

## **SCIF CONSTITUTION: SIMMONDS STEWART**

### **TEMPLATE MARK-UP**

Simmonds Stewart has acted for many companies accepting investment from NZVIF Seed Co-Investment Fund (SCIF) partners. These SCIF partners include angel clubs like Ice Angels and Angel HQ, and a number of seed investment funds.

The standard SCIF constitution has a range of terms that companies should seek to change in the negotiation process. To help companies and founders prepare in advance, we set out below a detailed mark-up of the standard constitution showing the changes we think are desirable to achieve a balanced governance position. Our amendments and comments are based on the template *constitution (ordinary shares)* available on the NZVIF website as at **23 December 2015**.

This mark-up of the constitution is intended to be used in conjunction with our mark-up of the standard SCIF Subscription and Shareholders' Agreement, located in the guidance notes section of the templates page on our website.

Obviously every company and investment deal is different, so not all of the changes we recommend will apply in all situations. Equally, in some deals we recommend further changes. But we think this mark-up will still be a helpful starting point for companies embarking on a transaction with a SCIF partner.

## **CONSTITUTION**

---

**[INSERT COMPANY NAME] LIMITED**



**Simpson Grierson**  
Barristers & Solicitors  
Auckland, Wellington & Christchurch, New Zealand  
[www.simpsongrierson.com](http://www.simpsongrierson.com)

# [INSERT COMPANY NAME] LIMITED CONSTITUTION

## 1. INTERPRETATION

---

In this Constitution unless the context indicates otherwise:

### 1.1 Definitions:

**Act** means the Companies Act 1993;

~~**Associated Person** has the meaning ascribed to the term in Rule 1.8 of the New Zealand Stock Exchange Listing Rules and **Associate** and **Associated** have corresponding meanings;~~

**Comment [SS1]:** This term is not used in the amended version of the constitution.

**Company** means [insert company name] Limited;

**Constitution** means this constitution;

**Controlling Interest** means an interest in a company giving (directly or indirectly) the ability to control 50% or more of the voting rights of the company (whether such control is exercised individually or jointly);

**Direct Relation** means the husband, wife, child (including adopted child and step-child) or other lineal descendant of the relevant person;

**Investors** means the holders of the Investor Shares;

**Investor Shares** means the shares issued to certain Investors pursuant to the Subscription and Shareholders' Agreement;

**Ordinary Shares** means the ordinary shares in the capital of the Company;

~~**Other Shareholders** means the Shareholders other than the Investors;~~

**Comment [SS2]:** This term is not used in the original or the amended version of the constitution.

**Permitted Transferee** means a person or entity to whom the Shares may be or are transferred in accordance with clause 6.7(e);

**Proposed Transferee** means any person who wishes to acquire the Shares of a Proposing Transferor where a notice is given under clause 9.1 or clause 10.1;

**Proposing Transferor** means any person who:

- (a) gives a Transfer Notice under clause 6.2, or is deemed to have given a Transfer Notice pursuant to this Constitution;
- (b) is obliged to procure a tag along offer under clause 9.1; or
- (c) gives a ~~Selling Notice~~ drag along notice under clause 10.1;

**Comment [SS3]:** Amended for consistency with clause 10.1

**Related Company** has the same meaning as defined in subsections 2(3) ~~and 2(4)~~ of the Act;

**Comment [SS4]:** Subsection 2(4) of the Companies Act 1993 has been repealed.

~~**Reorganisation** means any consolidation or sub-division of any Shares;~~

**Comment [SS5]:** This term is not used in the original or the amended version of the constitution.

**Securities** means Shares or any security which can be converted to Shares;

**Shares** means all Ordinary Shares or other shares issued by the Company;

**Shareholders** means the holders of the Ordinary Shares or any other Shares issued by the Company;

**Share Scheme** means any share scheme of the Company;

**Special Resolution** means a:

- (a) written resolution approved by the Shareholders who together hold 75% or more of the Shares and not less than 50% of the Investor Shares (with voting rights attached to them which are exercisable); or
- (b) resolution approved by a majority of 75% of the votes, and not less than 50% of the votes of the holders of Investor Shares, of those Shareholders entitled to vote and voting on the resolution;

**Subscription and Shareholders' Agreement** means the Subscription and Shareholders' Agreement entered into between [*insert names of parties*] dated [*insert date*], as may be varied, supplemented or replaced from time to time (the intention being that this definition will refer to any agreement(s) between the Shareholders relating to the Company which exist at a relevant time and which contain provisions relevant to the usage of such definition in this Constitution);

and

~~**Substantial Sale** means the sale of (or the grant of a right to acquire or to dispose of) any of the Shares (in one transaction or as a series of transactions) which will result in the purchaser of such Shares (or grantee of such right) and its Associates together acquiring a Controlling Interest in the Company, or the sale or other disposal of the assets of the Company which constitutes a "major transaction" as that term is defined in section 129 of the Act; and~~

**Comment [SS6]:** This term is not used in the amended version of the constitution.

**Transfer Notice** means a notice in writing given under clause 6.2;

- 1.2 **Clauses and Schedules:** references to clauses and schedules are references to clauses of and schedules to this Constitution respectively;
- 1.3 **Companies Act:** words or expressions not defined in this Constitution have the same meaning as they have in the Act;
- 1.4 **Gender:** words importing one gender include the other gender;
- 1.5 **Headings:** headings are for ease of reference only and do not form any part of the context or to affect the interpretation of this Constitution;
- 1.6 **Persons:** references to persons include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, states or agencies of state, government departments and local and municipal authorities in each case whether or not having separate legal personality;
- 1.7 **Plural and Singular:** words importing the singular number include the plural and vice versa;

- 1.8 Schedules:** the schedules to this Constitution and the provisions and conditions contained in those schedules have the same effect as if set out in the body of this Constitution;
- 1.9 Statutes and Regulations:** references to a statute include references to regulations, orders or notices made under or pursuant to such statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to or incorporating any of its provisions; and

## 2. COMPANIES ACT

---

The provisions of the Act are negated, modified, adopted and extended as provided in this Constitution.

