

**CONSTITUTION**  
**(incorporating changes made on**  
**21/9/04, 20/12/07, 24/9/12, 14/09/15 and**  
**17/10/16)**

**RAVENSDOWN LIMITED**

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# CONSTITUTION

## RAVENSDOWN LIMITED

### 1. EFFECT OF THIS CONSTITUTION

- 1.1 This Constitution shall be effective on registration of the Company as a co-operative company under the Co-op Act. The Company, the Board, each Director and each Shareholder of the Company have the rights, powers, duties and obligations set out in the Companies Act and the Co-op Act except to the extent that they are negated or modified, in accordance with the Companies Act or the Co-op Act, by this Constitution.

### 2. INTERPRETATION

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

**“Area”** means an area determined for the purposes of an election of Directors and which is set out in a Regulation.

**“Area Issue”** means an issue taken to a vote of Transacting Shareholders which is of special significance to a particular Area or Areas and which is determined to be an area issue by the Board and **“Area Issues”** means more than one of them.

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

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

**“Company”** means Ravensdown Limited.

**“Constitution”** includes any amendment or extension for the time being in force.

**“Convertible Security”** means a Security that may be converted into, or exchanged for, a Security of a different sort, whether at the option of the holder, or of the Company, or otherwise, and includes a right to subscribe for, or obtain, a Security of a different sort, pursuant to any right conferred by the first mentioned Security.

**“Co-op Act”** means the Co-operative Companies Act 1996.

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

**“Farmer”** means a person who derives income from the use of land for agricultural, forestry, horticultural, or pastoral purposes, and includes a trustee where income from the trust is derived wholly or partly from the use of land for agricultural, forestry, horticultural, or pastoral purposes, and also includes the personal representatives of a deceased farmer if that personal representative is still engaged in farming business and further includes the Crown and any Government Department, State owned or statutory corporation, or other corporation actively engaged in farming, but does not include (except in the case of the corporation a majority of shares in which are held by the State or its nominee) a corporation that does not derive its income principally from the use by it of land for

agricultural, forestry, horticultural, or pastoral purposes. If any doubt or dispute shall arise as to whether or not a person is a farmer within the meaning of this definition, the decision of the Directors thereon shall be final and conclusive.

**“Financial Year”** means the period of 12 months ending on expiration of the 31st day of May, or such other date as the Directors may settle as the end of the Company’s financial year from time to time.

**“Group Member”** means any subsidiary of the Company or other entity in respect of which the Company or a wholly-owned subsidiary of the Company holds at least 50% of the share capital or has an ownership interest of at least 50%.

**“Managing Director”** means a person appointed as the Managing Director for the time being in accordance with clause 17.5.

**“Member” or “Shareholder”** means the registered holder for the time being of shares in the Company, whether or not that Member or Shareholder is also a Transacting Shareholder.

**“Qualifying Shares”** means the minimum number of fully paid shares in the Company required to be held by a Transacting Shareholder to be eligible for rebates.

**“Quota Shareholding”** means that number of ordinary nominal value shares in the Company required from time to time to be held by any Transacting Shareholder calculated in accordance with clause 5, and, in the case of a surrender at the option of the Company under the provisions of section 21(5) Co-op Act, having regard to the requirements of clause 8.1(e).

**“Regulation”** means a document setting out Areas, and numbers of Directors in each Area, for the purposes of elections of Directors and that is adopted or altered from time to time by a resolution of the Board in accordance with clause 17.2.

**“Relevant Interest”** shall have the same meaning as is given to it by the Securities Amendment Act 1988, as if the Company was a public issuer under that Act.

**“Security”** means any interest in, or right to an interest in, any capital, assets, earnings, royalties, or other property of the Company and includes any interest in or right to be paid money deposited with, lent to, or otherwise owing by the Company.

**“Transacting Shareholder”** means, having regard to the co-operative activity of the Company under clause 3, a Shareholder who:

- (a) purchases or acquires goods or services from the Company, or having ceased to purchase or acquire goods or services from the Company, is, in the reasonable opinion of the Board, likely to resume doing so; or,
- (b) enters into other commercial transactions with the Company or, having ceased to enter into other commercial transactions with the Company is, in the reasonable opinion of the Board, likely to resume doing so; or
- (c) has incurred an obligation to do an act referred to in the foregoing paragraphs (a) or (b).

For the purposes of this Constitution a Shareholder may carry on one of the activities referred to in (a) to (c) above with the Company in one or more of the following ways:

- (i) directly
- (ii) through a subsidiary of the Company
- (iii) with another person who or which is carrying on the activity on behalf of the Company.

- 2.2 Expressions defined in the Companies Act and the Co-op Act where used in this Constitution have the meanings so defined.
- 2.3 Headings have been included for convenience only and shall not affect the interpretation of clauses in this Constitution.
- 2.4 The schedules form part of this Constitution.
- 2.5 References to any legislation or provision of any legislation are deemed to be references to that legislation or provision as amended, substituted or re-enacted and unless the context requires otherwise include any statutory instruments issued under that legislation or provision.
- 2.6 The singular includes the plural and vice versa, and words importing one gender include the other genders.
- 2.7 Any reference to \$ or dollars is a reference to New Zealand dollars and all amounts to be paid in accordance with this Constitution should be paid free from any deductions or transaction fees.
- 2.8 Any reference to a time or date shall be a reference to that time and date in New Zealand.

### **3. PRINCIPAL ACTIVITY**

The principal activities of the Company are to supply and provide Shareholders with goods and services, and to enter into other commercial transactions with Shareholders, either directly or indirectly, being co-operative activities under section 3 Co-op Act.

### **4. ISSUE OF SHARES AND CONVERTIBLE SECURITIES**

#### **4.1 Classes of Shares**

Subject to clause 4.2, the Board may issue shares in different classes and may in the terms of issue of any or all classes of shares negate, alter or add to the rights attaching to any share specified in section 36(1) Companies Act. Such rights may also be negated, altered or added to by this Constitution.

#### **4.2 Ordinary Shares With a Nominal Value**

Ordinary nominal value shares in the Company shall have a nominal value of \$1.00 each.

#### 4.3 **Pre-Emptive Rights**

The requirements of section 45 Companies Act regarding the issue of shares are hereby negated.

#### 4.4 **Controls on Issue**

The Board may in its discretion:

- (a) Refuse to issue, reissue or allot any shares to a person who in the opinion of the Board is not a Farmer and is not a Transacting Shareholder, except where an issue or allotment is made upon conversion of any Securities from time to time issued by the Company, if the terms of issue or allotment of those Securities provided for conversion to shares of the kind to be issued or allotted;
- (b) Refuse to issue, re-issue or allot any shares to a person where such issue, re-issue or allotment would cause a breach of clause 4.9; or
- (c) Decline to accept any application for shares.

The decision of the Board as to any matter under this clause shall be final and not subject to any review except by the Board in the exercise from time to time of the powers contained in this Constitution.

#### 4.5 **Controls on trading**

Any shares issued by the Company must not be listed or quoted for sale or purchase at any stock exchange or in any other public manner whatsoever.

#### 4.6 **Consideration**

The consideration for the issue of ordinary nominal value shares must be the nominal value of the shares or class or shares concerned. The consideration for the issue of shares without a nominal value shall be decided by the Board in accordance with the provisions of the Companies Act.

If by the terms or conditions of the allotment of any share, the whole or part of the amount payable as the issue price shall be payable by instalments, every such instalment shall, when due, be payable to the Company by the person who for the time being is registered as the holder of the share.

