

CONSTITUTION

- of -

AIR NEW ZEALAND LIMITED

This document is the Constitution of Air New Zealand Limited as adopted by the Company by Special Resolution on [25 September 2019].

Certified as the Constitution of the Company

Chairman

CONTENTS

1. **INTRODUCTION AND INTERPRETATION**
 - 1.1 Name of Company
 - 1.2 Trading Name
 - 1.3 Place of Incorporation
 - 1.4 Principal Place of Business
 - 1.5 Location of Head Office
 - 1.6 Definitions
 - 1.7 Meaning of “Interest”
 - 1.8 Meaning of “Associated Person”
 - 1.9 Construction
 - 1.10 Powers of Shareholders
 - 1.11 Crown and Kiwi Shareholder
 - 1.12 Confirmation of Office

2. **THE COMPANIES ACT AND NZX LISTING RULES**
 - 2.1 Companies Act
 - 2.2 Incorporation of NZX Listing Rules
 - 2.3 Compliance with NZX Listing Rules
 - 2.4 NZX Rulings
 - 2.5 Effect of Failure to Comply
 - 2.6 NZX Listing Rules Prevail

3. **RIGHTS AND LIMITATIONS ATTACHING TO SHARES AND EQUITY SECURITIES**
 - 3.1 Ordinary Shares
 - 3.2 Classes of Shares
 - 3.3 Limitation on Airline Ownership
 - 3.4 Limitation on Ownership by Non-New Zealand Nationals
 - 3.5 Kiwi Share
 - 3.6 Kiwi Shareholder Consent
 - 3.7 New Shares
 - 3.8 Issue of Prior or Equally Ranking Shares or Equity Securities

4. **ISSUE OF NEW EQUITY SECURITIES**
 - 4.1 Requirements for Issue
 - 4.2 Consolidation and Subdivision of Shares
 - 4.3 Bonus Issues

5. **BUYBACKS AND REDEMPTIONS OF EQUITY SECURITIES**

6. **CALLS ON SHARES**
 - 6.1 Board's Power
 - 6.2 Liability to Pay
 - 6.3 Differential Calls
 - 6.4 Instalments
 - 6.5 Time Call is Made
 - 6.6 Interest on Overdue Amounts
 - 6.7 Unpaid Instalments
 - 6.8 Calls in Advance
 - 6.9 Evidence
 - 6.10 Cancellation of Unpaid Amounts

- 7. **LIEN ON SHARES**
 - 7.1 Lien on Unpaid and Partly Paid Shares
 - 7.2 Power of Sale
 - 7.3 Absolute Title of Purchaser
 - 7.4 Application of Sale Proceeds

- 8. **FORFEITURE OF SHARES**
 - 8.1 Notice
 - 8.2 Forfeiture
 - 8.3 Sale of Forfeited Shares
 - 8.4 Application of Sale Proceeds
 - 8.5 Absolute Title of Purchaser
 - 8.6 Consequences of Forfeiture
 - 8.7 Evidence of Forfeiture

- 9. **TRANSFER OF SHARES**
 - 9.1 Transferor to Remain Holder Until Registration
 - 9.2 Right to Transfer
 - 9.3 Method of Transfer
 - 9.4 Forms of Transfer
 - 9.5 Power to Refuse to Register
 - 9.6 Transfers in Contravention of Clause 3.3 or 3.4
 - 9.7 Registration of Transfer shall not Affect Kiwi Shareholder
 - 9.8 Sale of Less than Minimum Holding
 - 9.9 Registration of Transfers
 - 9.10 Participation in Share Transfer Systems
 - 9.11 Power to Divide Share Register
 - 9.12 Transfer of Financial Products Other Than Shares

- 10. **POWERS OF BOARD AND KIWI SHAREHOLDER IN RELATION TO EQUITY SECURITIES**
 - 10.1 Nationality Declaration Required on Request
 - 10.2 Shareholder Disclosure Register
 - 10.3 Protection of Company and Constitution
 - 10.4 Registered Holders to Lodge Statutory Declaration
 - 10.5 Equity Securities Treated as Affected Equity Securities
 - 10.6 Intervening Act
 - 10.7 Notice of Affected Equity Securities to Registered Holder
 - 10.8 Determination as to Voting or Sale
 - 10.9 Holders of Affected Equity Securities Cannot Vote
 - 10.10 Disposal of Affected Equity Securities
 - 10.11 Identifying Affected Equity Securities
 - 10.12 Enquiries if Equity Securities are Affected Equity Securities
 - 10.13 Withdrawal or Amendment of Determination
 - 10.14 Absence of Notice Does Not Invalidate
 - 10.15 Decisions Final, Conclusive and Binding
 - 10.16 Certificate Conclusive

- 11. **TRANSMISSION OF SHARES**
 - 11.1 Transmission on Death of Shareholder
 - 11.2 Rights of Personal Representatives
 - 11.3 Joint Personal Representatives

- 12. **MEETINGS OF SHAREHOLDERS**
 - 12.1 Methods of Holding Meetings
 - 12.2 Meetings of Other Groups

- 13. **NOTICE OF MEETINGS OF SHAREHOLDERS**
 - 13.1 Written Notice
 - 13.2 Contents of Notice
 - 13.3 Proxy Form must be sent with Notice
 - 13.4 Irregularity in Notice
 - 13.5 Adjourned Meetings

- 14. **CHAIRPERSON OF MEETINGS OF SHAREHOLDERS**
 - 14.1 Chairperson of the Board to Act
 - 14.2 Other Chairperson
 - 14.3 Regulation of Procedure

- 15. **QUORUM FOR MEETINGS OF SHAREHOLDERS**
 - 15.1 Quorum Required
 - 15.2 Size of Quorum
 - 15.3 Lack of Quorum

- 16. **VOTING AT MEETINGS OF SHAREHOLDERS**
 - 16.1 Meetings in One Place
 - 16.2 Audio-Visual Meetings
 - 16.3 Voting by Electronic Means
 - 16.4 Postal Votes
 - 16.5 Number of Votes
 - 16.6 Declaration of Chairperson Conclusive
 - 16.7 Right to Demand Poll
 - 16.8 Time of Demand for Poll
 - 16.9 Timing of Poll
 - 16.10 Counting of Votes on Poll
 - 16.11 Auditor of Company to be Scrutineer
 - 16.12 Declaration of Poll Result
 - 16.13 Chairperson's Casting Vote
 - 16.14 Votes of Joint Holders
 - 16.15 Validity of Votes
 - 16.16 Shareholder Participation by Electronic Means

- 17. **VOTING RESTRICTIONS**
 - 17.1 Restriction
 - 17.2 Resolution or Proceeding not Void
 - 17.3 No Vote if Amounts Unpaid

- 18. **PROXIES AND CORPORATE REPRESENTATIVES**
 - 18.1 Proxies Permitted
 - 18.2 Form of Proxy
 - 18.3 Lodging Proxy
 - 18.4 Validity of Proxy Vote
 - 18.5 Corporate Representatives

- 19. **MINUTES OF SHAREHOLDER MEETINGS**

- 20. **SHAREHOLDER PROPOSALS**
 - 20.1 Notice to the Board
 - 20.2 Notice to Shareholders at Company's Expense
 - 20.3 Notice to Shareholders at Proposing Shareholder's Expense
 - 20.4 Late Notice
 - 20.5 Proposing Shareholder's Right to Give Written Statement
 - 20.6 Defamatory, Frivolous or Vexatious Statements
 - 20.7 Deposit of Costs by Proposing Shareholder

- 21. **ADJOURNED MEETINGS AND DISORDERLY MEETINGS**
 - 21.1 Chairperson's Discretion to Adjourn Meetings
 - 21.2 Direction to Adjourn
 - 21.3 Provisions Relating to Adjourned Meetings
 - 21.4 Adjournment of Disorderly Meetings
 - 21.5 Completion of Unfinished Business

- 22. **KIWI SHAREHOLDER APPROVAL FOR SALE OF MAIN UNDERTAKING**

- 23. **APPOINTMENT AND REMOVAL OF DIRECTORS**
 - 23.1 Number and Residence
 - 23.2 Majority of Board to be New Zealand Citizens
 - 23.3 Appointment of Directors
 - 23.4 Appointment and Removal by Ordinary Resolution
 - 23.5 Appointment by Board
 - 23.6 Rotation of Directors
 - 23.7 Vacation of Office
 - 23.8 Timing of Retirement and Appointment
 - 23.9 Election Procedures

- 24. **ALTERNATE DIRECTORS**
 - 24.1 Appointment
 - 24.2 Form of Appointment and Removal
 - 24.3 Rights of Alternate Director
 - 24.4 Remuneration and Expenses
 - 24.5 Cessation of Appointment

- 25. **PROCEEDINGS OF THE BOARD**
 - 25.1 Methods of Holding Meetings
 - 25.2 Convening of Meetings
 - 25.3 Contents of Notice
 - 25.4 Notice of Meetings
 - 25.5 Waiver of Irregularity
 - 25.6 Quorum
 - 25.7 Insufficient Number of Directors
 - 25.8 Chairperson
 - 25.9 Votes
 - 25.10 Resolutions in Writing
 - 25.11 Minutes
 - 25.12 Validity of Acts
 - 25.13 Interested Directors Must Not Vote
 - 25.14 Exception to Voting Prohibition
 - 25.15 Other Procedures

- 26. **DIRECTORS REMUNERATION**
 - 26.1 Fixing Remuneration
 - 26.2 Expenses
 - 26.3 Special Remuneration

- 27. **INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES**
 - 27.1 Indemnity for Directors
 - 27.2 Other Indemnities and Insurance
 - 27.3 Interpretation

- 28. **DIVIDENDS**
 - 28.1 Method of Payment
 - 28.2 Currency of Payment
 - 28.3 Deductions
 - 28.4 Entitlement Date
 - 28.5 Unclaimed Distributions

- 29. **NOTICES**
 - 29.1 Method of Service
 - 29.2 Joint Holders

- 30. **INSPECTION OF RECORDS**

- 31. **LIQUIDATION**
 - 31.1 Distribution of Surplus
 - 31.2 Distribution in Kind
 - 31.3 Trusts

- 32. **EXECUTION OF DEEDS**

CONSTITUTION
- of -
AIR NEW ZEALAND LIMITED

1 INTRODUCTION AND INTERPRETATION

1.1 **Name of Company:** The name of the Company shall not be changed from "Air New Zealand Limited" without the prior written consent of the Kiwi Shareholder which may be given on such terms and conditions as the Kiwi Shareholder thinks fit.