## 3. RIGHTS ATTACHING TO CLASSES OF SHARES

---

Save as expressly provided in this Constitution, in the Subscription and Shareholders' Agreement, or as otherwise required by law, all Shares will rank pari passu in all respects.

## 4. CALLS ON SHARES

---

- 4.1 Board May Make Calls:** The board may from time to time make such calls as it thinks fit upon the Shareholders in respect of any amount unpaid on their Shares and which is not, by the conditions of issue, made payable at a fixed time or times, and each Shareholder will, subject to receiving at least 14 days' written notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called. A call may be revoked or postponed as the board may determine.
- 4.2 Timing of Calls:** A call may be made payable at such times and in such amount as the board may determine.
- 4.3 Liability of Joint Holders:** The joint holders of a Share will be jointly and severally liable to pay all calls in respect thereof.
- 4.4 Interest:** If an amount called in respect of a Share is not paid before or on the time appointed for payment thereof, the persons from whom the amount is due will pay interest on that amount from the time appointed for payment thereof to the time of actual payment at such rate not exceeding 10% per annum as the board may determine, but the board may be at liberty to waive payment of that interest wholly or in part.
- 4.5 Instalments:** Any amount which by the terms of issue of a Share becomes payable on issue or at any fixed time will for all purposes be deemed to be a call duly made and payable at the time at which by the terms of issue the same becomes payable and, in case of non-payment, all the relevant provisions of this Constitution relating to payment of interest and expenses, forfeiture, or otherwise will apply as if the amount had become payable by virtue of a call duly made and notified.

- 4.6 **Differentiation as to Amounts:** The board may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

## 5. FORFEITURE OF SHARES

---

- 5.1 **Notice of Default:** If any person fails to pay any call or any instalment of a call for which such person is liable at the time appointed for payment, the board may at any time thereafter serve notice on such person requiring payment of the amount unpaid together with any interest which may have accrued.
- 5.2 **Final Payment Date:** The notice will name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made, and will state that, in the event of non-payment on or before the time appointed, the Shares in respect of which the amount was owing will be liable to be forfeited.
- 5.3 **Forfeiture:** If the requirements of any such notice are not complied with, any Share in respect of which the notice has been given may be forfeited, at any time before the required payment has been made, by a resolution of the board to that effect. Such forfeiture will include all dividends and bonuses declared in respect of the forfeited Share and not actually paid before the forfeiture.
- 5.4 **Sale of Forfeited Shares:** A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the board in its sole discretion thinks fit and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the board thinks fit. If any forfeited Share will be sold within 12 months of the date of forfeiture, the residue, if any, of the proceeds of sale after payment of all costs and expenses of such sale or any attempted sale and all amounts owing in respect of the forfeited Share and interest thereon will be paid to the persons whose share has been forfeited.
- 5.5 **Cessation of Shareholding:** A person whose Share has been forfeited will cease to be a Shareholder in respect of the forfeited Share, but will, nevertheless, remain liable to pay to the Company all amounts which, at the time of forfeiture, were payable by such person to the Company in respect of the Share, but that liability will cease if and when the Company receives payment in full of all such amounts.
- 5.6 **Evidence of Forfeiture:** A statutory declaration in writing declaring 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 will be conclusive evidence of such facts as against all persons claiming to be entitled to the Share.
- 5.7 **Validity of Sale:** The Company may receive the consideration, if any, given for a forfeited 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 such person will then be registered as the holder of the Share and will not be bound to see to the application of the purchase money, if any, nor will such person's 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.

## 6. TRANSFER OF SHARES

---

- 6.1 **Pre-emptive Provision:** Save for transfers exempted pursuant to clause 6.7 no Share in the Company will be sold or transferred by any Shareholder unless and

until the rights of pre-emption conferred in this clause 6 have been exhausted. Any contract to sell Shares entered into before these rights are exhausted must be conditional on those rights being exhausted.

**6.2 Obligation to Give a Transfer Notice:** Every Shareholder who wishes to sell or transfer any Shares (other than as permitted by clause 6.7) will give notice in writing to the Company specifying the price at which the Proposing Transferor is prepared to sell its Shares. Such notice will have the effect of constituting the Company as the Proposing Transferor's agent for the sale of the Shares in accordance with this clause 6. If a Transfer Notice includes several Shares it will not operate as if it were a separate notice in respect of each Share and the Proposing Transferor will be under no obligation to sell or transfer part only of the Shares specified in the notice. No such notice may be revoked by a Proposing Transferor except with the consent of the board.

