts from Joint Holders**

If several persons are registered as joint holders of any share, any one of those persons may give receipts for any money payable in respect of that share.

## **14. CALLS**

### **14.1 Power to Call**

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 shares held by them respectively and which is not by the conditions of allotment made payable at fixed times. Each shareholder shall pay the amount of every call so made on him or her to the persons and at the times in the manner appointed by the Board. A call may be made payable by instalments and may be revoked or postponed as the Board may determine.

### **14.2 Notice and Arrears of Call**

At least 14 days' notice of any call shall be given specifying the time and manner of payment and the person or persons to whom the call shall be paid.

### **14.3 Joint Holders**

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

### **14.4 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.

### **14.5 Interest**

If the call payable in respect of any share is not paid on or before the day appointed for payment, the holder for the time being of the share 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.

#### **14.6 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 shares in respect of which the debt accrued;
  - b) the resolution making the call is duly recorded in the minute book; and
  - c) notice of the call was duly given to the shareholder,
- 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 aforesaid shall be conclusive evidence of the debt.

#### **14.7 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.

### **15. DIVIDENDS**

#### **15.1 Interest**

No dividend shall bear interest against the Company.

#### **15.2 Unclaimed Dividends**

All dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. All dividends 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

dividend so forfeited to any person producing evidence that he or she is entitled to the same if the Board is satisfied on reasonable grounds that the Company will, immediately after the payment is made, satisfy the solvency test.

## **16. FORFEITURE OF SHARES**

### **16.1 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.

### **16.2 Notice**

The notice shall:

- a) name a further day (not being less than 10 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 manner in which payment is to be made; and
- c) state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call or instalment is made will be liable to be forfeited.

### **16.3 Non-Compliance**

If the shareholder does not comply with the requirements of any such notice, any shares 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 any distributions authorised in respect of the forfeited shares but then not paid.

### **16.4 Forfeited Shares**

Any share or shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Board thinks fit and as this Constitution permits.

## **16.5 Ceasing to be a Shareholder**

Any shareholder whose shares have been forfeited shall cease to be a shareholder in respect of the forfeited shares, 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 shares. The shareholder's liability shall cease if and when the Company receives payment in full of the amount so owing by the shareholder.

## **16.6 Evidence of Forfeiture**

A statutory declaration in writing that the declarant is a Director of the Company, and that a share in the Company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

## **16.7 Sale of Shares**

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

## **16.8 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 share, becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

## **16.9 Cancellation of Forfeiture**

If all calls, instalments, and interest due in respect of any forfeited share are paid before the share 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 share 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.

## **17. TRANSMISSION OF SHARES**

### **17.1 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 share shall be the only person recognised by the Company as having any title in the share. In the case of a share 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 share.

### **17.2 Assignee in Bankruptcy**

Any person becoming entitled to a share 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 share 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 share by the person before the bankruptcy.

### **17.3 Right of Personal Representative or Assignee**

Where the registered holder of any share 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 share 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 share.

## **18. LIEN ON SHARES**

### **18.1 Lien on Shares**

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 shares held by the shareholder, whether alone or jointly, and upon all money payable by the Company to the shareholder.

### **18.2 Discharge of Lien**

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

### **18.3 Sale of Shares**

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

- a) some sum in respect of which the lien exists is presently payable; and
- b) 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.

### **18.4 Execution of Sale**

For giving effect to any such sale the Board may authorise some person to transfer the share sold to the purchaser. The purchaser shall be registered as the holder of the shares 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 shares be affected by any irregularity or invalidity in the sale proceedings.

### **18.5 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 shares prior to the sale) in payment to the person entitled to the shares at the date of the sale.

## **18.6 Discharge from Calls**

Upon registration of the transfer to the purchaser of shares sold by the Company pursuant to clause 18.3 (“the Transferee”), the Transferee shall hold such shares free from all calls due prior to such purchase.

## **18.7 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.

# **19. MEETINGS OF SHAREHOLDERS**

## **19.1 Annual Meetings**

The annual meeting of the Company shall be held at such time and place as may be determined from time to time by the Board, but not later than 15 months after the holding of the previous annual meeting, and 6 months after the balance date of the Company.

## **19.2 Business of an Annual Meeting**

The business of the annual meeting shall be:

- a) to receive and consider the financial statements, the reports of the Board and of the auditor, and any matters incidental thereto;
- b) to elect Directors in the place of those retiring;
- c) to appoint auditors and fix, or authorise the Board to fix, their remuneration; and
- d) to transact any other business which, by law, may be transacted at an annual meeting.

## **19.3 Special Meeting**

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

- a) may be called at any time by the Board; and

- b) must be called by the Board at the written request of shareholders holding shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.

#### **19.4 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 copies of the request each signed by one or more of the requesting shareholders.