#### 4.7 **Convertible Securities**

The Board may from time to time, at its discretion, issue Convertible Securities upon such terms and conditions as the Board thinks fit, including, at its discretion, the right for the holders of the Convertible Securities to participate, in the same manner and to the same extent (subject to any discretion which the Board has under this Constitution) as the holders of any class or classes of shares as those shares for or to which the Convertible Securities are to be exchanged or converted:

- (a) In any issue of shares or Convertible Securities offered to such holders of such class or classes of shares;

- (b) In any issue of shares or Convertible Securities made in pursuance of any capitalisation of the profits or reserves of the Company.

#### **4.8 Alteration Of Shareholder Rights**

Shares in the Company which rank equally with, or in priority to, existing shares, whether as to voting rights or distributions, may be issued.

#### **4.9 Maximum Shareholding**

The Directors may from time to time prescribe the maximum number of shares that may be held by, or by and on behalf of, any Shareholder at a particular time.

### **5. QUOTA SHAREHOLDING AND QUALIFYING SHARES**

5.1 So long as the Company shall be registered as a Co-operative Company and subject to the provisions of clauses 4.9, the following provisions shall apply:

- (a) The number of shares required to be held by a Transacting Shareholder in respect of Quota Shareholding shall be such number as is from time to time fixed by the Board based on the co-operative activity in relation, directly or indirectly, to the Company by or on behalf of that Transacting Shareholder and may also be based on the time a Transacting Shareholder has been engaged in such co-operative activities. The decision of the Board as to the number of such shares which any Transacting Shareholder shall hold in the Company, and the method by which, and the period in respect of which, such number shall be calculated, or as to any other matters questions or things rendered necessary by or incidental to this clause for giving due effect thereto, shall be final and conclusive to all intents and for all purposes whatsoever.
- (b) The Board may establish a minimum number of shares required to be held by a Transacting Shareholder as Qualifying Shares.
- (c) The Board may from time to time vary the number of shares required to be held by a Transacting Shareholder and alter any method, period, or other factor used as the basis, or part of the basis, to calculate the Quota Shareholding required to be held by a Transacting Shareholder from those factors previously applying, and may from time to time also alter any minimum number established.
- (d) For the purpose of bringing the number of shares in the Company at any time held by any Transacting Shareholder up to, or towards, the Quota Shareholding applicable to that Transacting Shareholder or for the purpose of maintaining such number of shares at the Quota Shareholding, the Board may allocate further shares to such Transacting Shareholder in accordance with this Constitution to adjust that Member's shareholding to or towards the Quota Shareholding applicable to that Transacting Shareholder, or require such Transacting Shareholder to make such adjustment by acquiring further shares.
- (e) In the event of any Transacting Shareholder not applying to take up additional shares required to be taken up under subclause (d) above, or, in the case of an allocation by the Board, the Board in its absolute discretion, may issue, reissue, or allot such number of additional shares to such Transacting Shareholder as may be required to give effect to the

provisions of this clause as to the Quota Shareholding requirements of that Transacting Shareholder. The Board may thereafter alter the share register so that such Transacting Shareholder shall appear therein as being the holder of such shares as are required to meet all or part of the Quota Shareholding requirement of that Transacting Shareholder, as if the Transacting Shareholder had made the application for those shares necessary to adjust the holding of that Transacting Shareholder to or towards the Quota Shareholding applicable to that Transacting Shareholder. In any such case the Board shall give written notification of the Quota Shareholding requirement of such Transacting Shareholder; and, details of the allotment made to bring that Transacting Shareholder's shareholding to or towards the Quota Shareholding applicable to that Transacting Shareholder.

- (f) The Board may fix either a minimum proportion, or minimum amount, of a Quota Shareholding, which is required to be held in fully paid up shares by each Transacting Shareholder, and may from time to time alter such minimum proportion or amount or vary the minimum from a proportion to an amount and vice versa.
- (g) Subject to the relevant provisions of the Co-op Act, the decision of the Board as to whether any Member is a Transacting Shareholder, and the number of shares, comprising that Transacting Shareholder's Quota Shareholding, required to be held by that Transacting Shareholder, shall be final and binding on that Member.

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

### **6.1 Acquisition by Company**

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

### **6.2 Special Offers by Company**

For the purposes of section 60(1)(b)(ii) Companies Act, the Company may make an offer to one or more Shareholders to acquire shares issued by it without making such an offer to any other Shareholder or Shareholders in the Company.

### **6.3 Additional Power to Surrender Shares**

The powers conferred by clauses 6.1 and 6.2 are in addition to the powers of the Company to surrender ordinary nominal value shares pursuant to the Co-op Act and to this Constitution.

## **7. REDEMPTION OF SHARES**

### **7.1 Redeemable Shares**

The Company may redeem shares in accordance with the Companies Act:

- (a) at its option; or
- (b) at the option of the holder of the share; or



- (c) on a date specified in the terms of the issue of the share;

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

## **7.2 Special Redemption**

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

## **8. SURRENDER OF NOMINAL VALUE SHARES**

### **8.1 At the Option of Company**

The Company may require any Shareholder to surrender to the Company any or all ordinary nominal value shares held by that Shareholder provided that:

- (a) The Shareholder has ceased to be a Transacting Shareholder; or
- (b) The Shareholder has ceased to be a Farmer; or
- (c) The Shareholder has failed to comply with a material requirement of a transaction with, or in relation to, either directly or indirectly, the Company, contained in any contract between the Company, or any Group Member or agent of the Company, and the Shareholder; or
- (d) The Board forms the view that the Shareholder, or a person having a Relevant Interest in the shares held by that Shareholder is a person who or which is in competition with the Company directly or indirectly, and whether as partner, joint venturer, manager, shareholder, or director of any competitor; or
- (e) The surrender relates to shares held in excess of that Transacting Shareholder's Quota Shareholding. In such case, in ascertaining that excess, the Board shall use transactions constituting co-operative activity by or on behalf of the Transacting Shareholder in relation to the Company during at least the then immediately preceding Financial Year in calculating the relevant Quota Shareholding, together with such other Financial Years as chronologically precede that period, as the Board may choose from time to time; or
- (f) The Board is satisfied that the surrender would remedy an error in respect of the calculation of the Quota Shareholding of any such Shareholder, or would remedy an error in the number of shares allotted or transferred (where the provisions of clause 9.2 apply) to that Shareholder.

### **8.2 At the Option of the Shareholder**

Subject to the Company complying with any applicable statutory conditions a Shareholder may require the Company to surrender any or all ordinary nominal value shares held by that Shareholder where:

- (a) The shares are held by a personal representative of the estate of a deceased Shareholder as part of the estate of that deceased Shareholder and the personal representative has ceased to be a Transacting Shareholder; or
- (b) Where a Shareholder has not been a Transacting Shareholder during the immediately preceding five (5) years, or such other period as may be determined by the Board; or
- (c) Where a Shareholder has disposed of, or changed the use of, that Shareholder's property and other assets with the result that the Shareholder does not have the capacity to continue to be a Transacting Shareholder.

In each of the above cases in accordance with the provisions of Section 20 Co-op Act.

### 8.3 **Consideration for Ordinary Nominal Value Shares**

Subject to clauses 8.4 to 8.6 the consideration for the surrender of ordinary nominal value shares shall be the nominal value of the shares at the date the surrender takes effect or, the amount paid up on the shares, if it is less than the nominal value of the shares.