**6.3 Offer to Shareholders:** A Transfer Notice must be dealt with as follows:

- (a) Notice to Shareholders:** Upon receipt of the Transfer Notice the Company must promptly give written notice to all Shareholders other than the Proposing Transferor offering the Shares specified in the Transfer Notice in accordance with the provisions of this clause.
- (b) Form of Offers:** An offer pursuant to clause 6.3(a) must be made by written notice to each of the relevant Shareholders, in proportion to their existing holdings in the Company, without taking into account any Shares held by the Proposing Transferor. The notice must state:

  - (i)** the number of Shares to which the offeree is entitled;
  - (ii)** the price specified in the Transfer Notice at which the Proposing Transferor is prepared to sell the Shares;
  - (iii)** the time (not being less than 14 days nor more than 28 days) within which the offer, if not accepted, will be deemed to be declined; and
  - (iv)** that if the offeree wishes to purchase Shares in excess of the offeree's entitlement the offeree must, when accepting the offer, state the number of excess Shares which the offeree wishes to purchase.
- (c) Claims in Excess:** If any of the offerees do not claim their full entitlement the unclaimed Shares must be used for satisfying the requests for excess Shares. If there are insufficient unclaimed Shares to satisfy such requests, the unclaimed Shares must be divided among those offerees who request excess Shares, in proportion to their existing shareholdings in the Company (provided that no Shareholder will be allocated more excess Shares than the number which that Shareholder has requested) and Shares remaining unallocated after such proportional division (or any subsequent division) will be used to satisfy the requests for excess Shares which remain unsatisfied, in proportion to the existing shareholdings in the Company of the relevant offerees.
- (d) Other Persons:** If any Shares specified in the Transfer Notice remain unaccepted after the procedures set out in the preceding clauses have been followed (**Unallocated Shares**) the Company may for a further period of 28 days offer those Unallocated Shares to any third person

approved by the board (**Other Persons**) at a price not lower than the price specified in the Transfer Notice and on terms no more favourable to the purchaser than those offered to the Shareholders.

**6.4 Obligation to Transfer:** If, within the time periods specified in clause 6.3 after receipt of a Transfer Notice, the Company has received acceptances pursuant to clause 6.3 for all of the Shares specified in the Transfer Notice, the board must promptly give notice of that fact to the Proposing Transferor and to the Shareholders and any Other Persons who were allocated Shares (**Transferees**), such notification to also specify the number of Shares allocated to each Transferee and the date (not being more than 21 days after the Company has received acceptance notices pursuant to clause 6.3 for all of the Shares specified in the Transfer Notice) when settlement will occur (**Settlement Transfer Date**). On the Settlement Transfer Date:

- (a) **Payments:** each Transferee will pay to the Proposing Transferor the price of the Shares which that Transferee has agreed to purchase at the price per Share specified in the Transfer Notice;
- (b) **Proposing Transferor Bound to Sell:** the Proposing Transferor will be bound to transfer the Shares specified in the Transfer Notice to each Transferee upon payment of the total purchase price for those Shares, subject to deduction in payment to the Company of any amount which the Proposing Transferor owes to the Company; and
- (c) **Transfers to be Registered:** subject only to the restrictions contained in clause 7, the board will register all such transfers.

If, within the time period specified in clause 6.3(b) after receipt of a Transfer Notice, the Company has not received acceptances pursuant to clause 6.3 for all of the Shares specified in the Transfer Notice, the Proposing Transferor is not bound to sell any of the Shares specified in the Transfer Notice to the Shareholders or any Other Persons, and clause 6.6 will apply.

**6.5 Board May Effect Transfer:** If a Proposing Transferor defaults in transferring any Shares specified in a Transfer Notice in accordance with clause 6.4 the Company may execute a transfer of the Shares on behalf of the Proposing Transferor. Subject to deduction of any amount in respect of which the Company has a lien over the Shares, the Company will hold the purchase price in trust for the Proposing Transferor. The receipt of the Company will constitute a valid discharge for the purchase price and no question will be raised as to the title of a Transferee after entry of the name of the Transferee or other person in the share register as the holder of the relevant Shares.

**6.6 Transferor May Sell to Non-Shareholders:** If, within the time periods specified in clause 6.3 after receipt of a Transfer Notice, the Company has not received acceptances pursuant to clause 6.3 for all of the Shares specified in the Transfer Notice, the Proposing Transferor may (subject to clause 7), within the following three months thereafter, sell or transfer all of the Shares specified in the Transfer Notice to any person(s) at a price not lower than the price specified in the Transfer Notice and on terms no more favourable to the purchaser than those offered to the other Shareholders.

**6.7 Exempted Transfers:** The provisions of this clause 6 will not apply to any transfer of Shares by a Shareholder:

- (a) **Shareholder Approved Transfers:** to any person if the transfer is approved by Special Resolution~~all the Shareholders consent in writing to the transfer;~~
- (b) **Acquisition of Company's Own Shares:** to the Company, if made in accordance with this Constitution, the Subscription and Shareholders' Agreement and the Act;
- ~~(c)~~ **Drag Along:** to any person where all of the Shareholders are "dragged" in accordance with clause 10; ~~or~~
- ~~(e)~~(d) **Tag Along:** to a Proposed Transferee in accordance with the "tag along" provisions in clause 9; or
- ~~(d)~~(e) **Permitted Transferees:** to any of the following persons:
- (i) **Group Of Companies:** if the Shareholder is a company, to any Related Company;
- (ii) **Beneficial Owner:** ~~subject to clause 7.2,~~ to a person who is the beneficial owner of such Shares or (in the case of the legal title only) to a different or additional nominee(s) or trustee(s) on behalf of such beneficial owner; or
- (iii) **Direct Relation:** if the Shareholder is an individual, to a Direct Relation.

