# Constitution

## WE Share Limited (the **Company**)

I certify this document to be a true and correct copy of the constitution of WE Share Limited, approved by the Board for consideration by the Shareholders at the Annual General Meeting of the shareholders of the Company, to be held on XXXXXXX.

Chairman of the Board

The Companies Act 1993
And
The Co-operative Companies Act 1996

This Constitution contains regulations relating to the conduct of the company's affairs and must be read in conjunction with the Companies Act 1993 and the Co-operative Companies Act 1996.

# TABLE OF CONTENTS

# INTERPRETATION

In this constitution, unless the context otherwise requires:
**"Act"** means the Companies Act 1993 and its amendments. **"s"** means section references in the Act.
**"WE Share Business"** means the assets and business operated from _____________, Auckland.
**"Conflict"** – If there is a conflict between the provisions of this constitution and a mandatory provision of the Act, the Act shall prevail.
**"Co-op"** or **"Company"** means WE Share Limited.
**"Co-op Act"** means the Co-operative Companies Act 1996 as amended from time to time or any Act which replaces that Act.
**Definitions in Act** – Words or expressions used in this constitution bear the same meaning as in the Act.
**"Director"** means a duly appointed director of the Company.
**"Holder"**, **"Shareholder"** and **"Member"** means a holder of Rebate Shares or any other class of Equity Securities issued by the Company.
**Masculine, feminine, and neuter** – Words which import any gender include the other genders.
**"Member"** means a natural person or an organisation who holds a Transacting Share.
**"Person"** includes any society, firm, company, individual, body corporate, or any other legal entity and the successors to that person.
**"Rebate"** means a distribution by the Company by way of cash, assets or other consideration to a User.
**"Redeemable Shares"** means a share which is redeemable in terms of section 68 of the Act for a fixed amount or an amount calculated by reference to a formula and entitled to a dividend at a fixed rate or a rate fixed by reference to indicators both such amounts determined without reference to the Company's assets or profitability.
**"Transacting Shareholder"** has the meaning ascribed to it in the Co-operative Companies Act 1996.
**"Transacting Share"** means a share that can only be held by a transacting shareholder, and does not include shares of the Supporting Share Class.
**Singular and plural** – Words which import the singular and plural number include the plural and singular number respectively.
**"Special Resolution"** means a resolution approved by a majority of 75 percent or, if a higher majority is required by this Constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the question.
**"solvency test"** means the solvency test in s4 of the Act, as may be modified in accordance with the Act.
**No limitation** – the words "include", "including" or similar do not imply any limitation.

# PART 1 – PURPOSE

1.1. WE Share has been formed to supply distributed electricity generation (including solar PV) systems, energy efficiency products and other utilities products and services to financially benefit members. Inclusive in this purpose is to assist the reduction of NZ fossil fuel emissions and to facilitate the transition to a low carbon energy future. The Co-op aims to achieve these purposes in such a way as to contribute to the well-being of the shareholders and their environment, by:

- benefiting members by providing utility products at lower cost than each member can access individually.
- providing renewable energy to our members from solar PV and other distributed energy generation systems.

- promoting and providing practical advice for efficient use of energy.
- supporting the transition to a low carbon, renewable, distributed energy inclusive utilities services in New Zealand.
- promoting cooperative business and community concepts and values for the benefit of New Zealanders.
- Being respectful of and recognising our place in Te Ao Mārama – our inter-connected world – and acting as environmental stewards.
- operate in an open and transparent manner that empowers our members and provides a resource for other groups to follow.

1.2. The Co-op is authorised to apply for registration as a co-operative company under the Co- Operative Companies Act 1996.

### The Relationship Between the Constitution and the Co-operative Companies Act 1996

1.3. WE Share Limited is registered under the Co-operative Companies Act 1996, the Companies Act 1993, and as such shall have the rights powers duties and obligations set out in the Co-operative Companies Act 1996, the Companies Act 1993 and this Constitution.

1.4. The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Companies Act 1993 or the Co-operative Companies Act 1996 except to the extent that they are negated or modified by this Constitution.

# PART 2 – SHARES

## 2. RIGHTS AND POWERS ATTACHING TO SHARES

### Standard Shares

2.1. Unless otherwise provided by the terms of issue or by this constitution, a share confers on the holder.

2.1.1. The right to one vote on a poll at a meeting of the company on any resolution.

2.1.2. The right to an equal share in the distribution of the surplus assets of the company.

### Transacting Share Classes

2.2. A Transacting Share confers on the holder:

2.2.1. the right to a distribution or rebate subject to 9.5.