### 8.4 **Valuation of Ordinary Nominal Value Shares**

- (a) The Board may procure that a fair and reasonable price for shares to be surrendered is set by an independent valuation derived from a methodology which is appropriate having regard to:
  - (i) the current profitability of the Company, calculated before any rebate;
  - (ii) any known circumstances which are reasonably likely to affect the Company's business or profitability in the future;
  - (iii) the requirement of subclause (vi) below; and
  - (iv) any other matter which the Board, acting reasonably, considers has a bearing on the value of the shares to be surrendered.

For the purposes of this clause "independent" shall mean a valuer selected by the Company who does not have any significant commercial relationship with the Company which might give rise to a perception, reasonably held, that the valuer is compromised in that valuer's ability to give an independent view as to share price. As part of its instruction to the independent valuer the Company shall require that notice of the price settled by the valuer shall:

- (v) be sent to the Shareholders whose shares are the subject of a surrender, at the same time as it is sent to the Company; and
- (vi) not exceed the nominal value of the shares concerned, or, if less, the amount paid up on those shares.

### 8.5 **Arbitration**

If either the Company or a surrendering Shareholder considers that the price ascertained under clause 8.4, being a price less than either nominal value or the amount paid in respect of nominal

value, is not fair and reasonable, either may notify the other of an objection to the price within 10 working days of receiving notice of the price, and section 112 Companies Act shall apply with all necessary modifications, as if the Board had agreed to purchase the shares, and the price ascertained was the nominated price fixed by the Board and properly notified under section 112(1) Companies Act, but subject to clause 8.7 of this Constitution in respect of any payment of interest or principal to be made and subject also to the Company and the surrendering Shareholder being deemed to have agreed for the purposes of such arbitration that the final price shall be less than nominal value or the amount, if not fully paid, actually paid in respect of the nominal value of such shares.

#### **8.6 Agreement**

Notwithstanding clauses 8.3 and 8.4, the consideration payable for surrender may be an amount agreed by the Company and the Shareholder, provided that it is less than the amount which would be determined under clause 8.3.

#### **8.7 Payment of Consideration**

The consideration owed by the Company for any surrender of shares to the Company shall be payable at a date decided by the Board being a date no later than 24 months after a surrender takes effect where surrendered under the provisions of section 20(2) or (3)(a) Co-op Act or no later than 5 years in any other case. No interest shall be payable by the Company on any surrender proceeds due unless otherwise resolved by the Board.

#### **8.8 Right of set-off**

Notwithstanding any other provision in this Constitution, the Company may set off against any consideration owed by the Company to a Shareholder for any surrender of Shares to the Company, any amount due and payable to the Company or any Group Member by:

- (a) that Shareholder; and/or
- (b) a related company of that Shareholder (within the meaning of the Companies Act); and/or
- (c) a person that either has effective control of that Shareholder or is under the effective control of the Shareholder,

including in respect of products and services supplied by the Company or any Group Member. A 'person' includes a natural person or persons, a trust in respect of which the Shareholder is a trustee, and a corporate entity.

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

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

The Company may hold any of its own shares acquired under the Companies Act, or surrendered under the Co-op Act.

## 9.2 **Transfer of own shares**

Clause 4.4 and 4.5 of this Constitution, applying to the issue of shares by the Company, shall apply to the transfer of a share in the Company held by the Company itself.

## 10. **TRANSFER OF SHARES**

### 10.1 **Delay or Refusal to Register Transfers**

The Board may delay or refuse to register a transfer of shares in the Company:

- (a) Where the Company has a lien on a share or shares included in the transfer;
- (b) Where a call is due and unpaid or any other money is due to the Company and unpaid in respect of a share or shares included in the transfer;
- (c) Where the form of transfer and any other documentation required has not been provided or has not been duly executed;
- (d) Where the Board is of the opinion that the proposed transferee is not a desirable person to become a Shareholder of the Company;
- (e) Where the Board resolves that it is not in the best interests of the Company to register the transfer;
- (f) Where the transferee is not, and is not likely to become, a Transacting Shareholder of the Company;
- (g) Where the transferee is not a Farmer;
- (h) Where the transfer would cause the Company to become subject to any special regulatory or statutory control which could reasonably be expected to adversely affect the Company's business or assets;
- (i) Where the transfer would result in the transferor holding a lesser number of shares than the minimum required for such Member under the Quota Shareholding provisions of this Constitution.

### 10.2 **Custody of Form of Transfer**

All forms of transfer shall when registered be retained by the Company, but any form of transfer which the Board refuses to register or registration of which the Board delays shall be returned to the person who delivered the form to the Company within 5 working days after the date on which the Board passed the resolution to refuse or delay registration of the transfer.

## 11. **TRANSMISSION OF SHARES**

### 11.1 **Transmission on Death of Shareholder**

In the event of the death of a Shareholder, the legal personal representative of a deceased sole holder of a share shall be the only person recognised by the Company as having any title in the

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

#### **11.2 Assignee in Bankruptcy**

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

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

Where the registered holder of any share dies or becomes bankrupt, his or her personal representative or the assignee of his or her estate, as the case may be, shall, upon the production of such evidence as may from time to time be required by the Board, be entitled to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been entitled to if he or she had not died or become bankrupt. Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall for the purposes of this Constitution be deemed to be joint holders of the share.

### **12. SHARE REGISTER**

#### **12.1 Closure of Share Register**

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

#### **12.2 No Recognition of Trusts**

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

#### **12.3 Receipts from Joint Holders**

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

### **13. CALLS**

#### **13.1 Power to Call**

The Board may from time to time make such calls as it thinks fit upon the Shareholders in respect of all money unpaid on the shares held by them respectively and which is not by the conditions of allotment made payable at fixed times. Each Shareholder shall pay the amount of every call so

made to the persons and at the times and places appointed by the Board. A call may be made payable by instalments and may be revoked or postponed as the Board may determine.

### **13.2 Notice and Arrears of Call**

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

### **13.3 Joint Holders**

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

### **13.4 Call Made**

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

### **13.5 Interest**

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

13.6 If by terms of any prospectus, by the terms or conditions of allotment, or by the exercise of Directors' discretion under clause 22.1(c), any amount is payable in respect of any share by instalments, every such instalment shall be payable as if it were a call duly made by the Directors and of which due notice had been given and all provisions hereof with respect to the payment of calls and of interest thereon and to the forfeiture of shares for non-payment of calls shall apply to such instalments and to the shares in respect of which they are payable.

13.7 The provisions of this Constitution as to the liability of joint holders and as to payment of interest shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time whether on account of the amount of the share as if the same had become payable by virtue of a call duly made and notified.

### **13.8 Proof of Liability**

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

- (a) the name of the Shareholder sued is entered in the register of Shareholders of the Company as the holder or one of the holders of the shares in respect of which the debt accrued;
- (b) the resolution making the call is duly recorded in the minute book; and
- (c) notice of the call was duly given to the Shareholder.

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

### **13.9 Different Amounts**

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

## **14. FORFEITURE OF SHARES**

### **14.1 Failure to Pay**

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

### **14.2 Notice**

The notice shall:

- (a) name a further day (not being less than 10 days from the date of the notice) on or before which the call or instalment and all interest and expenses (if any) that have accrued by reason of the non-payment are to be paid;
- (b) name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable; and
- (c) state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which the call or instalment is made will be liable to be forfeited.