1.2 **Trading Name:** The trading name used by the Company in respect of its International Air Services shall include the words "Air New Zealand" unless the Kiwi Shareholder otherwise agrees (and any such agreement may be given on such terms and conditions as the Kiwi Shareholder thinks fit).

1.3 **Place of Incorporation:** The Company shall continue to be incorporated in New Zealand and registered on the New Zealand register kept pursuant to section 360(1)(a) of the Act.

1.4 **Principal Place of Business:** The Company's principal place of business in relation to each of its:

(a) New Zealand domestic airline services; and

(b) International Air Services,

shall be in New Zealand.

1.5 **Location of Head Office:** The location of the Head Office of the Company shall be in New Zealand.

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

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

"**Affected Equity Security**" means any Equity Security which is treated as such pursuant to clause 10.5 or clause 10.7;

"**Associated Person**" -

(a) in clause 3.3 and section 10, has the meaning specified in clause 1.8; and

(b) in every other clause, has the meaning specified in the NZX Listing Rules;

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

"Business Day" means a time between 8.30am and 5.30pm on a day on which NZX is open for trading;

"Class" means a class of Financial Products having identical rights, privileges, limitations and conditions and includes or excludes Financial Products which NZX in its discretion deems to be of or not of that Class (but NZX may not deem any Financial Products to be of the same Class as the Kiwi Share);

"Company" means Air New Zealand Limited;

"Constitution" means this Constitution, as altered from time to time;

"Convert" in respect of a Financial Product, means to:

(a) convert that Financial Product into, or exchange that Financial Product for, a Financial Product of a different sort, whether at the option of the holder, or of the Company, or otherwise; or

(b) subscribe for or obtain a Financial Product of a different sort,

pursuant to a right conferred by the first mentioned Financial Product;

"Conversion" and **"Convertible"** have corresponding meanings;

"Crown" means Her Majesty the Queen in right of New Zealand;

"Debt Security" has the meaning given in sections 8(1) and 8(5) of the FMC Act, subject to NZX's sole discretion to declare, by a Ruling, a Financial Product to be, or not to be, a Debt Security;

"Director" means a person appointed as a director of the Company;

"Distribution" has the meaning given in section 2(1) of the Act;

"Equity Security" has the meaning given in sections 8(2) and 8(5) of the FMC Act and also includes a Right, and includes an Ordinary Share, subject to NZX's sole discretion to declare, by way of a Ruling, a Financial Product to be, or not to be, an Equity Security but does not include the Kiwi Share (except that, unless the written consent of the Kiwi Shareholder has been obtained, any Ruling referred to in this definition shall not have effect, for the purposes of the use of this definition in any section or clause referred to in clause 3.5(b), or in any definition referred to in clause 3.5(b) insofar as the term so defined is used in the sections, clauses, and definitions referred to in clause 3.5(b));

"Financial Product" has the meaning given in the NZX Listing Rules;

"FMC Act" means the Financial Markets Conduct Act 2013;

"Head Office" means the place of business of the Company where central management and control is exercised;

"Independent Director" has the meaning given in the NZX Listing Rules;

"Interest", in relation to Equity Securities, has the meaning set out in clause 1.7;

"International Air Services", in relation to the Company, means the international air services operated by the Company under the Scheduled International Air Service Licence granted to it under the Civil Aviation Act 1990.

"Intervening Act" means the refusal, withholding, suspension or revocation of any Operating Right granted to, or enjoyed by, the Company or any Subsidiary of the Company, or the imposition of any conditions or limitations upon any such Operating Right which materially inhibit the exercise thereof, in either case by any state, authority or person in reliance upon any provision, or by reason of any matter or circumstance, relating to the nationality or residence of persons owning or controlling or having an interest (however described and whether direct or indirect) in the Company or an Interest in any of its Equity Securities, where that refusal, withholding, suspension or revocation or that imposition of conditions or limitations has or might be reasonably expected to have a materially adverse effect on the operations or a significant part of the operations of the Company or of the Company and its Subsidiaries taken as a whole;

"Kiwi Share" means the convertible preference share referred to in clause 3.2 which has the rights specified in clause 3.5;

"Kiwi Shareholder" means Her Majesty the Queen in right of New Zealand;

"Listed", **"List"** and **"Listing"** have the meanings given in the NZX Listing Rules;

"Minimum Holding" has the meaning given in the NZX Listing Rules;

"Minister" means a member of the Executive Council of New Zealand for the time being holding the office of a Minister and includes any member of the Executive Council of New Zealand acting on such member's behalf;

"New Zealand Business" means:

- (a) A person exempted from the requirement for consent provisions of the Overseas Investment Act 2005 by regulation 48 or regulation 49 of the Overseas Investment Regulations 2005;
- (b) If the regulations referred to in paragraph (a) are revoked;
 - (i) any person falling within that paragraph at the date of revocation provided that any such person shall only be a "New Zealand Business" pursuant to this sub-paragraph in relation to Financial Products held by it at that date;
 - (ii) any company or other body corporate or entity that is carrying on business in New Zealand and has established a presence in New Zealand which is of a substance and character that in the opinion of the Board (formed in accordance with criteria approved from time to time by the Kiwi Shareholder) justifies it being regarded as a New Zealand business for the purposes of this Constitution;

- (c) Any Subsidiary of any person referred to in paragraph (a) or paragraph (b) of this definition;
- (d) Underwriters or sub-underwriters of any offer to the public of Equity Securities for subscription or purchase, being an offer approved by the Board for the purposes of this definition, provided that such underwriters or sub-underwriters shall only be a "New Zealand Business" pursuant to this paragraph in relation to Equity Securities acquired as a result of such an approved offer;

"New Zealand citizen" means a person who is a New Zealand citizen in terms of the Citizenship Act 1977;

"New Zealand National" means:

- (a) Any New Zealand citizen, or any person who has attained the age of 18 years and is of full capacity who would, in the opinion of the Board, meet the requirements for citizenship set out in section 8(2) of the Citizenship Act 1977 (or any provisions enacted in substitution for those sections) if that person made an application for citizenship on the date on which his or her status as New Zealand National is considered for the purposes of this Constitution;
- (b) The Crown or any department or instrument of the Executive Government of New Zealand or any person acting on behalf of the Crown or any such department or instrument;
- (c) Any municipal, local, statutory or other authority formed or established in New Zealand or any instrument of local government in New Zealand;
- (d) Any New Zealand Business which has been approved by the Board for the purposes of this definition;
- (e) Any company, or other body corporate, that is established in New Zealand and has its registered office in New Zealand and that is substantially owned and effectively controlled by persons coming within any of paragraphs (a) to (d) of this definition;
- (f) Any person in the capacity of a trustee or manager of a trust, fund or other similar entity where the trust, fund or other similar entity is substantially owned and effectively controlled by persons coming within any of paragraphs (a) to (e) of this definition;
- (g) The trustees of any employee share purchase scheme or employee share option scheme operated by way of a trust for the benefit of the employees of the Company or any subsidiary of the Company, where all the trustees are persons coming within any of paragraphs (a) to (e) of this definition or the Company or a Subsidiary of the Company or Directors and where all voting rights in respect of all shares to which the scheme relates are held by the trustees;

"NZX" means NZX Limited and includes its predecessors, successors and assigns and, as the context permits, includes any authorised delegate of NZX (including the Tribunal);

"NZX Listing Rules" means the NZX Listing Rules in force from time to time;

"NZX Main Board" means the main board financial product market operated by NZX;

"Operating Right" means all or any part of any authority, permission, licence or privilege, whether granted or enjoyed pursuant to an air services agreement or otherwise, which enables an air service (other than a New Zealand domestic air service operating solely within New Zealand) to be operated;

"Ordinary Resolution" means a resolution passed by a simple majority of the votes of shareholders of the Company entitled to vote and voting;

"Ordinary Share" means an ordinary share in the capital of the Company;

"Personal Representative" means:

- (a) in relation to a deceased individual shareholder, the executor, administrator or trustee of the estate of that shareholder;
- (b) in relation to a bankrupt individual shareholder, the assignee in bankruptcy of that shareholder; and
- (c) in relation to any other individual shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed under that Act, and a donee of an enduring power of attorney complying with that Act;

"Related Body Corporate" has the meaning set out in section 12(2) of the FMC Act;

"Renounceable" in relation to a Right or offer of Financial Products means a Right or offer that is transferable by any holder for the time being to another person (whether or not an existing holder of any Financial Products to which the Right or offer relates);

"Representative" means a person appointed as a proxy or representative under section 18 or a Personal Representative or, in the case of the Kiwi Shareholder, a person appointed as a representative by the person named in the last notice received by the Company under clause 3.5(a) or under any corresponding provision of any previous constitution of the Company;

"Right" means any right to acquire any Financial Product or benefit of any kind, whether conditional or not, and whether Renounceable or not;

"Ruling" has the meaning given in the NZX Listing Rules;

"Share" means an Ordinary Share, the Kiwi Share, and any other share in the capital of the Company from time to time (as the context requires) on issue;

"Share Register" means the register of shareholders required to be kept pursuant to the Act;

“Special Resolution” means a resolution passed by a majority of 75% or more of the votes of the shareholders entitled to vote and voting;

“Subsidiary” means:

- (a) a subsidiary within the meaning of section 5 of the Act (read together with sections 7 and 8 of the Act); and
- (b) an entity treated as a subsidiary within the meaning of any financial reporting standard approved in terms of section 19 of the Financial Reporting Act 2013;

“Tribunal” has the meaning given in the NZX Listing Rules;

“Voting Right” means any right to vote on all matters or any matter at a meeting of the shareholders of the Company, not being a right that is exercisable only in one or more of the following circumstances:

- (a) During a period in which a dividend (or part of a dividend) in respect of the Financial Product which confers the right is in arrears being a dividend of an amount or rate fixed at the time of issue of the Financial Product;
- (b) On a proposal that affects rights attached to the Financial Product;
- (c) On a proposal to liquidate the Company;
- (d) On a proposal for the disposal of the principal business undertaking of the Company or of the Company and its Subsidiaries taken as a whole;
- (e) During the liquidation of the Company.