**Comment [SS7]:** It can be inflexible if a waiver is required from every small shareholder of the company.

**Comment [SS8]:** Where the *tag along* provisions of clause 9 apply, any shareholder should be able to *tag along* without having to first offer their shares to the remaining shareholders.

6.8 **[Change of Control:** *Where a company is a Shareholder (whether solely or jointly with others) and its Shares in the Company comprise the majority of its assets then, save in respect of a transfer to a Permitted Transferee, a transfer of a Controlling Interest in that company (whether by one or by a series of transactions completed after the date at which that company was first entered in the share register as a member of the Company) will constitute a deemed transfer and that company will be required to give the board a Transfer Notice at the effective indirect consideration paid (or to be paid) for that company's Shares, or, if that cannot be readily assessed and evidenced to the board's satisfaction, the board may substitute "fair value" for the Shares as assessed by a suitably qualified independent valuer appointed by the board.]*

## 7. REFUSAL TO REGISTER TRANSFERS

- 7.1 **Transfer Restrictions:** Subject to compliance with the provisions of section 84 of the Act, the board will refuse or delay the registration of any transfer of any Share to any person, whether an existing Shareholder or not:
- (a) **Required by Law:** if so required by law;
- (b) **Imposition of Liability:** if registration would impose on the transferee a liability to the Company and the transferee has not signed the transfer;
- (c) **Failure to Pay:** if a holder of any such Share has failed to pay when due any amount payable in respect of that Share to the Company;
- (d) **Infant or Unsound Mind:** if the transferee is an infant or a person of unsound mind;

- (e) **Proof of Ownership:** if the transfer is not accompanied by such proof as the board reasonably requires of the right of the transferor to make the transfer;
- (f) **Transfer Provisions:** if the pre-emptive provisions contained in clause 6 or tag along provisions in clause 9 have not been complied with;
- (g) **Comply with Terms:** if the terms of the Subscription and Shareholders' Agreement or this Constitution have not been complied with in relation to the proposed transfer; or
- ~~(h) **Substantial Sale:** if the transfer relates to a Substantial Sale which has not been approved by the holders of a majority of the Shares;~~
- ~~(i)(h) **Takeovers Code:** if the transfer would result in the Company becoming a "code company" as defined in the Takeovers Code Approval Order 2000 or having more than 45 share parcels.~~

**Comment [SS9]:** The inclusion of this sub-clause appears to be an error and it should be removed. By definition any *substantial sale* will already have been approved by at least a majority of shareholders.

~~7.2 **Nominee Transfers:** The board may at its discretion refuse to register any transfer of any Share from a Shareholder which holds that share on trust (as transferor) to the beneficial owner of that Share (as transferee).~~

**Comment [SS10]:** We are not certain what the purpose of this clause is. It is contrary to the intent of clause 6.7(e)(ii) and any Takeovers Code implications related to an increase in the number of shareholders is addressed by clause 7.1(h).

**8. NEW ISSUES OF SECURITIES**

**8.1 Section 45:** Section 45 of the Act will not apply to the Company.

~~8.2 **Alteration of Shareholder rights:** The issue of additional Shares ranking equally with, or in priority to, existing Shares, whether as to voting rights or distributions, is deemed not to be an action affecting the rights attached to the existing Shares.~~

~~8.2~~ **8.3 Pre-emptive Rights on Issue of New Securities:**

- (a) **Notice:** ~~Subject to clauses Error! Reference source not found. and 8.5.~~ Unless the relevant issue is permitted by the Subscription and Shareholders' Agreement (including any Share Scheme contemplated by that agreement) or a Special Resolution resolves otherwise, any new Securities will be offered to the ~~existing Shareholders~~ holders of the ~~Shares~~ Securities in proportion to the number of existing ~~Shares~~ Securities (of any class) held by them. Each such offer will be in writing and will state:
  - (i) **Number:** the number ~~and class~~ of Securities offered to the Shareholder;
  - (ii) **Terms of Issue:** the consideration for which, and other terms on which, the Securities are offered;
  - (iii) **Time:** the time (not being less than 14 days nor more than 28 days) within which the offer, if not accepted, will be deemed to be declined; and
  - (iv) **Excess:** that a Shareholder may, in accepting the offer, request that an additional number of Securities remaining unaccepted after the offer be allocated to such Shareholder.

**Comment [SS11]:** Amended for consistency with the language used in the rest of the constitution.

**Comment [SS12]:** This is an important change. As currently drafted the pre-emptive rights would apply in favour of shareholders and any option holders. Pre-emptive rights should be limited to existing shareholders only.