### **14.3 Non-Compliance**

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

### **14.4 Forfeited Shares**

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

### **14.5 Ceasing to be a Shareholder**

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

#### **14.6 Evidence of Forfeiture**

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

#### **14.7 Sale of Shares**

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

#### **14.8 Fixed Time Payments**

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

#### **14.9 Cancellation of Forfeiture**

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

#### **14.10 Proof on Forfeiture**

An entry in the minute book of the Board that a share in the Company has been duly forfeited on a date stated in the minute shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The Company may if necessary execute a transfer of the share in favour of the person to whom the share is sold or disposed of and may receive the consideration therefor. In the case of a re-allotment the person to whom the share shall have been re-allotted and in the case of a sale or other disposition the person or persons to whom the share shall be sold or disposed of shall be entered upon the register as the holder of the share and shall not be bound to see to the application of the purchase money nor shall that person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture re-allotment sale or other disposal of the share.

### **15. LIEN**

#### **15.1 Company's lien**

The Company shall have a first and paramount lien upon:



- (a) all shares registered in the name of each Shareholder (whether solely or jointly with others);
- (b) the proceeds of sale of such shares;
- (c) the consideration owed by the Company for the surrender of such shares; and
- (d) all distributions (including dividends) authorised in respect of such shares, and all rebates and other amounts payable in respect of such shares (including pursuant to clause 22);

for all debts, obligations and liabilities of such Shareholder (whether absolute or contingent, solely or jointly with others, or payable or to be performed or discharged presently or in the future), including without limitation:

- (e) unpaid calls and instalments payable in respect of any such shares;
- (f) interest on any such calls or instalments;
- (g) any monies owed by a shareholder to the Company or any Group Member, howsoever arising, including in respect of products and services supplied to that Shareholder by the Company or any Group Member;
- (h) expenses owing to the Company in respect of the sale or surrender of any such shares; and
- (i) any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other law in respect of such shares, whether the period for payment has arrived or not.

## 15.2 **Waiver of lien**

Registration of a transfer of shares on which the Company has any lien will operate as a waiver of the lien, unless the Company first gives notice to the contrary to the transferee.

## 15.3 **Right of sale of surrender**

The Company may:

- (a) sell a share on which it has a lien in such manner as the Board thinks fit, where:
  - (i) the lien on the share is for a sum which is presently payable; and
  - (ii) the registered holder of the share, or the person entitled to it on his or her death or bankruptcy, has failed to pay that sum within 10 working days after the Company has served him or her with written notice demanding payment of that sum; or
- (b) effect the surrender of a share on which it has a lien, where:
  - (i) the lien on the share is for a sum which is presently payable; and
  - (ii) the surrender is effected in accordance with clause 8 and the Co-op Act.

## 15.4 **Effecting sale or surrender**

- (a) In the case of the sale of a share under clause 15.3(a), the Company may receive consideration given for the share, and may execute a transfer of the share in favour of the person to whom the share is sold, and register that person as the holder of the share discharged from all calls due prior to the purchase. The purchaser shall not be bound to see to the application of the purchase money, and his or her title to the shares shall not be affected by any irregularity or invalidity in the proceedings relating to the sale.
- (b) In the case of the surrender of a share under clause 15.3(b), the Company may retain the consideration payable by the Company for the surrender in accordance with the Company's right of set-off under clause 8.8 or to the extent permitted under clause 15.4(c) below.
- (c) The Company must apply the sale proceeds or consideration for the surrender of the share (as relevant):
  - (i) first, in payment of all costs and expenses of such sale or surrender;
  - (ii) secondly, in payment of the sum presently payable on the lien; and
  - (iii) thirdly, the balance, if any, shall (subject to a like lien for sums not presently payable that existed upon the share before the sale) be paid to the person entitled to the share at the date of sale or surrender (as relevant).

## **16. MEETINGS OF SHAREHOLDERS**

### **16.1 Proceedings at Meetings**

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

### **16.2 Votes of Shareholders**

The use of voting rights attaching to shares may be affected by the provisions of the Co-op Act and this Constitution.

#### **(a) Votes of Shareholders on Area Issues**

- (i) For voting on Area Issues, all Transacting Shareholders who wish to vote, shall cast their votes in respect of the Area within which their principal place of business (as determined by the Board) is located.
- (ii) Where a Transacting Shareholder has more than one principal place of business and those places of business are located within more than one Area, the Transacting Shareholder may apply in writing to the Board for consent to cast a proportion of its votes in each of the Areas in which it has a principal place of business and the Board shall determine which Areas the Transacting Shareholder may be allowed to vote in at its discretion. Such an application may be made only once during each financial year of the Company.
- (iii) Subject to clause 16.2(a)(ii) above, every Transacting Shareholder present in person and entitled to vote shall have one vote by voice or on a show of hands. Upon a poll

every Transacting Shareholder present in person, by representative under clause 8 of the First Schedule to this Constitution, or by proxy, shall have one vote for each share held by the Transacting Shareholder subject to the following restrictions:

- (1) the Transacting Shareholder shall only be entitled to cast its votes in each of the Areas in which the Transacting Shareholder is entitled to vote in accordance with the following formula:

Total votes cast by the Transacting Shareholder in relevant Area  <hr style="width: 50%; margin-left: auto; margin-right: auto;"/>	=	Total fertiliser purchases made by Transacting Shareholder from the Company in the preceding financial year in relevant Area  <hr style="width: 50%; margin-left: auto; margin-right: auto;"/> Total fertiliser purchases made by the Transacting Shareholder from the Company in the preceding financial year
--	---	---

to the intent that the proportion of votes cast by that Transacting Shareholder in the relevant Area to the total shares held by that Transacting Shareholder in the Company shall bear the same ratio as the proportion of total fertiliser purchases made by that Transacting Shareholder from the Company during the preceding financial year in that Area to the total fertiliser purchases made by that Transacting Shareholder from the Company during the preceding financial year; and

- (2) notwithstanding the provisions of clause 16.2(a)(iii)(1), in any one Area no Transacting Shareholder shall vote more than that number of votes which equates to 3.5% of the total number of shares held and entitled to be cast as votes by all Transacting Shareholders in respect of the relevant Area.

**(b) Votes of Shareholders on Other Issues**

For voting on all issues other than Area Issues as provided for in clause 16.2(a) and Director's appointments in accordance with clause 17.4, every Transacting Shareholder present in person and entitled to vote shall have one vote by voice or on and show of hands, and upon a poll every such Transacting Shareholder present in person, by representative under clause 8 of the First Schedule to this constitution, or by proxy, shall have one vote for each share held by the Transacting Shareholder but no Transacting Shareholder shall vote more than that number of shares which equates 0.125% of the shares held by all Transacting Shareholders of the Company.

- 16.3 No Member shall be entitled to vote at any general meeting if that Member shall be in default of any payment of any call or other sum presently payable in respect of shares in the Company for one month after notice has been sent to that Member in writing under the hand of the Company requiring payment of such call or other sums.

16.4 Voting entitlement shall be established in respect of any particular meeting or postal ballot at a date to be fixed by the Board from time to time, which date shall be not more than twenty working days prior to the meeting, or closing date for ballot, as the case may be.

## **17. DIRECTORS**

### **17.1 Appointment**

Subject to the provisions of this clause, Directors shall be elected to represent each of the Areas, in the numbers, as determined by the Board and set out in a Regulation. In determining the Areas, and the numbers of Directors representing each Area, the Board shall have regard to geography, actual and potential shareholding, actual and potential shareholder numbers, actual and potential tonnage, economic expediency and community of interest within any Area or proposed Area. The total number of the elected Directors of the Company shall not be less than six nor more than eight. There may also be up to three further Directors of the Company who shall be appointed by the Directors from time to time and who shall be known as "Independent Directors". The Company may from time to time by ordinary resolution increase or reduce the maximum or minimum number of Directors in office. The Directors may also determine in what rotation the increased or reduced number is to go out of office.