#### **19.5 Proceedings at Meetings**

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

### **20. CAP ON VOTING RIGHTS**

#### **20.1 Voting Cap**

- a) Subject to the terms of issue of the shares held by the shareholder, each shareholder is entitled to one vote per ordinary share up to a maximum calculated in accordance with this clause 20 (**“Voting Cap”**).
- b) Notwithstanding clause 20.1(a), in the event of an interest group vote each shareholder in the interest group is entitled to one vote per ordinary share.

#### **20.2 Date of calculation of ~~voting cap~~Voting Cap**

The Board shall, 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 20, and such date shall be as close as reasonably possible to the date on which shareholders are to exercise their voting rights.

#### **~~20.3 Calculation of Voting Cap~~**

The maximum number of votes for each shareholder shall be calculated as follows:

Maximum number of votes =-

$$\frac{\text{shareholder's production}}{\text{total production}} \times \text{total potential voting rights}$$

where

Shareholder's production = the sum of the production of kiwifruit tray equivalents from each property in New Zealand owned or leased by each shareholder, which is supplied to the Company at FOBS, provided that production from a property may be attributed to only one shareholder and where the owner and lessee of a property are both shareholders, the production from that property will be attributed to the owner unless both the owner and the lessee notify the Company otherwise, in a form prescribed by the Company;

and

- a) Where a person other than the owner of a property was determined to be a Producer in respect of that property by (the then) Kiwifruit New Zealand under the Share Allocation Plan made pursuant to the Kiwifruit Industry Restructuring Act 1999, or subsequently by the Board of the Company and would be the Producer in respect of that property if that determination were made at the time the voting cap is calculated in accordance with clause 20.2 and both that Producer and the owner and/or lessee of the property are shareholders, the production will be attributed to the Producer, unless both the Producer and the owner or lessee notify the Company otherwise, in a form prescribed by the Company;—
- b) and production from a property:
  - i) — where kiwifruit was produced on the property and supplied to the Company at FOBS in any of the 5 financial years immediately preceding the financial year in which the vote occurs, is the average of the highest numbers of tray equivalents of kiwifruit so supplied in any 2 of those financial years; or
  - ii) — where kiwifruit was so supplied only in 1 of the 5 financial years immediately preceding the financial year in which the vote occurs, is the shareholder's production in that financial year; and

e) total production = the sum of production in tray-equivalents supplied to the Company at FOBS from all properties (including production from properties which is not attributable to a shareholder);

and

total potential voting rights = the total number of votes attached to all shares on issue which could be cast but for the **cap** on voting rights

### **20.3 Calculation of Voting Cap**

The maximum number of votes for each shareholder is the lesser of (1) the number of ordinary shares held by that shareholder and (2) the aggregate number of votes that shareholder is entitled to:

a) as the Owner of:

- i) a Standard Property, under clause 20.4(a);
- ii) a Property leased under a Glasgow Lease, under clause 20.4(b); and
- iii) a Property leased under an Existing Long Term Lease, under clause 20.4(c); and

b) as the Lessee of:

- i) a Standard Property, under clause 20.5(a);
- ii) a Property leased pursuant to a Glasgow Lease, under clause 20.5(b); and
- iii) a Property leased pursuant to an Existing Long Term Lease, under clause 20.5(c);

### **20.4 Owner's Voting Cap**

- a) The Owner of a Standard Property is entitled to the number of votes in respect of that Standard Property equal to the Production Entitlement (Votes) of that Property.
- b) The Owner of a Property leased under a Glasgow Lease is entitled to the number of votes in respect of that

Property equal to the Production Entitlement (Votes) of that Property, reduced by the Priority Allocation (Votes) (if any) in respect of that Property.

- c) The Owner of a Property leased under an Existing Long Term Lease is entitled to the number of votes in respect of that Property equal to the aggregate of:
  - i) the Production Entitlement (Votes) of the Owner's Theoretical Property; and
  - ii) the Production Entitlement (Votes) of the Lessee's Theoretical Property, reduced by the Priority Allocation (Votes) (if any) in respect of that Lessee's Theoretical Property.

## **20.5 Lessee's Voting Cap**

- a) The Lessee of a Standard Property is entitled to the number of votes in respect of that Standard Property equal to the Production Entitlement (Votes) of that Property, reduced by the Priority Allocation (Votes) (if any) in respect of that Property.
- b) The Lessee of a Property leased under a Glasgow Lease is entitled to the number of votes in respect of that Property equal to the Production Entitlement (Votes) of that Property.
- c) The Lessee of a Property leased under an Existing Long Term Lease is entitled to the number of votes in respect of that Property equal to the aggregate of:
  - i) the Production Entitlement (Votes) of the Lessee's Theoretical Property; and
  - ii) the Production Entitlement (Votes) of the Owner's Theoretical Property, reduced by the Priority Allocation (Votes) (if any) in respect of that Owner's Theoretical Property.