*[It may be a term of any offer made pursuant to this clause that each Shareholder accepting such offer must provide evidence reasonably satisfactory to the Company that it is a "wholesale Investor" within the meaning of clause 3 of schedule 1 to the Financial Markets Conduct Act 2013 or are otherwise able to accept such offer without triggering a requirement for the Company to issue a ~~prospectus, investment statement, product disclosure statement, public disclosure statement or similar document~~ in order to comply with the requirements for offers of securities to the public contained in ~~the Securities Act 1978 or the Financial Markets Conduct Act 2013 or any replacement legislation~~. For the avoidance of doubt, any offer which includes this term will satisfy the preemptive requirements in this clause notwithstanding that some Shareholders may not be eligible to accept such offer.]*

- (b) **Securities Not Accepted:** New Securities offered to Shareholders pursuant to clause 8.3(a) ~~8.2(a)~~ and not accepted will be used for satisfying requests for allocations under clause 8.3(a)(iv) ~~8.2(a)(iv)~~. If there are insufficient unaccepted Securities to satisfy such requests, the unclaimed Securities must be divided among those Shareholders who request excess Securities, in proportion to their existing shareholdings in the Company, provided that no Shareholder will be allocated more excess Securities than the number which that Shareholder has requested and Securities remaining unallocated after such proportional division (or any subsequent division) will be used to satisfy the requests for excess Securities which remain unsatisfied, in proportion to the existing shareholdings of the relevant Shareholders.
- (c) **Residual Shares:** Securities remaining unallocated after compliance with clauses 8.3(a) ~~8.2(a)~~ and 8.3(b) ~~8.2(b)~~ may, at any time within 4 months of the date the Securities are offered to Shareholders under clause 8.3(a), be disposed of by the board in such manner as it thinks most beneficial to the Company and may be offered to any person or persons the board is prepared to register as a Shareholder provided that the consideration for and other financial terms of such issue and the rights attaching to those Securities will not be more favourable to such person or persons than those offered to the Shareholders under clause 8.3(a) ~~8.2(a)~~ (it being acknowledged however that the board may choose to offer any warranties, undertakings or other conditions to new Shareholders which the board regards as being within the bounds of such provisions typically sought by new investors and which do not alter the financial terms of issue or the rights attaching to the Securities, without such provisions being construed as "more favourable" terms).

~~8.3~~**8.4 Section 107(2) Issue:** Nothing in clauses 8.3(a) and 8.3(b) applies to any issue of Securities made with the agreement or concurrence of all entitled persons as provided in section 107(2) of the Act.

~~8.4~~**8.5 Consolidation:** Subject to the Subscription and Shareholders' Agreement ~~and the prior approval of the Shareholders by ordinary resolution~~, the board may:

- (a) **Consolidation:** consolidate and divide all or any of the existing Securities in the Company; and
- ~~(b)~~ **Subdivision:** subdivide all or any of the existing Securities in the Company.

**Comment [SS13]:** The pro rata consolidation or subdivision of a company's share capital does not affect any of the shareholder's rights or ownership percentage. Requiring the consent of shareholders for a consolidation or subdivision is an unnecessary administrative burden on the company.

and nothing in clause 8.3 applies to any such consolidation or subdivision.

**9. TAG ALONG**

**9.1 Material Acquisitions of Shares:** If a Shareholder (or group of Shareholders) proposes a transfer of Shares (having exhausted the pre-emptive rights pursuant to clause 6) and which, together with any related transactions, would constitute a ~~Substantial Sale~~ ~~or~~ a sale of ~~20%~~ or more of the Shares, the Proposing Transferor must first give notice in writing to the remaining Shareholders of their intention to sell their Shares, before making the proposed transfer (**Proposed Transfer**) and procure the Proposed Transferee to make a legally binding offer to the remaining Shareholders to acquire ~~all of their Shares (or~~ a pro rata proportion equivalent to the proportion of Shares being purchased from the Proposing Sellers) on the same terms.

**Comment [SS14]:** This is usually set at a higher percentage, most commonly 50%.

**9.2 Period of Offer:** The offer referred to in clause 9.1 must be expressed to be capable of acceptance for a period of not less than 14 days and if it is accepted by any Shareholder (**Accepting Shareholder**) within that period, the completion of the Proposed Transfer will be conditional upon the Proposed Transferee tendering completion of the purchase of all of the Shares held by each Accepting Shareholder.

**10. DRAG ALONG**

**10.1 Offer to Purchase:** If the holder(s) of ~~a majority~~ ~~60%~~ ~~75%~~ or ~~more~~ of the Shares ~~including at least 50% of the Investor Shares~~ ~~all of the Investor Shares~~ propose to sell all of their Shares to a proposed third party purchaser (or purchasers acting in concert) who has made a bona fide legally binding cash offer on arm's length terms ~~for all of the issued Shares conditional only on achieving sufficient acceptances~~ (**Offer**), the Proposing Transferor(s) will have the right to give to the Company written notice, requiring the Company to drag the other Shareholders. That notice (**Selling Notice**) will include details of the price offered for each Share, details of the Proposed Transferee and the place and time for completion (**Completion**) of the Offer (being the same terms in all respects offered to the Proposing Transferor(s) for their Shares).

**Comment [SS15]:** This is usually set at a higher percentage, most commonly 75%.

**Comment [SS16]:** It is critically important that these words are deleted, otherwise:  
▲ the investors cannot be dragged without their agreement  
▲ the investors (on their own) can drag the other shareholders and force them to sell their shares in the company without their consent.

**10.2 Drag Along Notice:** Immediately upon receipt of the Selling Notice, the Company will give notice in writing (**Drag Along Notice**) to each of the Shareholders (other than the Proposing Transferor(s)) giving the details contained in the Selling Notice and requiring each of them to sell to the Proposed Transferee at Completion all of their holdings of Shares on the terms contained in the Drag Along Notice subject to the provisions set out below.