1.7 **“Meaning of ‘Interest’”**

In this Constitution:

- (a) A person has an **Interest** in an Equity Security if that person:
 - (i) Is a registered holder of the Equity Security; or
 - (ii) Is a beneficial owner of the Equity Security; or
 - (iii) Has the power to exercise, or to control the exercise of, a right to vote attached to the Equity Security; or
 - (iv) Has the power to acquire or dispose of, or to control the acquisition or disposal of, the Equity Security.
- (b) A person (**A**) has an Interest in an Equity Security that another person (**B**) has if:
 - (i) B or B's directors are accustomed or under an obligation (whether legally enforceable or not) to act in accordance with the directions,

- instructions, or wishes in relation to a power of control referred to in paragraph (a); or
- (ii) A has the power to exercise, or control the exercise of, the right to vote attached to 20 percent or more of the voting products of B; or
 - (iii) A has the power to acquire or dispose of, or to control the acquisition or disposal of, 20 percent or more of the voting products of B; or
 - (iv) A and B have an agreement to act in concert in relation to a power or control referred to in paragraph (a); or
 - (v) A and B are Related Bodies Corporate.
- (c) A person who has, or may have, a power or control referred to in either of paragraphs (iii) and (iv) of paragraph (a), has an Interest in an Equity Security regardless of whether the power or control:
- (i) Is expressed or implied;
 - (ii) Is direct or indirect;
 - (iii) Is legally enforceable or not;
 - (iv) Is related to a particular Equity Security or not;
 - (v) Is, or can be made, subject to restraint or restriction;
 - (vi) Is exercisable presently or in the future;
 - (vii) Is exercisable only on the fulfilment of a condition;
 - (viii) Is exercisable alone or jointly with another person or persons (but a power to cast merely one of many votes is not, in itself, a joint power of this kind).
- (d) A person has a power or control if the power or control is, or may at any time be, exercised under, by virtue of, or as the result of a revocation or breach of, a trust, or an agreement (or any combination of them), regardless of whether or not the trust or agreement is legally enforceable or whether or not the person is a party to it.
- (e) A person (**A**) does not have an Interest in an Equity Security if:
- (i) The ordinary business of A consists of, or includes, the lending of money or the provision of financial services, or both, and A has the Interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of A; or
 - (ii) A is authorised to undertake trading activities on a licensed market and A acts for another person to acquire or dispose of the product on behalf

of that person in the ordinary course of A's business of carrying out those trading activities; or

- (iii) A has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at a particular meeting of product holders, or a class of product holders, of a listed issuer, and a copy of the resolution is deposited with the listed issuer before the meeting; or
- (iv) A is appointed as a proxy to vote at a particular meeting of product holders, or of a class of product holders, of the listed issuer and the instrument of A's appointment is deposited with the listed issuer before the meeting; or
- (v) A is a bare trustee of a trust to which the product is subject; or
- (vi) A is a director of a body corporate and the body corporate has an Interest in the Equity Security; or
- (vii) A is a product holder of a body corporate and the body corporate's constitution gives the product holder pre-emptive rights on the transfer of the Equity Security, if all product holders of the Equity Security have pre-emptive rights on the same terms; or
- (viii) A is an operator of a designated settlement system (as defined in section 156M(1) of the Reserve Bank of New Zealand Act 1989) and is acting in the ordinary course of that business.

For the purposes of this clause 1.7 "voting product" has the meaning given to that term in section 6 of the FMC Act.

1.8 **Meaning of "Associated Person"**: In clause 3.3 and section 10, a person is an "Associated Person" of another person if:

- (a) They are acting jointly or in concert; or
- (b) Either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
- (c) They are Related Bodies Corporate; or
- (d) Either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
- (e) They are both, directly or indirectly, under the control of the same person.

1.9 **Construction**: In this Constitution, unless the context otherwise requires:

- (a) The headings appear as a matter of convenience and shall not affect the construction of this Constitution;

- (b) In the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;
- (c) A reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) A reference to an NZX Listing Rule includes that NZX Listing Rule as from time to time amended or substituted;
- (e) The singular includes the plural and vice versa and one gender includes the other genders;
- (f) The words "written" and "writing" include facsimile and email communications and any other means of communication resulting in or capable of permanent visible reproduction;
- (g) The word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (h) References to the Company's previous constitution include that constitution as amended from time to time;
- (i) Words or expressions defined in the Act, the NZX Listing Rules or the FMC Act have the same meaning in this Constitution, except as otherwise expressly provided in this Constitution.

- 1.10 **Powers of Shareholders:** Unless otherwise specified in the Act or this Constitution any power reserved to shareholders may be exercised and any approval of shareholders may be given by Ordinary Resolution.
- 1.11 **Crown and Kiwi Shareholder:** Nothing done by the Crown solely in its capacity as the holder of Shares (other than the Kiwi Share) or the holder of other Financial Products shall constitute the action of the Crown as Kiwi Shareholder and, conversely, nothing done by the Crown solely in its capacity as the Kiwi Shareholder shall constitute the action of the Crown in its capacity as the holder of Shares (other than the Kiwi Share) or the holder of other Financial Products.
- 1.12 **Confirmation of Office:** All offices, elections, and appointments (including of, or to, the Board and committees of the Board), registers, registrations, records, instruments, delegations, plans and generally all acts of authority that originated under any previous constitution of the Company and are subsisting and in force on the day on which this Constitution is adopted by the shareholders of the Company shall continue and be deemed to be effective and in full force under this Constitution.

2 THE COMPANIES ACT AND NZX LISTING RULES

2.1 **Companies Act:** The Company, the Board, each Director and each shareholder of the Company have the rights, powers, duties and obligations set out in the Act except to the extent that, as permitted by the Act, they are negated or modified by this Constitution.

2.2 **Incorporation of NZX Listing Rules:** For so long as the Company is Listed on the NZX Main Board this Constitution is deemed to incorporate the provisions of the NZX Listing Rules required under the NZX Listing Rules to be incorporated by reference in this Constitution, as those provisions apply from time to time (and as modified by any waiver or Ruling relevant to the Company).

2.3 **Compliance with NZX Listing Rules:** Subject to:

- (a) The terms of any Ruling from time to time given by NZX; and
- (b) The requirements of the Act and any other applicable legislative or regulatory requirement,

the Company shall, for so long as it is Listed, comply with the NZX Listing Rules.

2.4 **NZX Rulings:** If NZX has granted a Ruling in relation to the Company authorising any act or omission which in the absence of the Ruling would be in breach of this Constitution, that act or omission will be deemed to be authorised by this Constitution provided that, unless the consent in writing of the Kiwi Shareholder has first been obtained, that act or omission will not be deemed to be so authorised if such act or omission contravenes or fails to comply with clause 3.5 or clause 3.6 or any of the provisions of this Constitution referred to in clause 3.5 (b).

2.5 **Effect of Failure to Comply:** Failure to comply with:

- (a) The NZX Listing Rules; or
- (b) A provision of this Constitution corresponding with a provision of the NZX Listing Rules (whether such provision is set out in full in this Constitution or incorporated in it pursuant to clause 2.2),

does not affect the validity or enforceability of any transaction, contract, action, decision or vote taken at a meeting of Equity Security holders or other matter entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract. This provision does not limit the rights of Equity Security holders against the Company or the Directors.

2.6 **NZX Listing Rules Prevail:**

- (a) While the Company is Listed, but subject to clause 2.4 and paragraph (b) of this clause, if there is any provision in this Constitution that is inconsistent with the NZX Listing Rules relevant to the Company, the NZX Listing Rules prevail.

- (b) Clause 2.6(a) is subject to:
 - (i) clauses 3.5 and 3.6 and, in particular, no provision of the NZX Listing Rules that would contravene, fail to comply with, or be inconsistent with clause 3.5 or 3.6 or any of the provisions of this Constitution referred to in clause 3.5(b) shall have effect in relation to this Constitution or the Company; and
 - (ii) the requirements of the Act and any other applicable legislative or regulatory requirement.

3 RIGHTS AND LIMITATIONS ATTACHING TO SHARES AND EQUITY SECURITIES

3.1 **Ordinary Shares:** Each Ordinary Share confers on the holder the following rights (in addition to the rights set out elsewhere in this Constitution):

- (a) Subject to section 17 and to the rights of holders of any Shares or Equity Securities which confer special voting rights, the right to one vote on a poll at a meeting of the Company on any resolution, including any resolution referred to in section 36(1)(a) of the Act; and
- (b) Subject to the rights of holders of any Shares or Equity Securities which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board; and
- (c) Subject to the rights of holders of any Shares or Equity Securities which confer special rights as to surplus assets, the right to an equal share in the distribution of surplus assets of the Company.

3.2 **Classes of Shares:** At the time of adoption of this Constitution, the Company's issued share capital consists of Ordinary Shares, and one special rights convertible preference share (the "Kiwi Share").

3.3 **Limitation on Airline Ownership:** No person that owns or operates an airline business, nor any other person where the first-mentioned person and that other person are Associated Persons, may hold or have an Interest in an Equity Security unless the prior written consent of the Kiwi Shareholder has been given to such holding or Interest, and any such consent may be given on such terms and conditions as the Kiwi Shareholder thinks fit.

3.4 **Limitation on Ownership by Non-New Zealand Nationals:** No person who is not a New Zealand National may hold or have an Interest in Equity Securities which confer 10 percent or more of the total Voting Rights for the time being unless the prior written consent of the Kiwi Shareholder has been given to such holding or Interest, and any such consent may be given on such terms and conditions as the Kiwi Shareholder thinks fit.