## **21. CAP ON SHAREHOLDING**

### **21.1 Share cap rules apply to Producers**

This clause 20.3 only applies to Producers, including any person the Board deems to be a "Producer" (including,

to avoid doubt, a person deemed to be a Producer under clause 21.5, but excluding any Market Maker in accordance with clause 4.6(f) and the clearing and depository organisations in accordance with clause 4.8).

## **21.2 Maximum shareholding**

The maximum number of ordinary shares a Producer is entitled to hold (the Producer's "**Share Cap**") is a number equal to the aggregate of the following:

- a) if they are the Owner of:
  - i) a Standard Property, the number determined under clause 21.7(a);
  - ii) a Property leased under a Glasgow Lease, the number determined under clause 21.7(b); and
  - iii) a Property leased under an Existing Long Term Lease, the number determined under clause 21.7(c); and
- b) if they are the Lessee of:
  - i) a Standard Property, the number determined under clause 21.8(a);
  - ii) a Property leased under a Glasgow Lease, the number determined under clause 21.8(b); and
  - iii) a Property leased under an Existing Long Term Lease, the number determined under clause 21.8(c).

## **21.3 Prohibited purchases**

A Producer may not acquire shares if:

- a) the Producer is Overshared; or
- b) the acquisition would result in the Producer becoming Overshared.

## **21.4 Producer must sell if Overshared**

Subject to clause 21.5, a Producer that has been Overshared for a continuous period of 3 years or more must, within 20 working days after receiving notice from the Company



requiring it to dispose of shares, dispose of [X] ordinary shares, where [X] is the lowest number by which that Producer has been continuously Overshared in the 3 years before the date of the notice.

### **21.5 New Entrant must sell if insufficient progress**

If a person becomes Overshared as a result of a Greenfield having its Deemed Production reduced under clause 21.9, that person must, within 6 months of the Board giving the notice referred to in clause 21.9, dispose of sufficient ordinary shares such that it is no longer Overshared. For the purposes of this clause 20.3, such a person shall be deemed to be a “Producer” until they have complied with this clause or the relevant shares have been sold pursuant to clause 21.6.

### **21.6 Producer in default**

If a Producer fails to dispose of shares as required under this clause 20.3, the Board is irrevocably authorised to arrange for the sale of the shares and clause 12 shall apply to such sale.

### **21.7 Owner’s Share Cap**

- a) The Owner of a Standard Property is entitled to hold the Production Entitlement (Shares) of that Property.
- b) The Owner of a Property leased under a Glasgow Lease is entitled to hold the Production Entitlement (Shares) of that Property, reduced by the Priority Allocation (Shares) (if any) in respect of that Property.
- c) The Owner of a Property leased under an Existing Long Term Lease is entitled to hold the aggregate of:
  - i) the Production Entitlement (Shares) of the Owner’s Theoretical Property; and
  - ii) the Production Entitlement (Shares) of the Lessee’s Theoretical Property, reduced by the Priority Allocation (Shares) (if any) in respect of that Lessee’s Theoretical Property.

## **21.8 Lessee's Share Cap**

- a) The Lessee of a Standard Property is entitled to hold the Production Entitlement (Shares) of that Property, reduced by the Priority Allocation (Shares) (if any) in respect of that Property.
- b) The Lessee of a Property leased under a Glasgow Lease is entitled to hold the Production Entitlement (Shares) of that Property.
- c) The Lessee of a Property leased under an Existing Long Term Lease is entitled to hold the aggregate of:
  - i) the Production Entitlement (Shares) of the Lessee's Theoretical Property; and
  - ii) the Production Entitlement (Shares) of the Owner's Theoretical Property, reduced by the Priority Allocation (Shares) (if any) in respect of that Owner's Theoretical Property.

## **21.9 Insufficient progress at a Greenfield**

If, in the Board's opinion, there has been insufficient progress (having regard to the relevant circumstances) in respect of the infrastructure and plantings at a Greenfield by the date falling 2 years after that Greenfield was allocated a KPIN, then the Board may declare that the property is no longer to be classed as a Greenfield or as having any Deemed Production, and that the Owner and Lessee (if relevant) are no longer to be treated as New Entrants. If the Board exercises its power under this clause it shall give notice to the Owner and Lessee (if any) of the relevant Greenfield accordingly.

## **22. CLASS B SHARES**

### **22.1 Conversion to class B Shares**

- a) An ordinary share shall automatically and immediately be converted into a class B Share, and shall be recorded on the share register as a class B Share, if on any working day on or after the day falling 3 years after the Effective Date it is held by a shareholder (not being a Grandfathered Shareholder) that:

- i) is not a Producer or a person deemed to be a Producer (including the Market Maker and any person referred to in clause 4.8); and
- ii) was not, at any time in the three years immediately preceding that day, an Owner or Lessee of a property from which kiwifruit was being supplied to the Company.

b) An ordinary share held by a Grandfathered Shareholder on the day falling 7 years after the Effective Date (or, if that day is not a working day, on the first working day after that day) shall automatically and immediately be converted into a class B Share, and shall be recorded on the share register as a class B Share.