2.2.2. the right to one vote on a poll at a meeting of the co-op on any resolution irrespective of the number of Shares held.

2.2.3. the right to an equal share in the distribution of the surplus assets of the company.

2.3. Member Shares:

2.3.1. Member Shares shall be held only by one or two persons or organisations who reside of the same residence and who transact with the Co-op by purchasing goods or services from the Co-op.

2.3.2. The number of Member Shares that may be held by one person at any one time is limited to one.

2.3.3. The holders of Member Shares have the right to vote for seats on the Board that are reserved for the holders of Member Shares, and for seats on the Board that are not reserved for the holders of any particular share class.

2.4. Employee Shares

2.4.1. Employee Shares can only be held by an individual who transacts with the Co-op by supplying employment or other labour services to the Co-op.

2.4.2. The number of Employee Shares that may be held by one individual at any one time is limited to one.

2.4.3. The holders of Employee Shares have the right to vote for seats on the Board that are reserved for the holders of Employee Shares, if any, and for seats on the Board that are not reserved for the holders of any particular share class.

### Supporting Shares

2.5. Supporting Shares are preferential shares.

2.5.1. Supporting Shares can be issued to any person who the company board deems suitable to hold Supporting Shares.

2.5.2. The minimum number of Supporting Shares that may be issued to a person who does not already hold any Supporting Shares is 50, if any, or some other minimum number as the board may from time to time determine.

2.5.3. The maximum number of Supporting Shares that may be held by one person at any one time is only limited by the number offered by the board.

2.5.4. Supporting Shares do not confer any voting rights.

2.5.5. The holders of Supporting Shares have the right to receive a fixed preferential dividend at the per annum rate described on the issue product disclosure statement. The payment of such dividend ranks in priority to dividends paid in respect of other shares.

2.5.6. Supporting Shares do not confer the right to participate in any further dividends authorised by the board or to share in the distribution of the surplus assets of the Co-op.

### Other Classes

2.6. Any class of share may be issued by the company at any time including those which:

2.6.1. Are convertible;

2.6.2. Are redeemable;

2.6.3. Are restricted or limited as to transfer;

2.6.4. Differentiate as to liability;

2.6.5. Confer preferential rights to distributions of capital or income;

2.6.6. Confer special quorum rights;

2.6.7. Confer special, limited or conditional voting rights;

2.6.8. Do not confer voting rights;

2.6.9. Confer the right to appoint or remove a number of directors; or

2.6.10. Possess any combination of two or more of the foregoing characteristics.

## 3. ISSUE OF SHARES

3.1. Each application for the issue of a Share shall:

3.1.1. Be accompanied by payment of the nominal value of those shares at that time of that share at the date of such application or;

3.1.2. As otherwise required by the Board from time to time.

## Initial Share Issue

3.2. The company must issue the number and class of shares specified in the application for registration to the person or persons named therein.

## Subsequent Share Issues

The provisions of Section 45 of the Act shall not apply and subject to the provisions in sub clauses 3.3 and 3.4

3.3. The board may issue shares, securities that are convertible into shares or options to acquire shares at any time, to any person, in any number, in such classes and on such terms as it thinks fit subject to the provisions of the Act and this constitution.

3.4. The issue of further shares ranking equally with, or in priority to, any existing shares, whether as to voting rights, distributions or otherwise, is deemed not to be an action affecting the rights attaching to the existing shares of that class.

## Open Membership

3.5. Membership is open to any person or organisation who is willing to accept the responsibilities of membership, the responsibilities attached to the class of share that they hold and the purpose of the Co-op.

## Consideration for Share Issues

3.6. At the time that this constitution is registered:

- 3.6.1. Member shares have a nominal value of $150.
- 3.6.2. Employee Shares have a nominal value of $150.
- 3.6.3. Supporting Shares have a nominal value of $10.

3.7. The consideration for which a share is issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the company.

3.8. The persons named in the application for registration shall not be required to pay any consideration for the issue of a share on registration unless the consideration and terms of issue are fixed in any subscription application for the share or in any contract for the issue of the share.