3.5 **Kiwi Share:** The following rights and limitations shall attach to the Kiwi Share:

- (a) The Kiwi Share may be held only by, and shall be registered in the name of, the Kiwi Shareholder. Any Minister may from time to time give written notice to the Company of the person who is entitled to exercise the rights and powers of the

Kiwi Shareholder. The Company shall regard as the person entitled to exercise the rights and powers of the Kiwi Shareholder, the person named in the last such notice received by the Company (including any such notice given under any corresponding provision of any previous constitution of the Company);

- (b) Notwithstanding any provision of this Constitution to the contrary, none of the following provisions shall be amended, removed, or altered in effect, without the written consent of the Kiwi Shareholder:

Clause 1.1: Name of Company

Clause 1.2: Trading Name

Clause 1.3: Place of Incorporation

Clause 1.4: Principal Place of Business

Clause 1.5: Location of Head Office

The following definitions in clause 1.6:

"Affected Equity Security", "Board", "Class", "Crown", "Director", "Equity Security", "Head Office", "Interest", "International Air Services", "Intervening Act", "Kiwi Share", "Kiwi Shareholder", "Minister", "New Zealand Business", "New Zealand citizen", "New Zealand National", "Operating Right", "Ordinary Share", "Related Body Corporate", "Representative", "Share", "Share Register", "Voting Right" and any other definitions in clause 1.6 of terms used in any of the provisions (including the definitions) referred to in this clause 3.5(b)

Clause 1.7: Meaning of "Interest"

Clause 1.8: Meaning of "Associated Person"

Clause 1.9(g): The construction of "person"

Clause 2.4: NZX Rulings

Clause 2.6(b): NZX Listing Rules Prevail

Section 3: Rights and Limitations Attaching to Shares and Equity Securities

Clause 9.5(c) and (d): Power to Refuse to Register

Clause 9.6: Transfers in Contravention of Clause 3.3 or 3.4

Clause 9.7: Registration of Transfer shall not Affect Kiwi Shareholder

The last sentence of Clause 9.8 which states that the provisions relating to the sale of less than Minimum Holdings do not apply to the Kiwi Share

Section 10: Powers of Board and Kiwi Shareholder in Relation to Equity Securities

Clause 12.2(a): Meetings of Other Groups

Section 22: Kiwi Shareholder Approval for Sale of Main Undertaking

Section 23: Appointment and Removal of Directors

Clause 24.1: Appointment of Alternate Directors

Clause 25.8: Chairperson

Clause 25.9: Voting at meetings of Directors

Clause 25.10: Resolutions in Writing

- (c) Notwithstanding any provision of this Constitution to the contrary, except with the written consent of the Kiwi Shareholder no act or omission to act that contravenes or fails to comply with any of the sections or clauses specified in paragraph (b) above shall be valid or effective, whether or not the act or omission is that of the Board or the shareholders and whether or not the act or omission has been approved by a special resolution of shareholders;
- (d) For the avoidance of doubt, each of the matters referred to in paragraphs (b) and (c) above is deemed to be action which affects the rights attached to the Kiwi Share and accordingly is not effective without the approval of the Kiwi Shareholder in accordance with section 117 of the Act;
- (e) The Kiwi Shareholder shall be entitled to receive notice of and, either by the person named in the last notice given pursuant to paragraph (a) above (or any corresponding provision of any previous constitution of the Company) or by that person's representative, to attend any meeting of shareholders or any meeting of any class of shareholders, and to speak on any matter relating to rights attaching to the Kiwi Share but the Kiwi Share shall carry no right to vote or any other rights at any such meeting;
- (f) In a distribution of surplus assets upon the liquidation of the Company, the Kiwi Shareholder shall be entitled to repayment of any money paid up on the Kiwi Share in priority to any distribution of surplus assets to any other shareholder. The Kiwi Share shall confer no other right to participate in the surplus assets of the Company;
- (g) The Kiwi Shareholder may convert the Kiwi Share into an Ordinary Share at any time, by notice in writing to the Company, which notice shall be accompanied by the share certificate for the Kiwi Share. In that event the Kiwi Share shall be converted into an Ordinary Share as from the date of receipt of the notice by the Company, that Ordinary Share shall have the same rights and limitations as and rank equally with all other Ordinary Shares, there shall cease to be a Kiwi Share and a Kiwi Shareholder and all references to the Kiwi Share and the Kiwi Shareholder in this Constitution shall cease to have any application;

- (h) Notwithstanding any provision of this Constitution to the contrary, no Share or Equity Security may be issued which:
 - (i) Has the same rights as those attached to the Kiwi Share; or
 - (ii) Ranks equally with the Kiwi Share for the purposes of any provision of this Constitution which requires that the consent of the Kiwi Shareholder be obtained;
- (i) Nothing in clauses 3.7(a), 3.8 and 9.8 applies to or in respect of the Kiwi Share;
- (j) Notwithstanding any other provision of this Constitution, the Kiwi Shareholder shall, for the purposes of this Constitution and the Act, in relation to any of the matters referred to in paragraphs (b) and (c) above, constitute a separate interest group.

3.6 **Kiwi Shareholder Consent:** Notwithstanding any other provision of this Constitution, and without limiting section 117 of the Act, the rights attached to the Kiwi Share under clause 3.5 shall not be altered without the consent in writing of the Kiwi Shareholder.

3.7 **New Shares:** Subject to this section 3 and section 4, further Shares in the Company (including different Classes of Shares) may be issued which have any one or more of the following features:

- (a) Rank equally with, or in priority to, existing Shares in the Company; or
- (b) Have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
- (c) Confer preferential rights to distributions of capital or income; or
- (d) Confer special, limited or conditional voting rights; or
- (e) Do not confer voting rights; or
- (f) Are redeemable in accordance with section 68 of the Act; or
- (g) Are Convertible;

Sections 45(1) and 45(2) of the Act shall not apply to the issue of Shares by the Company.

3.8 **Issue of Prior or Equally Ranking Shares or Equity Securities:** The issue by the Company of any further Shares or Equity Securities which rank equally with, or in priority to, any existing Shares or Equity Securities, whether as to voting rights or distributions, shall:

- (a) Be permitted (subject to clauses 3.3 to 3.6 and section 4); and

- (b) Not be deemed to be action affecting the rights attached to those existing Shares or Equity Securities.

4 ISSUE OF NEW EQUITY SECURITIES

4.1 **Requirements for Issue:** The Board may issue Shares or other Equity Securities to any person and in any number it thinks fit provided that:

- (a) The issue does not contravene any other provision of this Constitution; and
- (b) While the Company is Listed, the issue is made in compliance with the NZX Listing Rules.

4.2 **Consolidation and Subdivision of Shares:** Subject to any applicable provisions of this Constitution, the Board may:

- (a) Consolidate and divide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class; or
- (b) Subdivide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class.

4.3 **Bonus Issues:** Subject to any applicable provisions of the NZX Listing Rules or this Constitution, the Board may resolve to apply any amount which is available for distribution to shareholders either:

- (a) In paying up in full Shares or other Financial Products of the Company to be issued credited as fully paid to:
 - (i) The shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) If applicable, the holders of any other Financial Products of the Company who are entitled by the terms of issue of those Financial Products to participate in bonus issues by the Company, whether at the time the bonus issue is made to the shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) In paying up any amount which is unpaid on any Shares held by the shareholders referred to in sub-clause (a)(i);

or partly in one way and partly in the other.

5 BUYBACKS AND REDEMPTIONS OF EQUITY SECURITIES

The Company may in accordance with the provisions of the Act and the NZX Listing Rules, and subject to the restrictions of the Act, this Constitution and the NZX Listing Rules:

- (a) Purchase or otherwise acquire Shares issued by it from one or more shareholders;
- (b) Purchase or otherwise acquire Equity Securities;
- (c) Hold any Shares or Equity Securities so purchased or acquired; and
- (d) Redeem any redeemable Shares or Equity Securities.

6 CALLS ON SHARES

- 6.1 **Board's Power:** The Board may, by notice in writing to a shareholder or shareholders, make calls in respect of all moneys unpaid on Shares and which are not, by the terms applicable to the Shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.
- 6.2 **Liability to Pay:** Each relevant shareholder shall be liable (jointly and severally in the case of joint shareholders) to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant Shares.
- 6.3 **Differential Calls:** Calls may be made in respect of certain Shares and not others and for different amounts in respect of certain Shares from others. The Board may, at the time of issue of any Shares, differentiate between the holders as to the amount of calls to be paid and the time of payment.
- 6.4 **Instalments:** The Board may determine that a call is payable by instalments.
- 6.5 **Time Call is Made:** A call shall be deemed to have been made at the time the resolution of the Board authorising the call was passed.
- 6.6 **Interest on Overdue Amounts:** A call not paid when due shall bear interest from the due date to the date of actual receipt by the Company at the rate fixed in the notice of call or the terms applicable to the relevant Shares or, if there is no such rate, as the Board determines. The Board may waive payment of interest wholly or in part.
- 6.7 **Unpaid Instalments:** Any amount payable on issue of a Share or on any fixed date or as an instalment of a call shall be deemed to be a call and if not paid, the provisions of this section 6 and sections 7 and 8 shall apply as if that sum had become payable by the making of a call.
- 6.8 **Calls in Advance:** The Board may, in its discretion, receive any moneys uncalled and unpaid upon any Shares in advance of its due date and, may pay interest on the amount received at such rate (if any) and on such terms as the Board determines.

6.9 **Evidence:** In any proceedings for the recovery of moneys due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:

- (a) The name of the shareholder is entered in the Share Register as the holder (or one of the holders) of the relevant Shares;
- (b) The resolution making the call is recorded in the records of the Company; and
- (c) Notice of the call was sent to the shareholder;

shall be conclusive evidence of the indebtedness of the shareholder to the Company in respect of the call.

6.10 **Cancellation of Unpaid Amounts:** No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

7 LIEN ON SHARES

7.1 **Lien on Unpaid and Partly Paid Shares:** The Company shall have a first and paramount lien on every Share which is not a fully paid Share (and any dividends or other distributions in respect of that Share) for:

- (a) All unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to that Share; and
- (b) Any amount which the Company may be called upon to pay under any legislation in respect of that Share, whether or not the due date for payment has passed.