### **17.2 Adoption and Alteration of Regulations**

A Regulation setting out the Areas and numbers of Directors in each Area may only be adopted or altered by a resolution of the Board. A Regulation may not be adopted or altered between the period of two days prior to the publication of the notices intimating the date and time for closing of nominations pursuant to clause 17.3(d), and the Annual Meeting immediately following the publication of that notice.

Upon an adoption of a new Regulation, or the altering of an existing Regulation, notification of the new Areas and numbers of Directors in each Area must be sent to all Members at least two days prior to the publication of the notices intimating the date and time for closing of nominations issued pursuant to clause 17.3(d) first following the said alteration or adoption.

A Regulation, and any amendment relating thereto, must be kept at the Company's Head office along with a copy of the Company's Constitution and must be available for inspection in the manner prescribed by Section 217 of the Companies Act by a Member or by a person authorised in writing by a Member for the purpose, who has served written notice of intention to inspect on the Company.

### **17.3 Nominations For Director**

- (a) Save as otherwise provided all Directors of the Company (excepting the Independent Directors) including Directors who retire by rotation and who offer themselves for re-election, shall be chosen by postal ballots conducted by the Board in the manner hereinafter provided.
- (b) No person shall be elected as a Director for any one Area unless a nomination paper in the form prescribed by the next succeeding subparagraph (signed by two Transacting Shareholders for the time being qualified to vote in the Area for which the Director is nominated and also by the candidate in token of his or her assent) shall be delivered or

posted to the officer authorised by the Board so that the same shall actually reach that officer not later than a date advised to Members by the Board in accordance with clause 17.3(d). Independent Directors shall not be subject to election. A Director may not represent (or be nominated to represent) more than one Area. A Director need not be resident or have a place of business in the Area for which they are nominated.

- (c) Nomination papers will be in a form approved by the Board from time to time.
- (d) Not less than thirty-one clear days before the annual meeting of shareholders of the Company the Board shall advise Members of the date and time for closing of nominations for the office of Director, the number of vacancies and whether any retiring Directors are available for re-election. The Board's notice will be given by such means of communication determined by the Board from time to time, having regard to Members' overall preferences relating to communications. This may include by way of notice in one or more newspapers circulating in an Area and/or by electronic means of communication.
- (e) If on the expiration of the time for receiving the nominations as aforesaid the number of candidates for the office of director for any Area shall not exceed the number of vacancies for that Area then the candidates so nominated shall be deemed to be duly elected.

#### **17.4 Voting Procedure**

If the number of candidates for any Area exceeds the number of vacancies for that Area then not less than 14 days prior to the date of the Annual Meeting of the Company the Board shall cause to be posted to each Transacting Shareholder having their principal place of business (as determined by the Board) in such Areas a voting paper on which shall be printed the names and addresses of all candidates for election in respect of that Area and Transacting Shareholders shall be entitled to vote in respect of such Area provided that where a Transacting Shareholder has more than one principal place of business and those places of business are located within more than one Area, the Transacting Shareholder may apply in writing to the Board for consent to cast a proportion of its votes in each of the Areas in which it has a principal place of business and the Board shall determine which Areas the Transacting Shareholder may be allowed to vote in at its discretion. Every Transacting Shareholder present in person and entitled to vote shall have one vote by voice or on a show of hands. Upon a poll every Transacting Shareholder present in person, by representative under clause 8 of the First Schedule to this Constitution, or by proxy, shall have one vote for each share held by the Transacting Shareholder subject to the following restrictions:

- (a) the Transacting Shareholder shall only be entitled to cast its votes in each of the Areas in which the Transacting Shareholder is entitled to vote in accordance with the following formula:

Total votes cast by the  
Transacting Shareholder in  
relevant Area

=

Total fertiliser purchases made  
by Transacting Shareholder  
from the Company in the  
preceding financial year in  
relevant Area

---

Total shares held by the  
Transacting Shareholder in  
the Company

---

Total fertiliser purchases made  
by the Transacting Shareholder  
from the Company in the  
preceding financial year

to the intent that the proportion of votes cast by that Transacting Shareholder in the relevant Area to the total shares held by that Transacting Shareholder in the Company shall bear the same ratio as the proportion of total fertiliser purchases made by that Transacting Shareholder from the Company during the preceding financial year in that Area compared to the total fertiliser purchases made by that Transacting Shareholder from the Company during the preceding financial year; and

- (b) notwithstanding the provisions of clause 17.4(a), in any one Area no Transacting Shareholder shall vote more than that number of votes which equates to 3.5% of the total number of shares held and entitled to be cast as votes by all Transacting Shareholders in respect of the relevant Area.
- (c) The postal ballot shall proceed as follows:
- (i) The Directors shall cause voting papers to be prepared showing those persons who have been nominated for office as Directors for the Area concerned. The order in which the Directors appear on the voting paper shall be settled by lot conducted by the Board.
- (ii) The voting paper shall be in the form following or in such other form as the Board shall approve:

**RAVENSDOWN LIMITED**

**Voting Paper for Election of Director(s) for**

**Area “ ”**

Serial No: \_\_\_\_\_ Maximum Number of Votes: \_\_\_\_\_

VOTE HERE (✓)

[Name and address of each Candidate:]

( )

( )

( )

( )

### ***Instructions and Information for Voters***

This voting paper shows, at the top right hand corner, the maximum number of votes to which you are entitled. Each share may be voted (to a maximum number of votes which equals 3.5% of the total number of shares held and entitled to be cast as votes by Transacting Shareholders in respect of the relevant Area or Areas) and any candidate for whom you vote will receive from you that number of votes shown above.

*Place a tick (✓) in the brackets beside the name of the candidate(s) you wish to vote for.*

*The number of Directors required for your Area is [    ]. You must not vote for more than [    ] candidate(s). Your voting paper will be informal if more than the required number of names are marked with a tick.*

*You may decline to vote at all, or vote for less than the number of candidates sought, if you wish.*

*This voting paper, to be valid, must be deposited at the registered office of the Company not later than one clear working day prior to the day for the holding of the meeting of the Shareholders of the Company, ie not later than        am/pm on the day of        19    .*

- (iii) Provided the officer authorised by the Board to issue such voting papers shall cause voting papers to be posted to Members in the relevant Area or Areas within the prescribed time, no objection shall be taken by any Member that he or she did not receive the same. The declaration of the authorised officer that such voting papers were duly posted to Members at the address shown in the Register of Members shall be accepted as conclusive evidence that they were posted to such Members.
- (iv) The officer authorised as aforesaid to issue voting papers to Members shall show thereon the number of votes to which the Member to whom it is to be posted is entitled in respect of the election of Directors in that Area. Each voting paper shall have printed thereon a serial number and the officer authorised to issue voting papers shall keep a record of the serial number of the voting paper sent to each Member.
- (v) Subject as provided in this clause 17.4 each Transacting Shareholder entitled to vote in an Area shall be entitled to the number of votes which equals one vote for every share held in the Company by that Transacting Shareholder with a maximum in each Area of that number of votes which is equal to 3.5% of the total number of shares held and entitled to be cast as votes by all Transacting Shareholders of the Company in respect of that Area
- (vi) Any Member who shall lose or destroy their voting paper shall as of right be entitled to apply to the authorised officer for and to receive another voting paper in the place of that so lost or destroyed. The voting paper issued in replacement of that lost or destroyed shall be endorsed at the top thereof so as to show that it is a replacement voting paper and shall show the serial number of the voting paper which it replaces. Neither the original voting paper issued to the Member nor the replacement voting

paper shall be deemed to be valid if both such voting papers shall be deposited at the registered office of the Company for the purpose of voting upon any election of Directors.