3.9. Before the board issues shares (not being the issue of shares on registration of the company) the board must:

- 3.9.1. Decide the consideration for which the shares will be issued and the terms on which they will be issued; and
- 3.9.2. If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
- 3.9.3. Resolve that, in its opinion, the consideration for and terms of the issue are fair and reasonable to the company and to all existing shareholders; and
- 3.9.4. If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue.

3.10. Before shares that have already been issued are credited as fully or partly paid up other than for cash, the board must

- 3.10.1. Determine the reasonable present cash value of the consideration; and
- 3.10.2. Resolve that, in its opinion, the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders; and is not less than the amount to be credited in respect of the shares.

3.11. Before the board issues securities that are convertible into shares or any option to acquire shares the board must

3.11.1. Decide the consideration for which the convertible securities or options, and in either case, the shares will be issued and the terms on which they will be issued; and

3.11.2. If the shares at to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and

3.11.3. Resolve that, in its opinion, the consideration for and terms of the issue of the convertible securities or options and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and

3.11.4. If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue.

3.12. The board must deliver notice of subsequent share issues to the Registrar of Companies within 10 working days of such issue. Directors who vote in favour of the resolutions required by clauses 3.9, 3.10 or 3.11 must sign a certificate as to the matters set out in those clauses and deliver the same to the Registrar of Companies within 10 working days after it is given, as required by the Act.

### No issue to affect Co-operative Status.

3.13. The Directors shall not issue shares or otherwise issue securities that may lead the Company to cease to be a co-operative company without the prior approval of a Special Resolution of the Company in General Meeting.

### Consolidation and Subdivision of Shares

3.14. The board may consolidate, divide or subdivide the shares or any class of shares in the company into a lesser or greater number of shares.

3.15. Clauses 3.9 to 3.11 shall not apply to the consolidation, division or subdivision of the shares or any class of shares in the company in proportion to those shares or the shares in that class.

## 4. ALTERATION OF SHAREHOLDER RIGHTS

4.1. The company may not take action that affects rights attached to shares unless that action has been approved by a special resolution of each interest group of shareholders (being a resolution approved by 75% of the votes of those shareholders entitled to vote and voting on that resolution), including the following rights:

4.1.1. The rights, privileges, limitations and conditions attached to the share by this Act or the constitution, including voting rights and rights to distributions;

4.1.2. The right to have the procedure set out in s117 and any further procedure required by this constitution for the amendment or alteration of rights, observed by the company;

4.1.3. The right to have that a procedure required by this constitution for the amendment or alteration of rights not amended or altered.

## 5. LIABILITY OF SHAREHOLDERS

### Limited Liability

5.1. The liability of a shareholder to the company is limited to any amount unpaid on a share held by the shareholder.

5.2. An amount unpaid on a share may comprise all or part of the consideration payable in respect of the issue of the share, or any other liability imposed on its holder by its terms of issue.

## Calls

5.3. The board may make calls on the holder of a share, or any amount unpaid on the share, and not by the terms of issue made payable on a fixed date.

5.4. An amount which, by the terms of issue of a share, is payable on allotment or at a fixed date is deemed for the purposes of this constitution to be a call duly made and payable on the date on which the payment is payable.

5.5. The board must give the shareholder not less than 10 working days notice of a call specifying the amount, date and place of payment. A call may be revoked or postponed as the board may determine.

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

5.7. Amounts unpaid on a share shall bear interest from the due date for payment to the date of actual payment at a rate to be determined by the board but not exceeding 4% per annum over the company's bank's prime overdraft rate; but the board shall be at liberty to waive payment of that interest wholly or in part.

5.8. In any proceedings for recovery of a call:

- 5.8.1. It is sufficient to prove that:
  - 5.8.1.1. The name of the relevant shareholder is entered in the share register as the holder, or one of the holders, of the shares to which the call relates; and
  - 5.8.1.2. Except in relation to any amount which, by the terms of issue of a share, is payable on allotment or at a fixed date, the resolution making the call is entered in the records and notice of the call has been duly given.
- 5.8.2. Proof of the matters mentioned in clause 5.8.1 is conclusive evidence of the debt and it is not necessary to prove the appointment or qualification of any member of the board which made the call nor any other matter.

5.9. The company may receive from any shareholder in advance any amount uncalled and unpaid upon any shares held by that shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the board and the shareholder agree.

## Application of Distributions

5.10. Any dividend or distribution due to the holder of a share may be applied in reduction or satisfaction on any amount unpaid on that share or any other amount presently payable by the shareholder to the company.