7.2 **Power of Sale:** If any amount due in respect of a Share on which the Company has a lien is unpaid for more than 14 days after notice in writing demanding payment has been given to the shareholder or the person entitled to receive notices in respect of that Share:

- (a) The Company may sell the Share on such terms as the Board determines; and
- (b) To give effect to any such sale, the Board may authorise any person to execute a transfer of the Share to, or at the direction of, the purchaser.

7.3 **Absolute Title of Purchaser:** The title of a purchaser of any Shares sold pursuant to clause 7.2 shall not be affected by any irregularity or invalidity in any sale.

7.4 **Application of Sale Proceeds:** The net proceeds of sale of any Share sold pursuant to clause 7.2, after deducting expenses of sale shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the Share at the date of sale.

8 FORFEITURE OF SHARES

- 8.1 **Notice:** If a call on a Share is not paid when due, the Directors may give 14 days' notice to the shareholder requiring payment of the call, together with interest on the amount of the call. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Share will be liable to be forfeited.
- 8.2 **Forfeiture:** If the notice is not complied with the Share may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.
- 8.3 **Sale of Forfeited Shares:** A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board determines. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.
- 8.4 **Application of Sale Proceeds:** The net proceeds of sale of any forfeited Share shall be applied in the same manner as set out in clause 7.4.
- 8.5 **Absolute Title of Purchaser:** The title of a purchaser of a forfeited Share shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Share.
- 8.6 **Consequences of Forfeiture:** A person whose Shares have been forfeited shall cease to be a shareholder in respect of those Shares and shall surrender the share certificate for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon.
- 8.7 **Evidence of Forfeiture:** A statutory declaration by a Director or any other person authorised by the Board that a Share has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

9 TRANSFER OF SHARES

- 9.1 **Transferor to Remain Holder Until Registration:** The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the Share Register.
- 9.2 **Right to Transfer:** Subject to any restrictions contained in this Constitution, Shares may be transferred:
- (a) Under a system of transfer approved under the FMC Act or pursuant to a "designated settlement system" within the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989 which is applicable to the Company;
 - (b) Under any other share transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which Shares are listed and which is applicable to the Company; or
 - (c) By an instrument of transfer which complies with this Constitution.

9.3 **Method of Transfer:** A Share which is disposed of in a transaction which complies with the requirements of a system of transfer referred to in clause 9.2(a) or 9.2(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer would have complied with the provisions of the FMC Act if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the Company's share registrar.

9.4 **Forms of Transfer:** An instrument of transfer of Shares to which the provisions of clause 9.3 are not applicable shall comply with the following provisions:

- (a) The form of the instrument of transfer shall be any usual or common form or any other form which the Board or the Company's share registrar may approve;
- (b) The instrument of transfer must be signed or executed by or on behalf of the transferor; and
- (c) Where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

9.5 **Power to Refuse to Register:** The Board may decline to register any transfer of Shares where:

- (a) The Company has a lien on any of the Shares; or
- (b) The transfer is not accompanied by such evidence as the Board or the Company's share registrar may reasonably require to show the right of the transferor to make the transfer; or
- (c) The transfer relates to Shares which, in the opinion of the Board, would, upon transfer, become, or be capable of being treated as, Affected Equity Securities; or
- (d) The Board has required the registered holder by notice in writing under clause 10.1 to lodge with the Company a declaration or disclosure in accordance with that clause and that declaration or disclosure has not been received by the Company from the registered holder within 20 working days of the date on which the notice is delivered by hand, fax or email or posted to the registered holder, or that declaration or disclosure has been received by the Company but has not been completed in all material respects to the satisfaction of the Board or is or may be in the opinion of the Board materially incorrect or misleading; or
- (e) Registration, together with the registration of any further transfer then held by the Company and awaiting registration, would result in the proposed transferee or a transferor holding Shares of less than a Minimum Holding,

provided that the Board resolves to exercise its powers under this clause within 30 working days after receipt or presentation of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five working days of the resolution being passed by the Board.

- 9.6 **Transfers in Contravention of Clause 3.3 or 3.4:** The Board shall decline to register a transfer of Equity Securities if it is aware that those Equity Securities have been transferred in contravention of clause 3.3 or 3.4 or any corresponding provision of any previous constitution of the Company.
- 9.7 **Registration of Transfer Shall Not Affect Kiwi Shareholder:** The registration by the Board of any transfer shall not prejudice or affect in any way the powers exercisable by the Kiwi Shareholder or the Board under section 10.
- 9.8 **Sale of Less than Minimum Holding:**
- (a) The Company may at any time give notice to a shareholder holding less than a Minimum Holding of Shares that if at the expiration of three months after the date the notice is given, Shares then registered in the name of the shareholder are less than a Minimum Holding, the Company may sell those Shares.
 - (b) The Board may authorise the transfer of the Shares sold under this clause to a purchaser of the Shares, and the shareholder is deemed to have authorised the Company to act on behalf of the shareholder and to sign all necessary documents relating to the sale. The purchaser is not bound to see to the application of the purchase money, nor shall the title to the Shares be affected by any irregularity or invalidity in the procedures under this Constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.
 - (c) The proceeds of the sale of any Shares sold under this clause must be applied as follows:
 - (i) first, in payment of any reasonable sale expenses;
 - (ii) second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Shares;
 - (iii) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.
 - (d) A certificate, signed by a Director that records that a power of sale under this clause has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

This clause 9.8 shall not apply to the Kiwi Share.

- 9.9 **Registration of Transfers:** Every instrument of transfer shall be delivered to the Company's share registrar, together with such evidence as the Board or the Company's share registrar may reasonably require to show the right of the transferor to make the transfer.
- 9.10 **Participation in Share Transfer Systems:** The Company may participate in any share transfer system approved under the FMC Act and implemented by NZX or in any share transfer system which operates in relation to trading in securities on any other stock exchange on which the Company's shares are traded and, in so participating, it

shall comply with the requirements of NZX or of the relevant share transfer system. The Board may register any transfer of Financial Products presented for registration in accordance with the requirements of any such system and will not be obliged to enquire as to the due execution of any transfer effected by reason of such system.

9.11 **Power to Divide Share Register:** The Share Register may be divided into two or more registers kept in different places.

9.12 **Transfer of Financial Products Other Than Shares:** This section 9 shall apply to transfers of Financial Products of the Company other than Shares with any necessary modifications.

10 POWERS OF BOARD AND KIWI SHAREHOLDER IN RELATION TO EQUITY SECURITIES

10.1 **Nationality Declaration Required on Request:** The Board may at any time or times (and must on the written request of the Kiwi Shareholder to do so in respect of any persons who are registered as the holders of 1% or more of the Equity Securities of any Class), by notice in writing, require the registered holder or holders of any or all Equity Securities to lodge with the Company within 20 working days of the date on which the notice is delivered by hand, fax or email or posted to the holder, a statutory declaration (or other disclosure required by the Board) stating:

- (a) Whether or not that holder is a New Zealand National; and
- (b) Whether or not any person other than a New Zealand National has an Interest in any Equity Security registered in the name of that holder and, if so, in respect of each such person the name, address and nationality of that person, the number and Class of Equity Securities concerned and the nature of that Interest.

10.2 **Shareholder Disclosure Register:** The Company:

- (a) May (and must on the written request of the Kiwi Shareholder) keep a register containing all information obtained by it from statutory declarations or other disclosure provided under clause 10.1;
- (b) Must provide to the Kiwi Shareholder a copy of the whole or any part of that register on written request by the Kiwi Shareholder; and
- (c) Must ensure that the register is kept confidential to the Board, the Kiwi Shareholder and any person nominated by the Board or the Kiwi Shareholder for the purposes of this paragraph.

10.3 **Protection of Company and Constitution:** The provisions of clauses 10.4 to 10.16 inclusive shall apply if either the Board determines, at its sole discretion, or the Kiwi Shareholder determines, after consultation with the Board, either that a registered holder of any Equity Securities has not complied with clause 10.1 or that it is necessary to:

- (a) Take steps in order to protect any Operating Right of the Company or any subsidiary because an Intervening Act has taken place or there is a reasonable likelihood that an Intervening Act may occur; or
- (b) Take steps in order to protect the status of the Company as a company that is substantially owned and effectively controlled by New Zealand Nationals; or
- (c) Establish whether any person that owns or operates an airline business, or any other person where the first-mentioned person and that other person are Associated Persons, holds or has an Interest in any Equity Securities in contravention of clause 3.3 or of any corresponding provision of any previous constitution of the Company; or
- (d) Establish whether any person other than a New Zealand National holds or has an Interest in any Equity Securities in contravention of clause 3.4; or
- (e) Establish whether any person has acted in contravention of or failed to comply with any of the terms or conditions of a consent given by the Kiwi Shareholder under clause 3.3 or 3.4 or under any corresponding provision of any previous constitution of the Company.

Where the Kiwi Shareholder makes such a determination and the Board fails to act pursuant to the following provisions of section 10 within such period of time as the Kiwi Shareholder considers is reasonable, or fails (in the opinion of the Kiwi Shareholder) to act in a manner which remedies the basis of the determination, the Kiwi Shareholder may act pursuant to the following provisions of this section 10 and those provisions shall apply as if every reference therein to the Board was a reference to the Kiwi Shareholder, and the Company, the Board and every officer of the Company shall do everything necessary on its, his, or her part to enable the exercise by the Kiwi Shareholder of the powers given to the Kiwi Shareholder under those provisions.