## **22.2 Rights of class B Shares**

- a) A class B Share does not confer any right on the holder to receive dividends, but otherwise confers the same rights on the holder as an ordinary share.
- b) To avoid doubt:
  - i) the Board may not authorise a dividend in respect of a class B Share; and
  - ii) a dividend that is authorised in respect of ordinary shares is not payable in respect of a class B Share.

## **22.3 Conversion to ordinary shares**

A class B Share shall automatically and immediately be converted into an ordinary share, and shall be recorded on the share register as an ordinary share, if on any working day it is held by a Producer or by a person deemed to be a Producer (including the Market Maker and any person referred to in clause 4.8).

## **23. EVIDENCE OF LEASE-HOLDING**

The Board may require a person to provide evidence showing that the person is a Lessee, which may include a copy of the relevant lease and/or a statutory declaration from each of the Owner and the Lessee as to the terms of that lease, and/or a statutory declaration as to those terms from a solicitor or other third party professional adviser.

## **24. CALCULATIONS**

Where any calculation carried out in accordance with this Constitution would result in a person being entitled to exercise a part vote, or being entitled to hold a part share, the result of that calculation will be rounded up to the nearest whole number.

## **25. HISTORICAL PRODUCTION**

For the purposes of calculating Historical Production of a Property:

- a) if the Property (the **“Subdivided Property”**) has been subdivided from another Property (the **“Original Property”**), the Historical Production (or **“HP”**) of the Subdivided Property will be calculated as follows:

$$HP \text{ of Subdivided Property} = HP \text{ of Original Property} \times \left( \frac{\text{area of Subdivided Property}}{\text{area of Original Property}} \right)$$

- b) if the Property is a Property that is the result of an amalgamation of 2 or more Properties (**“Amalgamated Property”**), the production history of the original Properties is aggregated and will apply to the Amalgamated Property.

## **26. DIRECTORS**

### **26.1 Number of Directors**

The number of Directors shall be determined from time to time by the Board provided that:

- a) the total number of Directors shall not be less than 6 or more than 8; and
- b) there shall be 3 Independent Directors.

### **26.2 Rotation of Directors**

- a) Directors shall hold office until the annual meeting nearest to the expiry of 3 years from the date of his/her election, and shall retire at that meeting.
- b) A Director retiring under clause 21.2(a) ~~26.2(a)~~ shall continue to hold office until the dissolution or adjournment of the meeting at which his or her successor is elected.

- c) Not less than 2 months before the annual meeting of shareholders, the Company shall:
  - i) notify shareholders of which Directors will retire at the annual meeting and which of those Directors will stand for re-election; and
  - ii) identify each vacancy arising from the retirement of Directors by a unique number.

### **26.3 Nomination of non-Independent Directors**

- a) Not less than 2 months before the annual meeting of shareholders the Company shall call for nominations to fill the non-Independent Director vacancies.
- b) Nominations must:
  - i) indicate the vacancy or vacancies which the person is nominated to fill;
  - ii) be made and signed by two shareholders (as nominator and seconder) and by the person nominated; and
  - iii) be received at the registered office of the Company no later than the date specified in the notice calling for nominations, which shall be a date not less than 3 weeks after the date of that notice.

### **26.4 Recommendation of Independent Directors**

- a) The Board may recommend a person without a Disqualifying Relationship for election or re-election as an Independent Director.
- [ b) The notice to shareholders given under ~~21.2(e)~~clause 26.2(c) must also notify shareholders of the person or persons who have been recommended by the Board to be elected or re-elected as an Independent Director, and the vacancy or vacancies which each person is recommended to fill.
- c) In the event that the Board does not recommend a person or persons to be elected or re-elected as an Independent Director, then the Board may call for nominations to fill the Independent Director vacancies,

which nominations shall meet the requirements of clause ~~21.3(b)~~ 26.3(b).

## 26.5 Election of Directors at Annual Meeting

- a) At the annual meeting the Company shall elect by resolution or poll a person to fill each of the Director vacancies from among the persons nominated or recommended to fill that vacancy.
- b) No person shall be eligible for election or re-election to the office of:
  - i) non-Independent Director at any meeting unless he or she has been nominated for election in accordance with clause ~~21.3(b)~~ 26.3(b) or is a non-Independent Director due to retire under clause ~~21.2(a)~~ 26.2(a); or
  - ii) Independent Director at any meeting unless he or she has been recommended by the Board in accordance with clause ~~21.4(a)~~ 26.4(a) or nominated for election in accordance with clause ~~21.4(c)~~ 26.4(c).
- 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.