# 6. LIEN ON SHARES

## Existence and Subject Matter of Lien

6.1. The company shall have a first and continuing lien on its shares for:

- 6.1.1. Amounts unpaid (whether presently payable or not) on those shares; or
- 6.1.2. Other amounts presently payable by the then holder of those shares to the company on any account whatsoever.

6.2. The lien shall extend to all dividends and distributions from time to time declared in respect of those shares and all proceeds of sale of those shares.

## Power of Sale

6.3. The company shall have power to sell, in a manner determined by the board, any share on which the company has a lien if:

6.3.1. An amount is presently payable to the company on that share or by the holder of that share; and

6.3.2. The company has demanded the amount in writing, and payment has not been made within 20 working days after the demand.

## Proceeds of Sale

6.4. The proceeds of sale must be applied first, in payment of costs and expenses incurred in enforcing the lien; and second in payment of the amount secured by the lien.

6.5. The balance, if any, shall be paid to the former shareholder provided however, if any consideration is payable at a future date in respect of the issue of the share over which the lien existed, the balance may be held in suspense by the company to the extent of any such consideration (without any obligation to account for interest), and applied in payment when such consideration is due.

6.6. The purchaser need not see to the application of the sale proceeds, nor will the purchaser's title to the shares be affected by any irregularity or invalidity in the enforcement of the lien.

## Forfeiture of Shares

6.7. If a shareholder fails to pay any call on the due date, the company may at any time thereafter by written notice to that shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the company by reason of such non-payment.

6.8. The notice shall specify a further date (not earlier than 10 working days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the share in respect of which the call is due is liable to be forfeited.

6.9. If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any share in respect of which the notice has been given may be forfeited by a resolution of the board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited share and not paid before the forfeiture.

6.10. When a share has been forfeited, the company shall give notice of the resolution to the shareholder in whose name the share stood immediately prior to the forfeiture and shall enter in the share registered details of the forfeiture.

6.11. A forfeiture may be cancelled at any time before the forfeiture comes into effect, on such terms as the board thinks fit.

6.12. The holder of a share which has been forfeited ceases to be a shareholder in respect of the forfeited share but remains liable to the company for all money payable in respect of the forfeited share.

# 7. SHARE REGISTER

## Company to Maintain Share Register

7.1. The company must maintain a share register that records the shares issued by the company.

7.2. The share register must state, with respect to each class of shares the following details for the last decade of:

7.2.1. The names, alphabetically arranged, and the latest known address of each person who is a shareholder; and

7.2.2. The number of shares of that class held by each shareholder and

7.2.3. The date of any:

7.2.3.1. Issue of shares to; or

7.2.3.2. Repurchase or redemption of shares from; or

7.2.3.3. Transfer of shares by or to,

7.2.3.4. each shareholder and the name of the person to or from whom the shares were transferred.

7.3. An agent may maintain the share register of the company.

## Share Register as Evidence of Legal Title

7.4. The entry of the name of a person in the share register as holder of the share is prima facie evidence that legal title to the share rests in that person.

7.5. The company may treat the registered holder of a share as the only person entitled to

7.5.1. Exercise the right to vote attached to the share; and

7.5.2. Receive notices; and

7.5.3. Receive a distribution in respect of the share; and

7.5.4. Exercise the other rights and powers attaching to the share.

## Trusts not to be Entered on Register

7.6. No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

## Personal Representative may be Registered

7.7. A personal representative of a deceased person whose name is registered in the share register of the company as the holder of a share in the company is entitled to be registered as the holder of that share as personal representative.

7.8. The registration of a trustee, executor, or administrator pursuant to this clause does not constitute notice of a trust.

# 8. TRANSFER OF SHARES

## Entry on the Register

8.1. A share may be transferred by entry of the name of the transferee on the share register.

## Form of Transfer

8.2. For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or by its personal representative must be delivered to:

8.2.1. The company; or

8.2.2. An agent of the company who maintains the share register.

8.3. The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the company on the transferee.

8.4. A transfer shall be an instrument in writing:

8.4.1. In any usual or common form;

8.4.2. In any other form which the board may approve; or

8.4.3. In the form set out in the First Schedule to the Securities Transfer Act 1991 or amendments thereto.

8.5. On receipt of a form of transfer, the company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless:

8.5.1. The board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and

8.5.2. Notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and

8.5.3. The board is permitted by clause 8.6 to refuse or delay registration.

### Rights to Refuse Transfer

8.6. The board may refuse to register the transfer of any share if:

8.6.1. The company has a lien on the share;

8.6.2. The share is not fully paid;

8.6.3. The holder of the share has failed to comply with the terms of any contract with the company;

8.6.4. The board considers that it would not be in the interests of the company to do so; or

8.6.5. The board believes effecting the transfer would be a breach of the law.

8.6.6. The transferee does not meet the eligibility criteria defined for the class of share that is being transferred.

### Where Share Certificate Issued

8.7. Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer is accompanied by the share certificate relating to the shares, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board.