**10.3 Compulsory Sale:** Each Shareholder who is given a Drag Along Notice will sell all of their Shares referred to in the Drag Along Notice (contemporaneously with the Proposing Transferor(s)) on the terms set out in the Drag Along Notice. However, in no circumstances will any such Shareholder be required to provide any warranties or indemnities to the Proposed Transferee except in respect of title, capacity and authority to sell all of their Shares pursuant to the Drag Along Notice.

**10.4 Company May Complete:** If any Shareholder fails to comply with clause 10.3, the Company will be constituted the agent of that Shareholder for the sale of the respective Shares in accordance with the Drag Along Notice and the board may authorise any person to execute and deliver on behalf of, and as attorney for, each defaulting Shareholder the necessary instrument(s) of transfer. The

Company's receipt of the purchase price will be good discharge to the Proposed Transferee and the Company will be solely responsible to account to the defaulting Shareholders.

## 11. ACQUISITION OF COMPANY'S OWN SHARES

---

- 11.1 Acquire Own Shares Subject to Shareholder Approval:** For the purposes of sections 59 and 60(1)(b)(ii) of the Act, the Company is expressly authorised to purchase or otherwise acquire Shares issued by it provided that no such purchase or other acquisition will be made, other than under section 107 or sections 110 to 112 of the Act, without the approval of a Special Resolution of Shareholders.
- 11.2 Authority to Hold Own Shares:** Subject to any restrictions or conditions imposed by law the Company is expressly authorised to hold Shares acquired by it pursuant to section 59 or section 112 of the Act. All the provisions of this Constitution relating to the issue of Shares including, without limitation, clause 840 will apply to a transfer by the Company of a Share held in itself (as if the transfer were an issue of the Share).

## 12. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

---

- 12.1 Governing Provisions:** The provisions of the first schedule of this Constitution govern proceedings at meetings of Shareholders. In the event of any inconsistency between the first schedule of this Constitution and the first schedule to the Act, the first schedule of this Constitution will prevail and the first schedule to the Act will be deemed to be amended accordingly.
- 12.2 Resolutions in Lieu of Meeting:** A Shareholders' resolution in writing under section 122 of the Act may consist of one or more documents in similar form (including letters, telegrams, cables, email or other similar means of communication) each signed or assented to by or on behalf of one or more of the Shareholders.

## 13. BOARD

---

The provisions of the Subscription and Shareholders' Agreement and the second schedule to this Constitution govern appointment of directors and proceedings of the board. The provisions of the third schedule to the Act will not apply to the Company.

## 14. INDEMNITIES AND INSURANCE

---

The Company is expressly authorised to indemnify and/or insure any director or employee against liability for acts or omissions and/or costs incurred in connection with claims relating thereto of the type specifically contemplated by sub-sections (3), (4) and (5) of section 162 of the Act to the maximum extent permitted by those sub-sections.

## 15. NOTICES

---

- 15.1 Service:** A notice may be served by the Company upon any director or Shareholder either personally or by posting it by fast post in a prepaid envelope or package addressed to such director or Shareholder at such person's last known address or by email to the email address of such director or Shareholder.

**15.2 Service by Email:** Any notice transmitted by email:

- (a) will be deemed to be received on the Business Day on which it arrives in the recipient's information system; or
- (b) if received in the recipient's information system after 5.00pm on a Business Day, or at any time on a non Business Day, will be deemed to be received at 9.00am on the next Business Day,

being, in each case, the time of day at the intended place of receipt of that notice. If there is any dispute as to whether an email has been received, the email shall only be deemed to have been received ~~if at the time that~~ the party giving notice produces a printed copy of the email which evidences that the email was sent to the correct email address of the party given notice.

**15.3 Time of Service by Post:** A notice sent by post will be deemed to have been served:

- (a) **In New Zealand:** in the case of a person whose last known address is in New Zealand, at the expiration of 48 hours after the envelope or package containing the same was duly posted or delivered in New Zealand; and
- (b) **Outside New Zealand:** in the case of a person whose last known address is outside New Zealand, at the expiration of seven days after the envelope or wrapper containing the same was duly posted by fast post in New Zealand.

**15.4 Proof of Service:** In proving service by post, it will be sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid.**15.5 Service on 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 first named in the share register in respect of the Share.**15.6 Service on Representatives:** A notice may be given by the Company to the person or persons entitled to a Share in consequence of the death or bankruptcy of a Shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address, if any, within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such an address has been so supplied), by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.**16. LIQUIDATION****16.1 Distribution of Surplus Assets:** Subject to the terms of issue of any Shares in the Company and to clause 16.2, upon the liquidation of the Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding-up (**Surplus Assets**) will be distributed among the Shareholders on a pro-rata basis, provided however that the holders of Shares not fully paid up will only receive a proportionate share of their entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares.

- 16.2 Distribution In Specie:** Upon a liquidation of the Company, the liquidator, with the sanction of an ordinary resolution and any other sanction required by law, may divide amongst the Shareholders in kind the whole or any part of the Surplus Assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any property to be divided and may determine how the division will be carried out as between the Shareholders. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit, but so that no Shareholder will be compelled to accept any shares or other securities to which any liability attaches.

**FIRST SCHEDULE  
PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

**Comment [SS17]:** The amendments to this Schedule have been made to ensure compliance with Schedule 1 of the Companies Act 1993, which governs proceedings at meetings of shareholders.