- 10.4 **Registered Holders to Lodge Statutory Declaration:** After such determination, if the Board considers it necessary or desirable to do so it may, by notice in writing, require the registered holder or holders of any or all Equity Securities to lodge with the Board within 20 working days of the date on which the notice is delivered by hand, fax or email or posted to the holder, a statutory declaration (or other disclosure required by the Board) giving such information as the Board may reasonably require for the purposes of determining whether to exercise its powers under this section 10.
- 10.5 **Equity Securities Treated as Affected Equity Securities:** Where the registered holder of any Equity Securities does not comply with clause 10.1 or 10.4, or the Board in its discretion considers that any declaration or disclosure required by clause 10.1 or 10.4 or other information reveals that -
- (a) Any person that owns or operates an airline business or any Associated Person of any such person, without the written consent of the Kiwi Shareholder, holds or has an Interest in any Equity Securities in contravention of clause 3.3 or any corresponding provision of any previous constitution of the Company; or
 - (b) Any person other than a New Zealand National holds or has an Interest in any Equity Securities in contravention of clause 3.4; or

- (c) Any person has acted in contravention of or failed to comply with any of the terms or conditions of a consent given by the Kiwi Shareholder under clause 3.3 or 3.4 or under any corresponding provision of any previous constitution of the Company,

the Board may determine that those Equity Securities shall be treated as Affected Equity Securities and immediately after making any such determination shall give a notice to that effect to the registered holder of the Equity Securities.

- 10.6 **Intervening Act:** Where the Board considers that an Intervening Act has occurred or there is a reasonable likelihood that an Intervening Act will occur, then the Board may identify those Equity Securities which gave rise or are likely to give rise to that Intervening Act.
- 10.7 **Notice of Affected Equity Securities to Registered Holder:** The Board shall give notice to the registered holder of any Equity Securities identified under clause 10.6 of its intention of treating those Equity Securities as Affected Equity Securities. The holder may make representations to the Board as to why any such Equity Securities should not be treated as Affected Equity Securities, within seven days of receiving the abovementioned notice from the Board. If any representation is made to the effect that an Intervening Act has not occurred and there is no reasonable likelihood that an Intervening Act will occur, the Board shall consult with the Kiwi Shareholder as to whether or not such act has occurred or there is such a reasonable likelihood. If after taking into consideration any such representations, the Board in its discretion (and, if required, after consultation with the Kiwi Shareholder) determines that such Equity Securities shall be treated as Affected Equity Securities, it shall immediately give notice to that effect to the registered holder of the Equity Securities.
- 10.8 **Determination as to Voting or Sale:** At the time when, or at any time after, the Board determines under clause 10.5 or 10.7 that any Equity Securities are to be treated as Affected Equity Securities and before that determination is withdrawn, the Board may determine either or both of the following:
 - (a) That clause 10.9 applies to the Equity Securities during such period (which may be unlimited) as the Board determines;
 - (b) That clause 10.10 applies to the Equity Securities,and the Board shall immediately give notice of the determination to the registered holder of the Equity Securities.
- 10.9 **Holders of Affected Equity Securities Cannot Vote:** A registered holder of Affected Equity Securities to whom a notice under clause 10.8 stating that this clause applies to those Equity Securities has been delivered by hand, fax or email or posted shall not (unless the notice is withdrawn) be entitled to vote in respect of those Equity Securities at any annual, special or Class meeting of the Company or at any meeting of the holders of Securities in an Interest Group (as defined in the Act) and in that event the votes attached to those Equity Securities shall vest in and may be exercised by the chairman of any such meeting who may act entirely at his or her discretion. This voting restriction shall be without prejudice to the right of any such registered holder to attend any meeting referred to in this clause.

- 10.10 **Disposal of Affected Equity Securities:** A registered holder of Affected Equity Securities to whom a notice under clause 10.8 stating that this clause applies to those Equity Securities has been delivered by hand, fax or email or posted shall, within three months (or such longer period as the Board may determine) of the date on which the notice is delivered by hand, fax, email or posted, ensure that either the Affected Equity Securities or Interest therein is disposed of so that they cease to be Affected Equity Securities and if, after three months (or such longer period as aforesaid), the Board is not satisfied that a suitable disposal has been made, the Board may arrange for the sale of the Affected Equity Securities on behalf of the registered holder at the best price reasonably obtainable at the relevant time, based upon advice obtained by it for the purpose, so that they are no longer capable of being treated as Affected Equity Securities. For this purpose, the registered holder shall be deemed to have appointed, and does hereby appoint, the Company as its agent and its attorney, in each case with full authority to act on its behalf in relation to the sale of the Affected Equity Securities and to sign all documents relating to such sale and transfer of the Affected Equity Securities and the Board may register a transfer of the Affected Equity Securities so sold, whether or not the transfer has been properly completed and whether or not it is accompanied by the certificates (if any) for the Affected Equity Securities. The person to whom such Equity Securities are transferred shall not be bound to see to the application of the purchase money, nor shall his, her or its title to the Equity Securities be affected by any irregularity or invalidity in the proceedings relating to the sale of those Equity Securities. The net proceeds of 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 former registered holder on surrender of the certificate (if any) for the Affected Equity Securities.
- 10.11 **Identifying Affected Equity Securities:** In deciding which Equity Securities are to be identified for the purposes of clause 10.6 the Board shall have regard to which Interests, in its opinion, have caused the act referred to in that clause to arise or be capable of arising and otherwise shall have regard to such other criteria as it may, in its discretion, consider appropriate and equitable.
- 10.12 **Enquiries if Equity Securities are Affected Equity Securities:** If, at any time, when a determination under this section 10 has been made and not withdrawn, anyone enquires of the Board whether any Equity Securities which he, she or it proposes to buy or in which he, she or it proposes to acquire any Interest would, in the opinion of the Board, be capable on acquisition of becoming Affected Equity Securities, the Board shall, on sufficient information being given to it, notify the enquirer whether in its opinion the Equity Securities would in such circumstances be capable of becoming Affected Equity Securities. Such notification shall not, however, be binding on the Board or the Company.
- 10.13 **Withdrawal or Amendment of Determination:** If the Board considers that any determination made under clause 10.5, 10.7, or 10.8 should be withdrawn or amended, it may do so, and shall give notice of the withdrawal or amendment to the registered holder of the Equity Securities concerned.
- 10.14 **Absence of Notice Does Not Invalidate:** The Board shall not be obliged to give, deliver or post any notice required under this section to be given, delivered or posted to any person if it does not know either the identity or address of the person. The absence of such a notice in such circumstances, and any accidental error in or failure to give, deliver or post any notice to any person to whom notice is required to be given,

delivered or posted under this section shall not prevent the implementation of or invalidate any procedure under this section.

- 10.15 **Decisions Final, Conclusive and Binding:** Any resolution or determination of, or decision or declaration or exercise of any discretion or power by, the Board or by the Chairman of any meeting under or pursuant to this section shall be final and conclusive; and any disposal or transfer made, or other things done, by or on behalf of, or on the authority of, the Board pursuant to this section shall be conclusive and binding on all persons concerned and shall not be open to challenge, whether as to its validity or otherwise on any ground whatsoever.
- 10.16 **Certificate Conclusive:** A certificate signed by a Director and countersigned by a second Director, or signed by the Kiwi Shareholder, that a power of sale under this section has arisen and is exercisable by the Board, or that an Equity Security has been duly transferred under this section on the date stated therein, shall be conclusive evidence of the facts stated therein.

11 TRANSMISSION OF SHARES

- 11.1 **Transmission on Death of Shareholder:** If a shareholder dies the survivor, if the deceased was a joint shareholder, or the shareholder's Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased shareholder. Nothing in this clause shall release the estate of a deceased joint shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.
- 11.2 **Rights of Personal Representatives:** A shareholder's Personal Representative:
- (a) Is entitled to exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the Shares held by that shareholder; and
 - (b) Is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this paragraph.
- 11.3 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

12 MEETINGS OF SHAREHOLDERS

- 12.1 **Methods of Holding Meetings:** A meeting of shareholders may be held by a number of shareholders, who constitute a quorum:
- (a) being assembled together at the place, date, and time appointed for the meeting; or
 - (b) participating in the meeting by means of audio, audio and visual, or electronic communication; or

- (c) by a combination of both of the methods described in clauses 12.1(a) and 12.1(b).

The Company is not required to hold meetings of shareholders in the manner specified in clauses 12.1(b) or (c). Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so. To avoid doubt, if a meeting is held in the manner specified in clauses 12.1(b) or (c), 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.

12.2 Meetings of Other Groups: A meeting of the holders of Financial Products in an Interest Group (as defined in the Act) or of the holders of a Class of Shares may be called by the Board at any time, and shall be called on the written request of persons holding Financial Products carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting of the Class or group in question. All the provisions of this Constitution relating to meetings of shareholders apply, with all necessary modifications, to a meeting of a Class or a group of Financial Product holders, except that:

- (a) The necessary quorum is two persons holding, or representing the holders of, Financial Products of the Class or group except where the Kiwi Shareholder is the sole holder in the Class or group in which case the Kiwi Shareholder shall comprise a quorum;
- (b) If the Board so elects, one meeting may be held of holders constituting more than one Class or group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each Class or group; and
- (c) Any holder of Financial Products in the Class or group, present in person or by Representative, may demand a poll.

13 NOTICE OF MEETINGS OF SHAREHOLDERS

13.1 Written Notice: Written notice of the time, date 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 the auditor of the Company not less than 10 working days before the meeting.

13.2 Contents of Notice: The notice must:

- (a) State 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) State the text of any special resolution to be submitted to the meeting;
- (c) State in the case of special resolutions required by sections 106(1)(a) or 106(1)(b) of the Act, the right of a shareholder under section 110 of the Act;

- (d) Contain or be accompanied by sufficient explanation, reports, valuations and other information, as to enable a reasonable person entitled to vote to understand the effect of each resolution proposed; and
- (e) For so long as the Company is Listed, comply with the requirements of the NZX Listing Rules.

- 13.3 **Proxy Form must be sent with Notice:** A proxy form must be sent by mail or electronically with each notice of meeting.
- 13.4 **Irregularity in Notice:** 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. The accidental omission to send a notice of a meeting to, or the failure to receive notice of a meeting by, any person entitled to that notice, does not invalidate the proceedings at the meeting.
- 13.5 **Adjourned Meetings:** If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time, date and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

14 CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 14.1 **Chairperson of the Board to Act:** If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of shareholders, that Director must chair the meeting.
- 14.2 **Other 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 or the chairperson is unwilling or unable to act, the Directors present, if any, may elect one of their number to be chairperson of the meeting. If no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairperson.
- 14.3 **Regulation of Procedure:** Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of shareholders.