# PART 3 – DISTRIBUTIONS

## 9. DISTRIBUTIONS TO SHAREHOLDERS

Board May Authorise Distributions if Company is Solvent

9.1. The board may, if it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test, and subject to any restrictions in this constitution, authorise a distribution by the company at a time and of an amount and to any shareholders it thinks fit.

9.2. A distribution may be any one or more of the following:

9.2.1. The payment of a dividend;

9.2.2. The issue of shares in lieu of a proposed dividend;

9.2.3. The offer of shareholder discounts in respect of some or all of the goods and services provided by the company;

9.2.4. The cancellation or reduction of a shareholder's liability in relation to a share to be acquired or redeemed by the company, or as a result of a proposed alteration to this constitution;

9.2.5. The purchase or acquisition by the company of its own shares;

9.2.6. The redemption by the company of its shares; and

9.2.7. The giving of financial assistance for the purpose of, or in connection with the purchase of its own shares or the shares of its holding company.

9.2.8. Vouchers that can be redeemed in transactions with the company.

9.2.9. Loyalty points.

9.3. Distributions will be paid to the Shareholder named first in the Share Register, or to such other person as directed by the Shareholder in writing.

## Rebates

9.4. The Board may from time to time at its discretion pay Rebates on those classes of Share that are entitled to be paid Rebates, on the basis that any such scheme may provide for:

- 9.4.1. differential qualifications, entitlements and provisions for calculating and paying Rebates, how and to whom Rebates may be allowed and the conditions on which Rebates may be payable;
- 9.4.2. such criteria for determining rebate entitlements (including rebate entitlements to different classes of goods and services, the amount of purchases, the method of purchase and the method or promptness of payment). For the avoidance of doubt, this may mean (amongst other things), that the Board may elect not to give a rebate to a Transacting Shareholder where the number or value or volume of, or the profit derived by the Company from transactions by that Transacting Shareholder is insufficient in a particular case;
- 9.4.3. the time or times at which Rebates will be credited or paid, whether or not Rebates will bear interest and whether or not Rebates will be satisfied in cash or in some other manner;
- 9.4.4. the Board to pay Rebates in advance during any financial year (and at such frequency as the Board determines), on account of anticipated year end profit and a final Rebate. In determining a Rebate in advance, the Board may have regard to monthly gross profit margins and past Rebate levels and methods of payment;
- 9.4.5. without limiting this Constitution, cancellation or deferment of Rebates already declared at any time before the due date for final payment of such Rebates if so required by any person providing substantial financial facilities to the Co-operative or failure of the Co-operative to satisfy the solvency test (within the meaning set out in section 4 of the Act);
- 9.4.6. the power to impose any levy or charge on or against any Rebates;
- 9.4.7. the power to impose a first lien upon any Rebate for any amount due and payable by the Shareholder.

## Directors' Certificate

9.5. The directors who vote in favour of a distribution or rebate must sign a certificate stating that, in their opinion, the company will immediately after the distribution or rebate, satisfy the solvency test and the grounds for that opinion.

9.6. The board must not make a distribution or rebate if, after a distribution is authorised and before it is made, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the distribution or rebate is made, satisfy the solvency test.

## Dividends

9.7. A dividend is a distribution other than the purchase or acquisition by the company of its own shares, or the giving of financial assistance for the purpose of, or in connection with the purchase of its own shares or the shares of its holding company.

9.8. The board must not authorise a dividend:

- 9.8.1. In respect of some but not all the shares in a class unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under this constitution or under the terms of issue of the share or is required, for a portfolio tax rate entity, as a result of section HL7 of the Income Tax Act 2004.

9.9. No interest is payable by the Co-operative on any Dividend; and

9.10. A shareholder may waive his or her entitlement to receive a dividend by notice in writing to the company signed by or on behalf of the shareholder.