## 26.6 Casual Vacancies

- a) Any casual vacancy occurring among the Directors may be filled up by the Board, or in their discretion they may call a special meeting for the purpose of filling up any such casual vacancy, provided that any casual vacancy occurring among the Independent Directors must be filled by a person who has no Disqualifying Relationship with the Company.
- b) The remaining Directors may continue to act notwithstanding any vacancy in their number but if the number of Directors or Independent Directors falls below the respective minimums fixed by this Constitution the Board shall not act, except for the purpose of filling vacancies, so long as the number is below the said minimum.

## 26.7 Remuneration of Directors

- a) Shareholders shall by ordinary resolution from time to time set a maximum amount for annual Directors' fees. The remuneration payable to the Directors in their capacity as Directors shall be the sum so determined by ordinary resolution or such lesser sum as the Board shall from time to time determine. The Directors' remuneration may be distributed among them in such manner as the Board shall from time to time determine.
- b) No resolution which increases the amount referred to  in clause ~~21.7(a)~~ 26.7(a) shall be passed unless notice of the amount of increase has been given in the notice of meeting.
- c) 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.
- d) Nothing in this clause ~~21.7~~ 26.7 shall affect the remuneration of Directors in any capacity other than as Directors.

## 26.8 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.

## 26.9 Disqualification of Directors

The office of a Director shall be vacated if:

- a) he or she becomes bankrupt; or
- b) he or she becomes a mentally disordered person, or a personal order relating to his or her property is made under the Protection of Personal and Property Rights Act 1988, or
- c) he or she resigns his or her office in accordance with the provisions of section 157(2) of the Act; or

- d) he or she becomes a person to whom section 151 of the Act applies; or
- e) in the case of an Independent Director, he or she becomes a person with a Disqualifying Relationship to the Company; or
- f) in the case of a non-independent Director, he or she becomes a person with no Disqualifying Relationship to the Company.

## **26.10 Removal of Director**

The shareholders may by ordinary resolution remove any Director before the expiration of that Director's period of office. In any such event, the notice of meeting must specify that one of the purposes for the meeting is to vote on such a resolution.

## **26.11 Proceedings at Meetings**

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

## **27. INDEMNITY AND INSURANCE**

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.

## **28. SHAREHOLDER STATEMENTS**

### **28.1 Shareholder's Statement**

A "Shareholder's Statement" means, in respect of a shareholder, a statement setting out:

- a) the number of shares held by that shareholder;
- b) each Property owned or leased by that shareholder;
- c) each Glasgow Lease and Existing Long Term Lease to which that shareholder is a party;
- d) the Historical Production for each Property included in subclause (b) above;
- e) the Deemed Production for each Greenfield included in subclause (b) above;



- f) if that shareholder is a Producer, that shareholder's Share Cap;
- g) the number of votes that shareholder is entitled to exercise under clause 20.1(a);
- h) the Priority Allocation (Shares) and Priority Allocation (Votes) for each Property included in subclause (b) above (including, in the case of a Property subject to an Existing Long Term Lease, the Owner's Theoretical Property and Lessee's Theoretical Property);
- i) if the shareholder is a Producer and is Overshared, when the Board's entitlement to sell shares under clause 20.3 arises; and
- j) if the shareholder is not a Producer, the date on which the shareholder's shares will convert to Class B Shares under clause 22.1,

in each case, as shown in the Company's records on the date of the Shareholder's Statement.

## **28.2 Annual statement**

The Company will provide each shareholder with a Shareholder's Statement within a reasonable time of the end of each season.

## **28.3 Update statements**

The Company will produce and issue an updated Shareholder's Statement to a shareholder upon request and as soon as reasonably practicable if there is any change in that shareholder's circumstances known to the Company since the last Shareholder's Statement was issued.

## **28.4 Update requests by shareholder**

A shareholder may, at any time, notify the Company that the shareholder's circumstances have changed since the last Shareholder's Statement was issued to that shareholder, or that the details shown in that statement were incorrect. The Company will, upon receipt from the shareholder of such evidence regarding the change in the shareholder's details as the Company may require, issue an

[ updated Shareholder's Statement in accordance with clause 28.3 as a result of the updated information.

## **29. NOTICES**

### **29.1 Notice to Joint Holders**

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder named first in the share register in respect of the share, such notice to be provided to the address noted in the share register in respect of the share. The Company shall 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.

### **29.2 Where joint shareholders are trustees**

[ Where a share is held by joint shareholders who are trustees of a trust, clause ~~23.1~~29.1 shall apply in respect of that share unless the trustees provide express written notice to the Company that authorisation from more than one joint shareholder is required to bind the trust.

### **29.3 Notice to Personal Representative or Assignee of Shareholder**

A notice may be given by the Company to any person entitled to a share 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.

### **29.4 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.

## **29.5 Notice to Overseas Shareholders**

Each shareholder whose place of address is not in New Zealand shall notify in writing to the Company a place in New Zealand which shall 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 whatsoever, and all proceedings taken without other notice to any such member shall be as valid as if he or she had due notice thereof.