15 QUORUM FOR MEETINGS OF SHAREHOLDERS

- 15.1 **Quorum Required:** Subject to clause 15.3 no business may be transacted at a meeting of shareholders if a quorum is not present.
- 15.2 **Size of Quorum:** A quorum for a meeting of shareholders is present if three shareholders who are entitled to vote at the meeting are present in person or by Representative.
- 15.3 **Lack of Quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) In the case of a meeting called by the Board on the request of shareholders under section 121(b) of the Act, the meeting is dissolved;
- (b) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the shareholders or their Representatives present will constitute a quorum.

16 VOTING AT MEETINGS OF SHAREHOLDERS

- 16.1 **Meetings in One Place:** In the case of a meeting of shareholders held under clause 12.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:
- (a) Voting by voice; or
 - (b) Voting by show of hands.
- 16.2 **Audio-Visual Meetings:** In the case of a meeting of shareholders held under clause 12.1(b) or clause 12.1(c), unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson of the meeting.
- 16.3 **Voting by Electronic Means:** To the extent permitted by the Act, and if applicable the NZX Listing Rules, the Company may allow shareholders to vote by signifying their assent or dissent by electronic means (including, for the avoidance of doubt, voting on a personal computer or other electronic device, with such vote being transmitted to the meeting), instead of the shareholder voting by another method permitted by the Act or this Constitution.
- 16.4 **Postal Votes:** Unless the Board determines otherwise, shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the First Schedule to the Act together with any other procedures determined by the Board. To avoid doubt, a postal vote may be cast using electronic means permitted by the Board.
- 16.5 **Number of Votes:** Subject to the provisions of clauses 10.9, 17.1 and 17.3 and subject to any rights or restrictions attached to any Share:
- (a) Where voting is by voice or a show of hands, every shareholder present in person or by Representative has one vote;
 - (b) On a poll every shareholder present in person or by Representative has:
 - (i) One vote in respect of every fully paid Share held by that shareholder;
 - (ii) In respect of each Share held by that shareholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Share was fully paid. That fraction must be equivalent to the proportion which

the amount paid (not credited) is of the total amount paid and payable (excluding amounts credited and amounts paid in advance of a call).

16.6 **Declaration of Chairperson Conclusive:** A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 16.7.

16.7 **Right to Demand Poll:** At a meeting of shareholders a poll may be demanded by:

- (a) Not less than five 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.

For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

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

16.9 **Timing of Poll:** The chairperson may determine the time and manner in which a poll is to be taken and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

16.10 **Counting 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 Representative and voting.

16.11 **Auditor of Company to be Scrutineer:** The auditor of the Company (including employees and agents of the auditor) for the time being, or if the auditor of the Company is unable or unwilling to act, then such person as the chairperson nominates, shall act as scrutineer for the purposes of a poll.

16.12 **Declaration of Poll Result:** The chairperson of the meeting may declare the result of a poll either at or after the meeting and, when the outcome of the poll is known, may do so regardless of whether all votes have been counted. The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

16.13 **Chairperson's Casting Vote:** The chairperson of the meeting is entitled to a casting vote.

- 16.14 **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.
- 16.15 **Validity of Votes:** In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination shall be conclusive.
- 16.16 **Shareholder Participation by Electronic Means:** A shareholder, or the shareholder's proxy or Representative, may, to the extent permitted by the Act and the NZX Listing Rules, participate in a meeting 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).

To avoid doubt, participation in a meeting includes participation in any manner specified in Schedule 1 of the Act or this Constitution.

17 VOTING RESTRICTIONS

- 17.1 **Restriction:** Notwithstanding anything to the contrary in this Constitution or the NZX Listing Rules, a person is unable to vote in favour of a resolution when that person is disqualified from voting in favour of the resolution by the voting restrictions contained in NZX Listing Rule 6.3 unless that person is permitted to vote by an exception to those voting restrictions contained in the NZX Listing Rules.
- 17.2 **Resolution or Proceeding not Void:** No resolution of, or proceeding at, a meeting of Financial Product holders will be void on the basis of a breach of clause 17.1.
- 17.3 **No Vote if Amounts Unpaid:** No shareholder shall be entitled to vote at any meeting in respect of Shares on which any call or other moneys are due and unpaid.

18 PROXIES AND CORPORATE REPRESENTATIVES

- 18.1 **Proxies Permitted:** A shareholder may exercise the right to vote either by being present in person or by 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.
- 18.2 **Form of Proxy:** A proxy must be appointed by notice in writing that is signed by or, in the case of an electronic notice, sent by the shareholder, or by appointing the proxy online as per the Company's instructions in a notice of meeting, and the notice must state whether the appointment is for a particular meeting or a specified term.
- 18.3 **Lodging Proxy:** No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by or on behalf of the Company at any place specified for that purpose in the notice of meeting. The notice of meeting may provide for different matters for different kinds of proxies (for example, a different specified

time for the receipt of a proxy by electronic means). In any case, the time or times specified may not be more than 48 hours before the start of the meeting.

- 18.4 **Validity of Proxy Vote:** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
- 18.5 **Corporate 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. A representative shall have the same rights and powers as if the representative were a proxy.

19 MINUTES OF SHAREHOLDER MEETINGS

The Board must ensure that minutes are kept of all proceedings at meetings of shareholders. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings.

20 SHAREHOLDER PROPOSALS

- 20.1 **Notice to the Board:** 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.
- 20.2 **Notice to Shareholders 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.
- 20.3 **Notice to Shareholders at Proposing Shareholder's Expense:** If the notice is received by the Board not less than five 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.
- 20.4 **Late Notice:** If the notice is received by the Board less than five 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.
- 20.5 **Proposing Shareholder's Right to Give Written Statement:** If the Directors intend that shareholders may vote on the proposal by proxy or by postal vote they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing shareholder in

support of the proposal, together with the name and address of the proposing shareholder.

- 20.6 **Defamatory, Frivolous or Vexatious Statements:** The Board is not required to include in or with the notice given by the Board:
- (a) any part of a statement prepared by a shareholder that the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
 - (b) 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).
- 20.7 **Deposit of Costs by Proposing Shareholder:** 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.

21 ADJOURNED MEETINGS AND DISORDERLY MEETINGS

- 21.1 **Chairperson's Discretion to Adjourn Meetings:** The chairperson may, in his or her sole discretion, at any time during the meeting adjourn from time to time and place to place (including either to a later time at the same meeting or to an adjourned meeting):
- (a) The meeting; or
 - (b) Any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion in relation to any of those matters.

In addition, if at any meeting a motion or proposal to adjourn the meeting has been defeated, the chairperson has an absolute discretion whether or not to accept and put to the meeting any further motion or proposal to adjourn the meeting.

- 21.2 **Direction to Adjourn:** If directed by the meeting, the chairperson must adjourn the meeting.
- 21.3 **Provisions Relating to Adjourned Meetings:** No business can be transacted at any adjourned meeting other than the unfinished business at the original meeting. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as the original meeting. Otherwise, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 21.4 **Adjournment of Disorderly Meetings:** If any meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving reasons, either adjourn or dissolve the meeting.

- 21.5 **Completion of Unfinished Business:** If any meeting is dissolved by the chairperson pursuant to clause 21.4, the unfinished business of the meeting shall be dealt with as follows:
- (a) In respect of any resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act, authorise the Distribution;
 - (b) In respect of any resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors;
 - (c) The chairperson may direct that any item of business which is uncompleted at the meeting, and which in his or her opinion requires to be voted upon, be put to the vote by a poll in accordance with clauses 16.9 to 16.15 or in such other manner as the chairperson determines without further discussion.

22 KIWI SHAREHOLDER APPROVAL FOR SALE OF MAIN UNDERTAKING

The Company may not sell or dispose of the Company's principal business undertaking, or the principal business undertaking of the Company and its Subsidiaries taken as a whole, except with the prior written consent of the Kiwi Shareholder, which may be given on such terms and conditions as the Kiwi Shareholder thinks fit.

23 APPOINTMENT AND REMOVAL OF DIRECTORS

23.1 **Number and Residence:** The number of Directors must not at any time be more than 8 nor less than 5. At least three Directors must be ordinarily resident in New Zealand. The minimum number of Independent Directors shall be two.

23.2 **Majority of Board to be New Zealand Citizens:** A person who is not a New Zealand citizen shall not be eligible for appointment or election as a Director unless, immediately after his or her appointment or election as such, more than one half of the total number of directors then in office would be New Zealand citizens and any appointment or election in breach of this clause is void. If at any time the number of Directors who are New Zealand citizens is not more than one half of the total number of Directors then in office, the Board shall ensure (whether by exercising its powers under clause 23.5 or otherwise) that as soon as practicable sufficient Directors are appointed so that more than one half of the total number of Directors then in office are New Zealand citizens.

23.3 **Appointment of Directors:** A person may be appointed as a Director of the Company by:

- (a) Appointment by the Board in accordance with clause 23.5;
- (b) Nomination and appointment at the Company's annual or special meetings of Equity Security holders in compliance with the NZX Listing Rules; or
- (c) Appointment as an alternate Director in accordance with clause 24.1.

23.4 **Appointment and Removal by Ordinary Resolution:** A Director may be appointed by Ordinary Resolution provided that the appointment does not result in a breach of clause

23.1 or clause 23.2. All Directors shall be subject to removal from office as director by Ordinary Resolution.

23.5 **Appointment by Board:** The Board may at any time (but is not obliged to) appoint a person to be a Director to fill a vacancy in the maximum number of Directors fixed under clause 23.1 provided that the appointment does not result in a breach of clause 23.1 or clause 23.2. A Director appointed by the Board shall retire from office at the next annual meeting of the Company, but shall be eligible for re-election at that meeting.

23.6 **Rotation of Directors:** Each Director shall retire from office when required to do so by the NZX Listing Rules but, subject to the NZX Listing Rules, shall be eligible for re-election (including at any meeting at which the Director retires).