## Bonus Shares in lieu of Dividend

9.11. The board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if:

9.11.1. The right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms; and

9.11.2. If all shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained; and

9.11.3. The shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and

9.11.4. The shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agreed to receive the shares; and

9.11.5. The consideration for the shares has been determined in accordance with this constitution and s47 of the Act.

### Unclaimed rebates

9.12. Any unclaimed rebate:

9.12.1. may be invested or otherwise made use of by the Board for the benefit of the Company until claimed;

9.12.2. may be mingled by the Company with other money of the Company and will not be required to be held on trust by the Company;

9.12.3. will be paid, subject to compliance with the Solvency Test, to any person producing valid evidence of entitlement to that rebate within five years of it having been declared; and

9.12.4. which has been unclaimed for five years after having been declared may be forfeited by the Board for the benefit of the Company provided always that the Board may at any time after such forfeiture annul the same and pay the rebate so forfeited to any person producing valid evidence that he or she is entitled to the same and will do so unless in the opinion of the Board such payment would not be in the best interests of the Company.

## 10. COMPANY MAY ACQUIRE ITS OWN SHARES

### Right to Acquire

10.1. The company may purchase or otherwise acquire its own shares if the board makes an offer to acquire such shares and:

10.1.1. The offer is to all shareholders to acquire a proportion of their shares that:

10.1.1.1. would, if accepted, leave unaffected relative voting and distribution rights within each class, and

10.1.1.2. affords a reasonable opportunity to accept the offer, or

10.1.2. The offer is to one or more shareholders, and:

10.1.2.1. All shareholders have consented in writing; or

10.1.2.2. The offer is special and the resolutions and disclosure document referred to in clauses 10.3 and 10.4 have been passed and given respectively.

### Resolutions Required for Offers

10.2. The board may make an offer to acquire shares issued by the company only if it has previously resolved that

10.2.1. It is satisfied on reasonable grounds that immediately after the purchase or acquisition, the company will satisfy the solvency test; and

10.2.2. The acquisition in question is in the best interests of the company; and

10.2.3. The terms of the offer and the consideration offered for the shares are fair and reasonable to the company; and

10.2.4. It is not aware of any information that will not be disclosed to shareholders:

10.2.4.1. Which is material to an assessment of the value of the shares; and

10.2.4.2. As a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.

### Further Resolutions Required for Special Offers

10.3. Where the board makes a special offer to acquire shares to one or more shareholders without the consent in writing of all shareholders, then the board must also resolve:

10.3.1. That the acquisition is of benefit to the remaining shareholders; and

10.3.2. That the terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.

### Disclosure Document for Special Offers

10.4. Before an offer is made pursuant to a resolution under clause 10.3, the company must send to each shareholder a disclosure document that sets out

10.4.1. The nature and terms of the offer, and if made to specified shareholders, to whom it will be made; and

10.4.2. The nature and extent of any relevant interest of any director of the company in any shares the subject of the offer; and

10.4.3. The text of the resolutions required by clause 10.3, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed acquisition.

10.5. The offer must be made not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder.

### Resolutions and Certificate

10.6. The resolutions referred to in this clause 10 must set out in full the reasons for the directors' conclusions.

10.7. The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein.

10.8. The board must not make an offer to acquire shares issued by the company if, after the passing of the resolutions and before the making of the offer the board ceases to be satisfied as to the matters resolved.

## 11. COMPANY MAY HOLD TREASURY STOCK

11.1. Shares issued by the company which are purchased or acquired by it shall be deemed cancelled immediately on acquisition unless

11.1.1. The board resolves that the shares concerned shall be retained as treasury stock; and

11.1.2. The number of shares acquired, when aggregated with shares of the same class held by the company at the time of acquisition, does not exceed 5 percent of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled.

11.2. The rights and obligations attaching to any treasury stock owned by the company shall be suspended during any such period of ownership.

11.3. Transfer of treasury stock held by the company is deemed to be an issue of new shares.

# 12. COMPANY REDEMPTION OF SHARES

## Right to Issue Redeemable Shares

12.1. The company may issue shares which are redeemable

- 12.1.1. At the option of the company; or
- 12.1.2. At the option of the holder of the shares; or
- 12.1.3. On a date specified by their terms of issue, for a consideration that is:
- 12.1.4. Specified; or
- 12.1.5. To be calculated by reference to a formula; or
- 12.1.6. Required to be fixed by a suitably qualified person who is not associated with or interested in the company.