- (vii) Voting shall be undertaken by placing a tick against the name or names of the nominee(s) for whom the voter wishes to vote. The vote of any person who votes for more than the number of Directors required or who defaces his or her voting paper by any writing thereon or whose voting paper is deposited at the registered office of the Company later than one clear working day before the time for holding the relevant meeting of Shareholders shall be treated as invalid and shall not be counted.
  - (viii) A returning officer, a deputy returning officer and such poll clerks as the Directors shall consider necessary shall be appointed by the Directors to count the votes and report to the chairperson the result of the voting. The candidates for the vacant position(s) receiving the highest number of votes in the election of Directors for the relevant Areas shall be declared elected.
  - (ix) Any Member who at the time of posting of the voting papers for the election of Directors as aforesaid shall be in default in payment of any call or other sum presently payable by that Member in respect of shares in the Company for one month after notice has been sent in writing under the hand of the Secretary requiring that Member to pay such call or other sum, shall not be entitled to have a voting paper nor to vote in respect of such election.
- (d) The Board in its discretion may authorise an officer to cause the postal ballot for any election of Directors to be carried out by electronic means as well as, or instead of, by the posting and returning of voting papers in hard copy, having regard to Members' overall preferences relating to communications. Any postal ballot by electronic means shall be carried out in a form approved by the Board and notified to the relevant Transacting Shareholders at the same time as voting papers are sent to Transacting Shareholders in hard copy (where applicable). The form of postal ballot by electronic means must enable:
- (i) the maximum number of votes to which the Transacting Shareholder is entitled in respect of the relevant Area to be clearly identified;
  - (ii) voting instructions (including deadlines) to be clearly notified to the voter;
  - (iii) the Transacting Shareholder casting the votes to be clearly and uniquely identified as the voter; and
  - (iv) the voter to clearly indicate which nominee(s) for whom the voter wishes to vote.
- (e) The authorised officer shall not be required to cause a voting paper in respect of an Area to be posted in hard copy to any Shareholder who has given notice to the Company that the Shareholder wishes to receive a voting paper in respect of the Area by electronic means.



## 17.5 **Managing Director**

- (a) The Board may from time to time appoint a suitable person to be the Managing Director of the Company for such term (not exceeding 5 years), at such remuneration, and generally on such terms and conditions as they may think fit; and may, subject to any contract between him or her and the Company, from time to time remove or dismiss him or her from office and appoint another in his or her place. Subject to the terms and conditions of any agreement between the Company and its Managing Director, the general and routine business of the Company shall be managed by the Managing Director, who shall at all times faithfully observe and obey all resolutions of the Board and provide regular reports to the Board in respect of such appointment as Managing Director.
- (b) A Managing Director shall not while he or she holds office as such be subject to retirement by rotation, and shall not be taken into account in determining the rotation or retirement of Directors, but (subject to the provisions of any contract between him or her and the Company) he or she shall be subject to the same provisions as to resignation and removal as the other Directors of the Company.

## 17.6 **Rotation and Retirement of Directors**

Nothing in the next succeeding clauses 17.7 to 17.12 (both inclusive) shall apply to Independent Directors appointed pursuant to clause 17.1.

- 17.7 (a) At each Annual Meeting of the Shareholders of the Company one quarter of the Directors elected by Members, or if their number is not a multiple of four then the number nearest to one quarter, shall retire from office in accordance with clause 17.8.
- (b) Every Director who shall have attained the age of 70 years shall retire at the next Annual Meeting of the Company held after he or she attains that age and after such retirement he or she shall not thereafter be eligible for election as a Director.

17.7A No Director shall be required to retire from office due to any boundary adjustments to an Area of which that Director represents unless the bulk of two former Areas have been amalgamated into one Area and two or more incumbent Directors remain representing that Area.

17.8 The Directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became Directors on the same day those to retire shall (unless they agree otherwise among themselves) be determined by lot.

17.9 A retiring Director shall be eligible for re-election.

17.10 The Company at the meeting of Shareholders at which a Director retires in manner aforesaid may fill the vacated office if it has not been so filled by ballot in the manner provided in this Constitution.

17.11 A retiring Director shall retain office until the dissolution or adjournment of the meeting at which he is to retire.

17.12 Any casual vacancy occurring in the Directors elected by the Members may be addressed by:

- (a) A by-election in the Area concerned, and the provisions of clauses 17.1 to 17.4 should apply to any such by-election with such variations or modifications as the circumstances may require; or
- (b) an election in the Area concerned to be held in the postal ballot for Directors under clause 17.3 which is due to be held immediately prior to the next annual meeting.

17.13 Where the Directors have exercised their power to appoint an Independent Director or Independent Directors such Independent Director or Independent Directors shall hold office as an additional Director to the existing Directors but so that the total number of Directors shall not at any time exceed the number fixed in accordance with this Constitution. Any Independent Director so appointed shall hold office only until the conclusion of the next following Annual Meeting of the Company and shall then be eligible for reappointment by the Directors but such Independent Directors shall not be taken into account in determining the Directors who are to retire by rotation at that meeting.

#### **17.14 Alternate Directors**

Any Director may appoint any person, not being a Director, who is approved by a majority of the other Directors to be an alternate Director for a particular meeting or meetings of Director or during his absence or inability to act as Director. The appointee, while he holds office as an alternate Director, shall be entitled to notice of meetings of the Directors and to attend and vote thereat as a Director, shall not require any qualification and shall not be entitled to be remunerated otherwise than out of the remuneration of the Director appointing him. Any appointment so made may be revoked at any time by the appointor or by a majority of the other Directors. Any appointment or revocation under this Constitution shall be effected by notice in writing to be delivered under this clause shall be effected by notice in writing to be delivered to the officer of the Company authorised by the Board for this purpose. Any alternate Director so appointed shall be resident in the same Area (as defined in clause 17.2) as the Director for whom such alternate is substituting.

17.15 The appointment of an alternate Director shall be cancelled and the alternate Director shall cease to hold office whenever the Director who appointed him shall cease to be a Director. A Director retiring at any general meeting of the Company and being re-elected at that meeting shall not for the purpose of this clause be deemed to have ceased to be a Director.

### **18. MEETINGS OF DIRECTORS**

#### **18.1 Proceedings of Meetings**

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

### **19. INDEMNITY AND INSURANCE**

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

## **20. AUDIT**

20.1 Auditors shall be appointed and their duties regulated in accordance with section 196 to 203 Companies Act.

## **21. NOTICES**

### **21.1 Notice to Joint Holders**

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder named first in the share register in respect of the share.

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

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

### **21.3 Shareholders receipt of documents by electronic means**

- (a) Notwithstanding any other provision in this Constitution, any Shareholder may elect to receive, by electronic means, all or any notices, statements, reports, accounts, papers or other documents to be sent or posted to that Shareholder by the Company, by giving notice to the Company (and providing the Shareholder's nominated email address) in a form acceptable to the Company.
- (b) In respect of any Shareholder who has elected to receive documents by electronic means under this clause, the Company will be deemed to have sent a notice, statement, report, account, paper or other document to that Shareholder by emailing such document to the email address supplied by the Shareholder from time to time, and otherwise complying with the Electronic Transactions Act 2002 (as applicable).