## **30. DEDUCTIONS FROM PAYMENTS TO SHAREHOLDERS**

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 on account of any or all of the following:

- a) calls or instalments or any debt, liability or engagement; and
- b) debts, liabilities or obligations in respect of which the Company has a lien on the shares 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 shares of a deceased or other shareholder.

## **31. METHOD OF CONTRACTING**

An obligation which if entered into by a natural person would by law be required to be by deed may be entered into on behalf of the Company in writing signed under the name of the Company by a Director whose signature must be witnessed.

## **32. TRANSITION ARRANGEMENTS**

### **32.1 Transition Period**

In this clause 32 “Transition Period” means the period beginning on the Effective Date and ending 7 years later.

### **32.2 Transition arrangements for Overshared Producer**

If a Producer is Overshared on the Effective Date, then during the Transition Period clause 21.4 will only apply to

the number of ordinary shares held by the Producer in excess of:

- a) the number of ordinary shares by which the Producer was Overshared on the Effective Date; or
- b) if the Producer becomes Overshared by a lower number of ordinary shares during the Transition Period, that lower number.

### **32.3 Method used for calculating position at Effective Date**

The method set out in Schedule 3 shall be used for the purposes of determining the position of each shareholder at the Effective Date for the purposes of this clause 32.

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# SCHEDULE 1

## PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

### 1. CHAIRPERSON

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

### 2. NOTICE OF MEETING

**2.1** 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 an auditor of the Company not less than 10 working days before the meeting.

**2.2** 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;
- b) the text of any special resolution to be submitted to the meeting; and
- c) in the case of meetings called under clause 19.4 of the Constitution, the name of the shareholder(s) requesting the meeting.

**2.3** 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.

- 2.4** 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.
- 2.5** The Chairperson of any meeting at which a quorum is present may, with the consent of the meeting (and shall 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.

### **3. METHODS OF HOLDING MEETINGS**

A meeting of shareholders may be held by a quorum of shareholders:

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

### **4. QUORUM**

**4.1** Subject to clause 4.3 of this Schedule no business may be transacted at any general meeting if a quorum is not present.

**4.2** A quorum for a meeting of shareholders is present if:

- a) not less than 50 shareholders or representatives of bodies corporate who are shareholders are present; or
- b) shareholders or representatives of shareholders who are between them holdable to exercise not less than 5% of the shares of votes to be cast on the Company carrying voting rights business to be transacted by the meeting are present.

- 4.3** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- a) In the case of a meeting convened under section 121(b) of the Act, the meeting is dissolved;
  - b) In the case of any other meeting the meeting is adjourned to such other date, time and place as the Directors may appoint and for which notice has been given in accordance with clause 2.5 of this Schedule (if the date appointed by the Directors is more than thirty days after the adjourned meeting). 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.
- 4.4** 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.

## **5. VOTING**

- 5.1** In the case of a meeting of shareholders held under subclause 3(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.
- 5.2** In the case of a meeting of shareholders held under subclauses 3(b) or 3(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.
- 5.3** A declaration by the Chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 5.4 of this Schedule.
- 5.4** At a meeting of shareholders a poll may be demanded by:
- a) not less than 5 shareholders having the right to vote at the meeting; or



- b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or
  - c) a shareholder or shareholders holding shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all shares that confer that right; or
  - d) the Chairperson of the meeting.
- 5.5** A poll may be demanded either before or after the vote is taken on a resolution.
- 5.6** For the purpose of this clause 5, 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.
- 5.7** 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 the Company's share registrar (or other person authorised by the Board where voting is by electronic means), registered and audited by the Company's auditors. Individual voting papers and proxy forms shall be retained by the Company's auditors for a period of six months after the meeting, after which they shall be destroyed unless the Board otherwise resolves.
- 5.8** If a poll is taken, votes shall be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.
- 5.9** The Chairperson of a shareholders' meeting is not entitled to a casting vote.
- 5.10** Whether before or after a meeting at which shareholders will be voting, no Director or employee of the Company shall have access to or seek to obtain any information that reveals the voting preferences of individual shareholders (including voting papers, electronic results or proxy forms), except as follows:

- a) A shareholder may authorise the disclosure of that shareholder's voting preferences, either generally or subject to specified conditions.
- b) No more than 30 minutes prior to the start of the relevant meeting, the Company's share registrar, auditors or other person authorised by the Board to collect proxies or electronic votes may make available to the Board a summary of information about proxy votes received.
- c) If satisfied that there are compelling reasons to do so, the Board may resolve to authorise the disclosure of voting preference information, in which case:
  - i) the Board must specify what conditions are to apply, if any, in respect of the proposed disclosure; and
  - ii) the Board must immediately notify all shareholders of the proposed disclosure and the reasons for authorising it.