**1. CHAIRPERSON**

---

- 1.1 Chairperson of Board to Chair Meetings:** If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of Shareholders, he or she must chair the meeting.
- 1.2 Election if No Chairperson:** If no chairperson of the board has been elected, or if at any meeting of Shareholders the chairperson of the board is not present within 15 minutes of the time appointed for the commencement of the meeting, the directors present will elect one of their number to be chairperson of the meeting. If at any meeting no director is willing to act as chairperson, or if no director is present within 15 minutes of the time appointed for holding the meeting, the Shareholders present will choose one of their number to be chairperson of the meeting.

**2. NOTICE OF MEETINGS**

---

- 2.1 Notice to be Given:** 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 Contents of Notices:** The notice must state:
- (a) Nature of Business:** the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgement in relation to it; ~~and~~
  - (b) Text of Special Resolutions:** the text of any Special Resolution to be submitted to the meeting; ~~:-~~
  - (c) Text of Opt Out Resolutions:** the text of any resolution for the purposes of section 207I or 207J of the Act to be submitted to the meeting; and
  - (d) Minority Buy-Out Rights:** in the case of special resolutions required by section 106(1)(a) or (b) of the Act, the right of a Shareholder under section 110 of the Act.
- 2.3 Waiver of Irregularities:** 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 Accidental Omissions:** 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 Adjournments:** The chairperson may, and if so directed by the meeting will, adjourn the meeting from time to time and from place to place, but no business

will 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 will be given as in the case of an original meeting. Save as aforesaid, it will not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### 3. METHODS OF HOLDING MEETINGS

---

A meeting of Shareholders may be held either:

- 3.1 Physical Meeting:** by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; ~~or~~
- 3.2 Other Means:** by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting; ~~or-~~
- ~~3.2~~**3.3 Combination of Means:** by a combination of both of the methods described in clauses 3.1 and 3.2 of this schedule.

### 4. QUORUM

---

- 4.1 No Business Without Quorum:** Subject to clause 4.3 of this schedule, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 4.2 Quorum of Shareholders:** A quorum for a meeting of Shareholders is present if Shareholders or their proxies are present who between them hold more than 50% of the Shares, including at least 50% of the Investor Shares.
- 4.3 Proceedings in Absence of Quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) Meeting Dissolved: in the case of a meeting called under section 121(b) of the Act, the meeting is dissolved; and
- (b) Meeting Adjourned: in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the directors may appoint, and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.
- ~~4.2 Proceedings in Absence of Quorum:~~ ~~If a quorum is not present within 20 minutes after the time appointed for the meeting the meeting is adjourned to the following working day at the same time and place, or to such other date, time, and place as the directors present (or otherwise by board resolution) may determine, and if, at the adjourned meeting, a quorum comprising the Investors is not present within 20 minutes after the time appointed for the meeting, the Shareholders present will constitute a quorum.~~

**4.4 Participation by Electronic Communication:** ~~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 Methods of Voting - Physical Meeting:** In the case of a meeting of Shareholders held under clause 3.1 of this schedule, unless a poll is demanded, voting at the meeting will be by whichever of the following methods is determined by the chairperson of the meeting:

- (a) **Voice:** voting by voice; or
- (b) **Show of Hands:** voting by show of hands.

**5.2 Methods of Voting - Other Meetings:** In the case of a meeting of Shareholders held under clause 3.2 ~~or clause 3.3~~ of this schedule, unless a poll is demanded, voting at the meeting will be by ~~any method permitted by the chairperson of the meeting~~ ~~the Shareholders signifying individually their assent or dissent by voice.~~

~~**5.3 Number of Votes on Voice or Show of Hands:** Subject to any rights or restrictions for the time being attached to any class of Shares, every Shareholder present in person or by proxy and voting by voice or on a show of hands will have one vote.~~

**5.3 Chairperson's Declaration:** 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~~ ~~5.5~~ of this schedule.

**5.4 Demand for Poll:** At a meeting of Shareholders a poll may be demanded by:

- (a) ~~Five~~ ~~Two~~ **Shareholders:** not less than ~~five~~ ~~two~~ Shareholders having the right to vote at the meeting;
- (b) **10% of Voting Rights:** 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;
- (c) **10% of Amount Paid Up:** by a Shareholder or Shareholders holding Shares 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) **Chairperson:** the chairperson of the meeting.

**5.5 Timing of Demand:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

**5.6 Number of Votes on Poll:** If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy and voting.

**5.7 No Casting Vote:** The chairperson is not entitled to a casting vote.

**5.8 Effect of Proxy:** For the purposes of ~~this~~ clause ~~5.5~~, the instrument appointing a proxy to vote at a meeting of the Shareholders 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.

**5.9 Chairperson to Direct Manner of Poll:** Except as provided in clause ~~5.10~~~~5.11~~ of this schedule if a poll is demanded it will be taken in such manner as the chairperson directs, and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

**5.10 Timing of Poll:** A poll demanded on the election of a chairperson or on a question of adjournment will be taken immediately. A poll demanded on any other question will be taken at such time and place as the chairperson of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

## 6. PROXIES

---

**6.1 Proxy May Be Appointed:** A Shareholder may exercise the right to vote either by being present in person or by proxy.

**6.2 Rights of Proxy:** 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 Method of Appointment:** 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 not exceeding 12 months.

**6.4 Multiple Proxies:** A Shareholder may appoint more than 1 proxy for a particular meeting, provided that more than 1 proxy is not appointed to exercise the rights attached to a particular Share held by the Shareholder.