## **22. DISTRIBUTIONS AND REBATES**

### **22.1 Application of Profits and Rebates**

The Board may from time to time, as it deems necessary or expedient in the interests of the Company, apply the gross returns arising from the conduct of the Company's business in or towards the following matters:

- (a) In setting aside and establishing any reserves, suspense accounts, or special funds for meeting contingencies or for furthering or extending the business of the Company including reserves to be used at the discretion of the Board for the purpose of replacement of any assets of the Company, or for making rebates, refunds, bonuses or other similar payments or

for stabilising or making more uniform any such payments, or for any capital expenditure incurred, or to be incurred, or for equalising dividends, or for any other purpose to which the funds of the Company may properly be applied. Pending such application, and at the discretion of the Board, such amounts may either be employed in the business of the Company or be invested in such investment, including any reserve for acquisition, redemption or surrender of shares in the Company as the Board may think fit;

- (b) In making rebates, refunds, bonuses or other similar payments to Transacting Shareholders, calculated on the basis of the level of transactions constituting co-operative activity in relation to, directly or indirectly, the Company, by or on behalf of Transacting Shareholders in respect of any Financial Year of the Company, the Board shall determine how such calculation will be made. The Board may have regard to all or any of the quantity, price, value, quality, type, or method of sale or purchase of goods or services supplied, number of fully paid shares held, whether a Transacting Shareholder holds Qualifying Shares, or the proportion of Quota Shareholding held in respect of fully paid shares, by any Transacting Shareholder and the Board may determine different rates of payment as between Transacting Shareholders or the exclusion of some Transacting Shareholders, having regard to all or any of the foregoing factors, and they may also apply a varying rate of payment of rebates, refunds, bonuses or other similar payments to any Transacting Shareholders based on volume, value, time or period of transactions constituting co-operative activity with that Transacting Shareholder;
- (c) The Board may pay the whole or any part of any rebate, refund, bonus or other similar payment in cash. Upon the issue, reissue or allotment of any shares, the Board may forthwith and without any authority of the Members other than this clause apply all or part of the amounts due to any Transacting Shareholder to pay up in full or in part shares so issued, reissued, or allotted to each such Transacting Shareholder in respect of Quota Shareholding.
- (d) Where any Transacting Shareholder has paid in full all of the shares issued, reissued or allotted and required by that Transacting Shareholder as a Quota Shareholding, the Board shall pay (subject as provided below) the whole of the amount due to such Member under clause (b) and (c) above in cash, unless the Transacting Shareholder agrees to take all or part of the amount due in fully paid shares.
- (e) Any rebates, refunds, bonuses (including pool payments), dividends, or similar payments granted, allowed or declared by the Company which have been unclaimed for three years or longer from the date on which the same were granted, allowed or declared may be forfeited by the Board for the benefit of the Company. After forfeiture the person or persons who would have been entitled to payment thereof had the same not been forfeited, shall be entitled to payment (subject to such person having fully paid shares in respect of all shares forming part of that person's Quota Shareholding) upon adducing to the satisfaction of the Board sufficient evidence that such person would have been entitled thereto had the same not been forfeited.

## 22.2 Payments

- (a) If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

- (b) Any distribution or rebate may be paid:
- (i) by cheque sent through the post to the registered address of the Member or person entitled thereto, or in the case of joint holders to any one of such joint holders at his or her registered address, or
  - (ii) by an electronic transfer of funds to a bank account nominated by the Member, joint holders or person entitled to such distribution or rebate (as relevant); or
  - (iii) by a cheque sent by post to such person and such address, or an electronic transfer of funds to such person to a nominated bank account, as the Member or person entitled or such joint holders as the case may be may direct.

Every such cheque shall be made payable to the order of the person to whom it is sent or to the order of such other person as the Member or person entitled or such joint holders as the case may be may direct.

- (c) The Board may deduct from any distribution or rebate payable to any Member all such sums of money as may be due from that Member to the Company on account of calls instalments or otherwise of any debts liability or engagement.
- (d) A transfer of any shares shall not pass the right to any dividend declared thereon or other distribution in respect thereof, before the registration of the transfer. Rebates shall only be paid to the Shareholder undertaking the co-operative activity with the Company in respect of which the rebate is payable.

### **22.3 Interest**

No distribution or rebate shall bear interest against the Company.

## **23. METHOD OF CONTRACTING**

23.1 In addition to the procedures set out in section 180(1)(a) of the Companies Act an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

- (a) a Director and the Chief Executive Officer; or
- (b) by a Director, or any person authorised by the Board for that purpose, or by a person within a class of person or persons nominated by the Board from time to time, and in each such case the signatures of those persons must be witnessed.

## **24. TRANSACTING SHAREHOLDER STATUS**

24.1 Any Shareholder who or which is a Transacting Shareholder and who or which has ceased co-operative activity with the Company, which activity is not intended to recommence, shall give the Company written notice of such cessation as soon as is reasonably practicable and failure to do so shall entitle (but not oblige) the Board to assume that the Shareholder concerned is likely to resume co-operative activity with the Company at some time in the future.

**25. GOVERNING LAW**

25.1 This Constitution is governed by and shall be construed in accordance with New Zealand law.

25.2 Any legal action or proceeding arising out of or in connection with this Constitution shall be brought in the courts of New Zealand.

## **FIRST SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

### **1. CHAIRPERSON**

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

### **2. NOTICE OF MEETING**

- 2.1 Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and an auditor of the Company not less than 10 working days before the meeting.
- 2.2 The notice must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
  - (b) the text of any special resolution to be submitted to the meeting.
- 2.3 An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 2.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.
- 2.5 The Chairperson of any meeting at which a quorum is present may and shall, if so directed by the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of the original meeting. When a meeting is adjourned for less than 30 days, notice of the time and place of the adjourned meeting may be given by announcement at the meeting which is adjourned.

### **3. QUORUM**

- 3.1 Subject to clause 3.3 no business may be transacted at any general meeting if a quorum is not present.

- 3.2 No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business; save as herein otherwise provided, ten Transacting Shareholders personally present (including, in the case of a corporate member, by representation) shall be a quorum, except that in the case of a class meeting, 5 Members present in person, by proxy, or by representative or members present in person, by proxy, or by representative holding not less than 5% of the issued shares of that class shall constitute a quorum.
- 3.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) In the case of a meeting covered under section 121(b) Companies 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 Board may appoint and, if at the adjourned meeting, a quorum is not present within 30 minutes of the time appointed for the meeting, the Transacting Shareholders or their proxies present shall be a quorum.

#### **4. VOTING**

- 4.1 In the case of a meeting of Shareholders, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the Chairperson of the meeting:
- (a) Voting by voice; or
  - (b) Voting by show of hands.
- 4.2 A declaration by the Chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 4.3.
- 4.3 At a meeting of Shareholders a poll may be demanded by:
- (a) not less than 5 Shareholders having the right to vote at the meeting;
  - (b) a Shareholder or Shareholders representing not less than 10 percent of the total voting rights of all Shareholders having the right to vote at the meeting; or
  - (c) by 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 per cent of the total amount paid up on all shares that confer that right; or
  - (d) the Chairperson of the meeting.
- 4.4 A poll may be demanded either before or after the vote is taken on a resolution.
- 4.5 If a poll is taken, votes must be counted according to the votes attached to the shares of each Shareholder present in person or by proxy and voting.
- 4.6 The Chairperson of a Shareholders' meeting is entitled to a casting vote.