## 6. PROXIES

- 6.1** A shareholder may exercise the right to vote either by being present in person, by electronic means or by proxy.
- 6.2** A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
- 6.3** A proxy must be appointed by notice in writing signed by 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.
- 6.4** A proxy is not effective unless it is provided to the Company's share registrar or other nominated party at least 48 hours before the start of a meeting.
- 6.5** 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 ~~23.129~~29.1 of the Constitution shall be valid.
- 6.6** 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 shall be valid.

- 6.7** No person other than the chairperson of the meeting may exercise voting rights as a proxy which when aggregated with that person's own voting rights or other voting rights held as a proxy would mean that the person may exercise on any vote more than 20% of the votes which may be cast on the matter voted upon.
- 6.8** The notice appointing a proxy shall be in such form as may be approved by the Board from time to time:
- 6.9** An instrument of proxy in favour of the chairperson of the meeting (howsoever expressed) shall be valid and effectual as though it were in favour of a named person and shall constitute the person who chairs the meeting or meetings for which the proxy is used (whether an adjournment or not) the lawful proxy or proxies of the appointor.
- 6.10** 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.
- 6.11** 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 Company's share registrar or other nominated person not less than four hours before the time fixed for the holding of the meeting or of the adjourned meeting for which the proxy is given.
- 6.12** At any meeting of shareholders the chairperson of the meeting shall at the commencement of the meeting notify the meeting of:
- a) the total number of votes which may be exercised by proxy at the meeting;
  - b) the total number of votes which the chairperson may exercise as a proxy at the meeting;
  - c) the identity of any person who may exercise voting rights as a proxy which, when aggregated with that

person's own voting rights or other voting rights held as a proxy, would mean that the person may exercise on any vote more than 5% of the votes which may be cast on the matter voted upon.

## **7. POSTAL VOTES**

- 7.1** The Board may decide in respect of a particular meeting or 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.
- 7.2** 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.
- 7.3** 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.
- 7.4** 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.
- 7.5** 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.

**7.6** 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.

**7.7** 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.

**7.8** 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.

## **8. MINUTES**

**8.1** The Board must ensure that minutes are kept of all proceedings at meetings of shareholders and are tabled at the subsequent meeting.

**8.2** Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## **9. SHAREHOLDER PROPOSALS**

**9.1** 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.

**9.2** 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.

- 9.3** 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.
- 9.4** 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 must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 9.5** If the Board intends that shareholders may vote on the proposal by proxy or by postal vote, it 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.
- 9.6** The Board is not required to include in or with the notice given by the Board a statement prepared by a shareholder which the Directors consider to be defamatory, frivolous, or vexatious.
- 9.7** 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.

## **10. CORPORATIONS MAY ACT BY REPRESENTATIVES**

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. Where a body corporate is registered as the holder of a share and no valid proxy or appointment of a representative has been received in relation to such share, no person shall be entitled to vote in relation to such share.

## **11. VOTES OF JOINT HOLDERS**

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

## **12. LOSS OF VOTING RIGHTS IF CALLS UNPAID**

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

## **13. PRIVATE MEETINGS**

**13.1** The meetings of the Company shall be regarded as private meetings. Except as provided in clause 13.2 of this Schedule, persons other than shareholders or persons holding proxies for shareholders may be present there only during the pleasure of the chairperson of the meeting.

**13.2** A Director who is not a shareholder of the Company is entitled to attend and speak at meetings of shareholders.

## **14. VOTING BY ADMINISTRATOR ETC**

If any person otherwise entitled by the 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.

## **15. OTHER PROCEEDINGS**

Except as provided in this Schedule, and subject to the Constitution, a meeting of shareholders may regulate its own procedure.

## **16. SHAREHOLDER PARTICIPATION BY ELECTRONIC MEANS**

**16.1** 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).

**16.2** 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

### 1. CHAIRPERSON

- 1.1 The Board shall elect one of their number as Chairperson of the Board, and, if they think fit, one of their number as Deputy Chairperson of the Board. The Board shall determine the period for which the Chairperson and the Deputy Chairperson (if appointed) are to hold office, and, unless otherwise determined, they shall be elected annually.
- 1.2 The Chairperson of the Board shall preside at each meeting of the Board, and in case of his or her absence or incapacity to act at any meeting, the Deputy Chairperson, if there has been one appointed, shall preside. In the absence from any meeting of the Board or inability to act of the Chairperson of the Board and of the Deputy Chairperson (if any) the Directors present shall choose one of their number to be Chairperson of the meeting.

### 2. NOTICE OF MEETING

- 2.1 A Director, or an employee of the Company upon the request of a Director, may convene a meeting of Directors including an audio or video meeting as provided in clause 3.1(b) of this Schedule.
- 2.2 Not less than 2 days' notice of a meeting of the Board must be sent to every Director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
- 2.3 An irregularity in the notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

### **3. METHODS OF HOLDING MEETINGS**

- 3.1** A meeting of the Board may be held by:
- a) a number of the Directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
  - b) a number of the Directors who constitute a quorum participating by means of audio or video communication by which all Directors participating can simultaneously hear each other throughout the meeting.
- 3.2** In the case of meetings held in accordance with clause 3.1(b) of this Schedule, 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 meeting that he or she is leaving the meeting.