~~6.3~~**6.5 Notice of Appointment to be Produced:** No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

~~6.4~~**6.6 Specified Time for Production of Proxy:** The instrument appointing a proxy and a power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority will be deposited at the registered office of the Company or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default, the instrument of proxy will be treated as invalid.

~~6.5~~**6.7 Proxy Form With Notice of Meeting:** A proxy form will be sent with each notice calling a meeting of the Company.

~~6.6~~**6.8 Form of Proxy:** An instrument appointing a proxy will be in the following form or a form as near thereto as circumstances admit:

[ ] LIMITED

**INSTRUMENT APPOINTING A PROXY**

I/We  
of

being a Shareholder of [ ] Limited hereby  
appoint  
(print name of proxy) of  
or failing him/her of  
as my/our proxy to vote for me/us on my/our behalf at the  
[.....the Annual] [Special] Meeting of the Company to be held at  
on commencing  
at [am/pm] [or all meetings of the Company  
held within twelve months of the date hereof] and at any  
adjournment of any such meeting.

Signed this day of  
(Usual signature/s)"

**6.7.6.9 Form of Proxy With Voting Directions:** Where it is desired to afford Shareholders an opportunity of voting for or against a resolution, the instrument appointing a proxy will be in the following form or a form as near thereto as circumstances admit:

[ ] LIMITED

**INSTRUMENT APPOINTING A PROXY**

I/We  
of

being a Shareholder of [ ] Limited hereby appoint  
(print name of proxy) of  
or failing him/her of  
as my/our proxy to vote for me/us on my/our behalf at the  
[.....the Annual] [Special] Meeting of the Company to be held  
at on commencing  
at [am/pm] and at any adjournment thereof.

I/We direct my/our proxy to vote in the following manner

**Vote with a Tick**

Resolutions	For	Against
1. _____		
2. _____		

Signed this day of  
(Usual signature/s)"

**6.8 6.10 Validity of Proxy Votes:** A vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or revocation 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 at which the proxy is used.

## 7. NO POSTAL VOTING

---

Section 7 of the first schedule to the Act, providing for postal votes, will not apply to the Company.

## 8. MINUTES

---

**8.1 Minutes to be Kept:** The board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

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

## 9. SHAREHOLDER PROPOSALS

---

**9.1 Notice of Proposal:** 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 Circulation of Proposals at Company's Expense:** 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 Circulation of Proposals at Shareholder's Expense:** 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 ~~may require the Shareholder to meet the expense of circulating that proposal as a condition of circulation, and if notice is received less than 5 working days before notice of the meeting must be given, the board may only be required to circulate the proposal if it is practical to do so.~~

**9.4 Circulation of Proposals if Practicable:** 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.

**9.19.5 Statement in Support:** If the directors intend that Shareholders may vote on the proposal by proxy they must give the proposing Shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words

prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

**9.6 Excluded Statements:** The board is not required to include in or with the notice given by the board:

**(a) Defamatory Statement:** any part of a statement prepared by a Shareholder which the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or

~~(a)~~ **(b) Defamatory Resolution:** any part of a proposal or resolution prepared by a Shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious.

~~9.2~~ **9.7 Deposit of Circulation Costs:** 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.

## 11. VOTES OF JOINT HOLDERS

---

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

## 12. LOSS OF VOTING RIGHT 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 Shareholders' meeting other than a meeting of an interest group.

## 13. OTHER PROCEEDINGS

---

Except as provided in this schedule, and subject to this Constitution, a meeting of Shareholders may regulate its own procedures.

## 14. SHAREHOLDER PARTICIPATION BY ELECTRONIC MEANS

---

**14.1 Participation by Electronic Means:** For the purposes of this schedule, a Shareholder, or the Shareholder's proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if:

**(a) Board Approval:** the board approves those means; and

**(b) Conditions:** 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).

**14.2 Meaning of Participation:** To avoid doubt, participation in a meeting includes participation in any manner specified in this schedule or permitted by this Constitution.

**SECOND SCHEDULE  
PROCEEDINGS OF THE BOARD**

**1. REGULATION OF MEETINGS, QUORUM AND CONVENING**

---

- 1.1 Meetings As Directors See Fit:** The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 1.2 Quorum:** The quorum necessary for the transaction of business by the board will be as set out in clause 98 of the Subscription and Shareholders' Agreement.
- 1.3 Summoning Meetings:** A director may, and an employee at the request of a director will, at any time, summon a meeting of the board by notice to each of the directors given by any means of communication.

**2. VOTING**

---

At every meeting of the board each director will have one vote. Questions arising at any meeting of the board will be decided by a majority of votes.

**3. CHAIRPERSON**

---

The chairperson of directors will be appointed in accordance with the Subscription and Shareholders' Agreement. The chairperson will ~~not~~ have a casting vote.

**4. RESOLUTION IN WRITING**

---

A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the board will be as valid and effectual as if it had been passed at a meeting of the board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors. A signed resolution that is received by email in PDF or other document reproduction format will be as valid and effectual as the original signed document with effect from completion of its transmission.

**5. METHOD OF MEETING**

---

Subject to clause 1.2 of this schedule, a meeting of the board may be held either:

- 5.1 Physical Meeting:** by a number of the directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- 5.2 Other Means:** by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

**6. MINUTES**

---

The board will ensure that minutes are kept of all proceedings at meetings of the board.