- 4.7 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.
- 4.8 Subject to clause 4.10 if a poll is demanded it shall be taken in such manner and at such time and place as the Chairperson of the meeting may direct and either at once or after an interval of adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.
- 4.9 Any poll duly demanded on the election of a Chairperson of a meeting or on any question of adjournment shall be taken at the meeting and without adjournment.
- 4.10 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

**5. PROXIES**

- 5.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 5.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.
- 5.3 A proxy must be appointed:
  - (a) by notice in writing signed by the Shareholder; or
  - (b) by a form of electronic notice as may be adopted by the Board from time to time and advised to Shareholders,

and must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- 5.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- 5.5 A proxy is not effective unless it and the power of attorney (if any) under which it is signed, or a certified copy, is produced to the Company at its registered office at least 48 hours before the start of a meeting.
- 5.6 The notice appointing a proxy shall be in the following form or any other form which the Board approve:

***RAVENSDOWN LIMITED***

*I/We, \_\_\_\_\_*

*of \_\_\_\_\_*

*being a Member/Members of the abovenamed Company, hereby appoint*

\_\_\_\_\_

of \_\_\_\_\_

or failing that person \_\_\_\_\_

of \_\_\_\_\_

as my/our proxy to vote for me/us on my/our behalf at the \_\_\_\_\_

(annual or extraordinary, as the case may be) meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

Signature: \_\_\_\_\_

- 5.7 Where it is desired to afford Members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or any other form approved by the Board:

**RAVENSDOWN LIMITED**

I/We, \_\_\_\_\_

of \_\_\_\_\_

being a Member/Members of the abovenamed Company, hereby appoint

\_\_\_\_\_

of \_\_\_\_\_

or failing that person \_\_\_\_\_

of \_\_\_\_\_

as my/our proxy to vote for me/us on my/our behalf at the \_\_\_\_\_

(annual or extraordinary, as the case may be) meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

Signature: \_\_\_\_\_

\* This form is to be used \* in favour of \_\_\_\_\_ the resolution  
against \_\_\_\_\_

\* Unless otherwise instructed, the proxy will vote as the proxy thinks fit.

*\* Strike out whichever is not desired.*

- 5.8 A vote given in accordance with the terms of a notice of appointment of proxy shall be valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of any share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation or transfer has been received by the Company before the start of the meeting or adjourned meeting.
- 5.9 Any notice appointing a proxy given by a Shareholder shall be deemed to be revoked on receipt from the Shareholder of a notice in writing to that effect at the registered office of the Company not less than twenty-four hours before the time fixed for the holding of the meeting or of the adjourned meeting for which the proxy is given.

## **6. MINUTES**

- 6.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 6.2 Minutes which have been signed correct by the Chairperson of the meeting are prima facie evidence of the proceedings.

## **7. SHAREHOLDER PROPOSALS**

- 7.1 A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.
- 7.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 7.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 7.4 If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 7.5 If the Board intends that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

- 7.6 The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous, or vexatious.
- 7.7 Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

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

- 8.1 A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

## **9. VOTES OF JOINT HOLDERS**

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

## **10. PRIVATE MEETINGS**

- 10.1 The meetings of the Company shall be regarded as private meetings. Except as provided in clause 11 persons other than Shareholders or persons holding proxies for Members may be present there only during the pleasure of the Chairperson of the meeting.
- 10.2 A Director who is not a Shareholder of the Company is entitled to attend and speak at meetings of Shareholders.

## **11. VOTING BY ADMINISTRATOR ETC**

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

## **12. OTHER PROCEEDINGS**

- 12.1 Except as provided in this Schedule, and subject to the Constitution of the Company, a meeting of Shareholders may regulate its own procedure.
- 12.2 Upon the holding of a vote, whether by voice or on a show of hands or upon a poll in respect of Area Issues and in respect of any other issues, every Transacting Shareholder shall be entitled to the number of votes set out in clause 16.2 and upon the holding of a postal ballot for the election of Directors, every Transacting Shareholding shall be entitled to the number of votes set out in Clause 17.4.

- 12.3 A postal ballot for the election of Directors shall be conducted as set out in clause 17.3 and 17.4.
- 12.4 There shall be no postal voting in respect of any meeting of the Company except as expressly provided in this Constitution, or except in respect of any resolution specifically notified by the Board as being a resolution on which postal votes will be allowed. Where the Board specifically notifies a resolution as being a resolution on which postal votes will be allowed, the Board may cause the postal ballot for the resolution to be carried out by electronic means as well as by the posting and returning of voting papers in hard copy.

## SECOND SCHEDULE: PROCEEDINGS OF MEETINGS OF THE BOARD

1. The Directors may meet together for the despatch of business adjourn and otherwise regulate their meetings as they think fit. No resolution proposal or motion submitted to or proposed at a meeting of the Directors shall be carried or be deemed to be carried or be given effect to unless a majority of the Directors present at the meeting and who vote do so vote in favour of such resolution proposal or motion and all questions arising at any such meeting shall be determined by a majority of the Directors present at the meeting and voting on any such question. The Chairperson of Directors (or in his or her absence the Deputy Chairperson) shall have a casting vote.

A Director may at any time summon a meeting of the Directors.

2. The quorum necessary for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed shall be that number of Directors which is not less than 50% of the Directors holding office at the time of the relevant meeting of Directors. Seven days notice at least shall be given of any meeting of Directors, unless Directors numbering not less than a quorum otherwise agree at the relevant meeting of Directors.
3. The continuing Directors may act notwithstanding any vacancy in their body but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the Company as the necessary quorum of Directors the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company but for no other purpose.
4. The Directors may elect one of their number chairperson of their meetings (and if they think fit may also elect a Deputy Chairperson) and determine the period for which he or she is to hold office. If no chairperson is elected or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the same the Deputy Chairperson (if one has been elected) shall act as Chairperson or if he or she is not present then ten minutes after the time appointed for holding the same the Directors present may choose another of their number to be chairperson of the meeting.
5. It shall not be necessary to give notice of a meeting of Directors to a Director who is not within New Zealand, provided a notice addressed to that Director has been sent by post to such Director's last known address or by email to such Director's email address provided to the Company.
6. A resolution in writing signed by all the Directors for the time being in New Zealand (being not less than 50% of the total aggregate number of Directors) shall be as valid and effectual as if it had been passed at a meeting of Directors duly called and constituted.
7. For the purposes of this Constitution the contemporaneous linking together by simultaneous audio or audio and visual means of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Directors and all the provisions in this Constitution as to meetings of the Directors shall apply to such meetings by telephone so long as the following conditions are met:
  - (a) All the Directors for the time being entitled to receive notice of a meeting of the Directors (including any alternate for any Director) shall be entitled to notice of such a meeting and to

be linked by such means for the purposes of such meeting. Notice of any such meeting may be given by such means.

- (b) Each of the Directors taking part in such a meeting must be able to hear of each of the other Directors taking part at the commencement of the meeting.
- (c) At the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Directors of the Company to all the other Directors taking part.

A Director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times such a meeting unless he or she has previously obtained the express consent of the chairperson to leave the meeting as aforesaid.

A minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting.

8. In all other respects the provisions of the Third Schedule to the Companies Act shall apply to meetings of the Board. In the event of a conflict between this Second Schedule and the Third Schedule to the Companies Act, this Schedule shall prevail.