### **4. QUORUM**

- 4.1** Unless otherwise determined by the Board, a majority of Directors is a quorum.
- 4.2** No business may be transacted at a meeting of the Board if a quorum is not present.

### **5. VOTING**

- 5.1** Every Director has one vote.
- 5.2** The Chairperson has a casting vote.
- 5.3** A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 5.4** A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against the resolution at the meeting.

## **6. MINUTES**

The Board must ensure that minutes are kept:

- a) of the names of the Directors present at each meeting of the Board and of any committee of the Board;
- b) 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, shall be receivable as prima facie evidence of the matters stated in the minutes.

## **7. WRITTEN RESOLUTIONS**

- 7.1** A resolution in writing signed or assented to by all Directors then entitled to receive notice of a Board meeting by electronic means or otherwise is valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 7.2** Any such resolution may consist of several documents (including electronic means or other similar means of communication) in like form each signed or assented to by one or more Directors.
- 7.3** A copy of any such resolution must be entered in the minute book of Board proceedings.
- 7.4** A resolution in writing of the Board is passed if a majority of the votes cast on it are in favour of it.

## **8. PROCEEDINGS OF COMMITTEES OF DIRECTORS**

The rules in this Constitution governing meetings and proceedings of the Board shall, except as altered by any resolutions made by the Board, apply also to the meetings and proceedings of any committee of the Board.

## **9. OTHER PROCEEDINGS**

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

# SCHEDULE 3

## ALLOCATION RULES

### 1. GENERAL ALLOCATION RULES

A Producer's ordinary shares and votes will be allocated to each Property where that Producer is the Priority Producer in accordance with this schedule.

### 2. THEORETICAL PROPERTIES AND PART PROPERTIES

For the purposes of allocating ordinary shares and votes:

- a) a Property that is subject to an Existing Long Term Lease shall be deemed to be 2 Properties (each a **"Theoretical Property"**):
  - i) each with  $\frac{1}{2}$  the Production Entitlement (Shares) and  $\frac{1}{2}$  the Production Entitlement (Votes) of the actual Property;
  - ii) one of which is leased by the Owner to the Lessee (the **"Owner's Theoretical Property"**); and
  - iii) one of which is leased by the Lessee to the Owner (the **"Lessee's Theoretical Property"**);
- b) if an Owner leases only part of a Property, the part that is leased (**"Leased Part"**) and the part that is not leased (**"Owned Part"**) shall each be deemed to be separate Properties, each with its own Historical Production calculated on the basis of Trays supplied to the Company from that Owned Part or Leased Part, as the case may be;
- c) if a Property (including a Leased Part) is leased to more than one Lessee, each of whom leases a different part of that Property, then each separate part (a **"Part Property"**) shall be deemed to be a separate Property:
  - i) leased by the Owner to the Lessee of that Part Property; and
  - ii) with its own Historical Production calculated on the basis of Trays supplied to the Company from that Part Property.

### 3. SHARE ALLOCATION

The ordinary shares of a Producer shall be allocated to each of the Properties where that Producer is the Priority Producer in accordance with the following formula, which shall apply separately to each Property:

$$\text{Priority Allocation (Shares)} = (\text{total shares}) \times \left( \frac{\text{property's production entitlement (shares)}}{\text{total production entitlement (shares)}} \right)$$

Where:

- a) “total shares” means the total number of ordinary shares held by the Producer;
- b) “property’s production entitlement (shares)” means the Production Entitlement (Shares) of the relevant Property in respect of which the Producer is the Priority Producer;
- c) “total production entitlement (shares)” means the aggregate of the Production Entitlement (Shares) at all of the Producer’s Properties in respect of which the Producer is the Priority Producer,

provided that the number of that Producer’s ordinary shares allocated to a Producer’s Property in accordance with this clause shall not exceed the Production Entitlement (Shares) of that Property.

### 4. VOTE ALLOCATION

The votes of a Producer shall be allocated to each of the Properties where that Producer is the Priority Producer in accordance with the following formula, which shall apply separately to each Property:

$$\text{Priority Allocation (Votes)} = (\text{total shares}) \times \left( \frac{\text{property's production entitlement (shares)}}{\text{total production entitlement (shares)}} \right)$$

Where:

- a) “total shares” means the total number of ordinary shares held by the Producer;
- b) “property’s production entitlement (shares)” means the Production Entitlement (Shares) of the relevant Property in respect of which the Producer is the Priority Producer;

c) “total production entitlement (shares)” means the aggregate of the Production Entitlement (Shares) at all of the Properties in respect of which the Producer is the Priority Producer, and

provided that the number of that Producer’s votes allocated to a Producer’s Property in accordance with this clause shall not exceed the Production Entitlement (Votes) of that Property.

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