23.7 **Vacation of Office:** A Director shall cease to hold office as a Director if the Director:

- (a) Becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally; or
- (b) Becomes disqualified from being a Director pursuant to Section 151 of the Act; or
- (c) Resigns from office by notice in writing to the Company; or
- (d) Is removed from office pursuant to this Constitution or the Act; or
- (e) Has for more than six months been absent without permission of the Board from meetings of the Board held during that period; or
- (f) If he or she was a New Zealand citizen when first appointed or elected as a Director, ceases to be a New Zealand citizen and that would result in the provisions of clause 23.2 not being complied with; or
- (g) Is an executive Director and the Board resolves that he or she should cease to hold office as a Director.

23.8 **Timing of Retirement and Appointment:** If:

- (a) A Director retires at a meeting of shareholders and is not re-elected at that meeting, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting;
- (b) A Director is removed from office at a meeting of shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting;
- (c) A person who is not already a Director is appointed or elected as a Director at a meeting of shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

23.9 **Election Procedures:** Subject to the other clauses of this section, the procedures for the election or re-election of Directors shall be determined by the chairperson of the

meeting and may be conducted by a resolution or resolutions or by a ballot or ballots according to rules determined by the chairperson.

24 ALTERNATE DIRECTORS

- 24.1 **Appointment:** Each Director may from time to time appoint any person who is not already a Director to be the Director's alternate Director (an "Alternate Director"). No Director may make such an appointment except with the consent of a majority of his or her co-Directors. A Director may not act as an alternate for another Director. No Director may appoint a deputy or agent otherwise than as an Alternate Director.
- 24.2 **Form of Appointment and Removal:** Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.
- 24.3 **Rights of Alternate Director:** Each Alternate Director will be entitled to:
- (a) Receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
 - (b) Attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
 - (c) In the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.
- 24.4 **Remuneration and Expenses:** Each Alternate Director's:
- (a) Remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
 - (b) Expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.
- 24.5 **Cessation of Appointment:** An Alternate Director will cease to be an Alternate Director:
- (a) If the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment; or
 - (b) On the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director; or
 - (c) If a majority of the other Directors resolve to revoke the Alternate Director's appointment.

25 PROCEEDINGS OF THE BOARD

- 25.1 **Methods of Holding Meetings:** A meeting of the Board may be held either:
- (a) By a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - (b) By means of audio, or audio and visual, communication by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.
- 25.2 **Convening of Meetings:** A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause and clauses 25.3 and 25.4. Notice may be given to a Director in any of the following ways:
- (a) By delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered; or
 - (b) By sending the notice by facsimile transmission, email or other method of electronic communication to the facsimile number, email address or other address given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when sent; or
 - (c) By posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted.
- 25.3 **Contents of Notice:** A notice of a meeting must specify the date, time and place of the meeting and, if the meeting is to be by means of audio or audio and visual communication, the manner in which the Director will be contacted to participate at the time of the meeting. The notice must specify the general nature of the business to be conducted at the meeting.
- 25.4 **Notice of Meetings:** The following periods of notice shall apply to the convening of meetings of the Board:
- (a) Except in the case of urgency falling within paragraph (b) of this clause, the minimum period of notice for convening a meeting of the Board shall be 7 days;
 - (b) In the case of urgency where, in the opinion of the chairperson (or, failing him or her, the deputy chairperson or acting chairperson) and one other director, a meeting of the Board is required in the interests of the Company to be convened on less than 7 days' notice, the meeting may be convened on shorter notice.
- 25.5 **Waiver of Irregularity:** An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

- 25.6 **Quorum:** A quorum for a meeting of the Board is three Directors. No business may be transacted at a meeting of the Board unless a quorum is present.
- 25.7 **Insufficient Number of Directors:** The Directors may continue to act where there is a vacancy in their body, but, where the number has fallen below 5, the continuing Directors may act to remedy the shortfall in Directors or to summon a meeting of shareholders, but for no other purpose.
- 25.8 **Chairperson:** The Directors may elect one of their number, who must be a New Zealand citizen and (while the Crown is a substantial product holder in the Company within the meaning of section 274 of the FMC Act through being the beneficial owner of Equity Securities) a person approved for this purpose by the Crown, as chairperson of the Board and determine the period for which the chairperson is to hold office. If no chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.
- 25.9 **Votes:** Subject to clauses 25.13 and 25.14 every Director has one vote. The chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. 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 that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.
- 25.10 **Resolutions in Writing:** A resolution in writing, signed or assented to by three quarters or more of the Directors, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Notice of the form of the proposed resolution shall be given to each Director in accordance with paragraph (a) or (b) of clause 25.2. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings.
- 25.11 **Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of the Board.
- 25.12 **Validity of Acts:** All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:
- (a) Any defect in the appointment of any Director or person acting as a Director; or
 - (b) That they or any of them were disqualified; or
 - (c) Any irregularity in a notice of meeting.
- 25.13 **Interested Directors Must Not Vote:** A Director must not vote on a Board resolution for, or be counted in a quorum for the consideration of, any matter in which the Director is interested. In this clause and clause 25.14 the term "interested" bears the meaning assigned in section 139 of the Act.

25.14 **Exception to Voting Prohibition:** Notwithstanding clause 25.13, a Director may vote on a Board resolution for, and be counted in the quorum for the consideration of, a matter in which that Director has an interest if that matter:

(a) is one in respect of which Directors are expressly required to sign a certificate;
or

(b) relates to the grant of indemnity pursuant to section 162 of the Act.

25.15 **Other Procedures:** Except as set out in this section 25, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

26 DIRECTORS' REMUNERATION

26.1 **Fixing Remuneration:** The Board may, subject to the NZX Listing Rules, exercise the power conferred by section 161 of the Act to authorise remuneration and other benefits to and for Directors.

26.2 **Expenses:** Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.

26.3 **Special Remuneration:** Without limiting clause 26.1 of this Constitution, but subject to any applicable NZX Listing Rule relating to transactions with related parties, the Board may authorise special remuneration to any Director who is or has been engaged by the Company to carry out any work or perform any services which is not in the capacity of a director of the Company or a Subsidiary.

27 INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

27.1 **Indemnity for Directors:** Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

27.2 **Other Indemnities and Insurance:** In addition to the indemnity set out in clause 27.1, the Company may:

(a) Indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act;

(b) Indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; and

(c) Effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.

27.3 **Interpretation:** Words given extended meanings by section 162(9) of the Act have those extended meanings in this section.

28 DIVIDENDS

28.1 **Method of Payment:** A distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled shareholders, or in the case of joint shareholders, to the shareholder named first in the share register, or to such other person and in such other manner as the shareholder or joint shareholder may in writing direct.

28.2 **Currency of Payment:** The Board may, in its discretion, differentiate between shareholders as to the currency in which dividends are to be paid. In exercising that discretion the Board may have regard to the registered address of a shareholder, the register on which a shareholder's Shares are registered or any other matter the Board considers appropriate. In any case where a dividend is to be paid to a shareholder in a currency other than New Zealand currency, the Board must first obtain the written consent of that shareholder to the payment of the dividend in the relevant currency. In such a case the amount payable will be converted from New Zealand currency in a manner, at a time and at an exchange rate determined by the Board.

28.3 **Deductions:** The Board may, at its discretion, deduct from any dividend or other distribution payable to a shareholder any amount owed by the shareholder to the Company in respect of which the Company has a lien over the specific Shares on which the dividend or other distribution is payable. The Board must deduct from any dividend or other distribution payable to any shareholder any amount it is required by law to deduct, including withholding and other taxes.

28.4 **Entitlement Date:** Dividends and other distributions or payments to holders of Financial Products of the Company will be payable to the persons who are the registered as holders of those Financial Products on an entitlement date fixed by the Board.

28.5 **Unclaimed Distributions:** All dividends and other monetary distributions unclaimed for one year after the due date for payment may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust, but subject to compliance with the solvency test, shall pay the distribution to the person producing evidence of entitlement.

29 NOTICES

29.1 **Method of Service:** All notices, reports, accounts or documents required to be sent to a shareholder shall be delivered, posted or sent in the manner set out in section 391 of the Act provided that:

- (a) where the Crown has provided the Company with an address for service (which address will be recorded in the Share Register) then notices to the Crown shall be delivered, posted or sent to the Crown at that address; and

- (b) where the Kiwi Shareholder has provided the Company with an address for service then notices to the Kiwi Shareholder shall be delivered, posted or sent to the Kiwi Shareholder at that address.

Notices to any other person shall be sent in the same manner as if that person was a shareholder.

- 29.2 **Joint Holders:** A notice may be given by the Company to the joint holders of a Financial Product by giving the notice to the joint holder named first in the register in respect of the Financial Product.

30 INSPECTION OF RECORDS

Except as provided in the Act or unless the Board determines otherwise in any particular case, no holder of Financial Products shall be entitled to:

- (a) Inspect any records, books, papers, correspondence or documents of the Company; or
- (b) Require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

31 LIQUIDATION

- 31.1 **Distribution of Surplus:** Subject to the rights of the holders of any Financial Products in the Company and to clauses 31.2 and 31.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the shareholders in proportion to their shareholding. If any shareholder's Shares are not fully paid up the liquidator of the Company may require those Shares to be fully paid up before the shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.
- 31.2 **Distribution in Kind:** With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator of the Company may divide amongst the shareholders in kind the whole or any part of the surplus assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:
 - (a) Attribute values to assets as the liquidator considers appropriate; and
 - (b) Determine how the division will be carried out as between the shareholders or different classes of shareholders.
- 31.3 **Trusts:** With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of shareholders of the Company. The liquidator may determine the terms of the trust.

32 EXECUTION OF DEEDS

A deed which is to be entered into by the Company may be signed on behalf of the Company by:

- (a) Two or more Directors; or
- (b) Any Director and a person authorised by the Board, whose signatures must be witnessed; or
- (c) One or more attorneys appointed by the Company in accordance with section 181 of the Act.