## Consideration for the surrender of Shares

12.2. Unless otherwise specified in this constitution, the consideration for the surrender of a Share shall be the lesser of the nominal value of the share at the date it was issued to the shareholder, or the actual amount paid up on that share at the surrender date.

## Redemption of Shares

12.3. Transacting Shares may be redeemed at the option of the shareholder in any of the following situations:

- 12.3.1. The shareholder is no longer transacting business with the Co-op and has not transacted any business with the Co-op during the preceding year; or
- 12.3.2. The shareholder is no longer in a position to transact business with the Co-op; or

12.4. Transacting Shares may be redeemed at the option of the Co-op in any of the following situations:

- 12.4.1. The shareholder has not transacted any business with the Co-op during the preceding year, and in the opinion of the Board, is not likely to do so in the immediate future; or
- 12.4.2. The shareholder has failed to comply in a material respect with the requirements relating to transactions with the Co-op contained in any contract between the Co-op and the shareholder.
- 12.4.3. The Board finds that a member has:
  - 12.4.3.1. Intentionally or repeatedly violated any provision of the Co-op's Constitution,
  - 12.4.3.2. or policies issued by the Board; or
  - 12.4.3.3. Taken actions that will materially impede the Co-op from accomplishing its purposes; or
  - 12.4.3.4. Taken or threatened actions that adversely affect the interests of the Co-op or its members as such;
  - 12.4.3.5. Wilfully obstructed any lawful purpose or activity of the Co-op; or
  - 12.4.3.6. Breached any contract with the Co-op.

12.5. Supporting Shares may be redeemed at the option of the Co-op or at the option of the Shareholder in any of the following situations:

- 12.5.1. The shareholder has held the share for more than 8 years;

12.6. The Board may only redeem a share if the Board is satisfied on reasonable grounds that immediately after the share has been redeemed, the Co-op will satisfy the solvency test.

## Resolutions Required for Redemptions at Option of Company

12.7. The company may exercise an option to redeem shares only if the board has previously resolved that:

12.7.1. It is satisfied on reasonable grounds that immediately after the shares have been redeemed, the company will satisfy the solvency test; and

12.7.2. The redemption of the shares is in the best interests of the company; and

12.7.3. The consideration for the redemption of the shares is fair and reasonable to the company.

### Further Resolutions Required for Special Redemptions

12.8. Where the company exercises a special option to redeem shares in relation to one or more shareholders without the consent in writing of all shareholders, then the board must also resolve:

12.8.1. That the redemption is of benefit to the remaining shareholders; and

12.8.2. That the consideration for the redemption is fair and reasonable to the remaining shareholders.

### Resolutions and Certificate

12.9. The resolutions referred to in this clause 12 must set out in full the reasons for the directors' conclusions.

12.10. The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein.

12.11. The company must not exercise an option to redeem shares if, after the passing of the resolutions and before the option is exercised, the board ceases to be satisfied as to the matters resolved.

## 13. FINANCIAL ASSISTANCE FOR PURCHASE OF OWN SHARES

### Right to Give Financial Assistance

13.1. The company may give financial assistance to a person for the purpose of or in connection with, the purchase of a share issued or to be issued by the company, or by its holding company, whether directly or indirectly if

13.1.1. All shareholders have consented in writing; or

13.1.2. The financial assistance is special and the resolutions and disclosure document referred to in clauses 13.4 and 13.5 have been passed and given respectively; or

13.1.3. The financial assistance is limited and is given in accordance with clause 13.7.

13.2. For the purposes of this clause, "financial assistance" includes a loan, a guarantee, and the provision of a security.

### Resolutions Required for Financial Assistance

13.3. The company may give financial assistance to purchase shares issued by the company only if the board has previously resolved that:

13.3.1. It is satisfied on reasonable grounds that the company will, immediately after the giving of financial assistance, satisfy the solvency test; and

13.3.2. The company should provide the assistance; and

13.3.3. Giving the assistance is in the best interests of the company; and

13.3.4. The terms and conditions under which the assistance is given are fair and reasonable to the company.

### Further Resolutions Required for Special Financial Assistance

13.4. Where the company gives special financial assistance without the consent in writing of all shareholders or in accordance with clause 13.7, then the board must also resolve

13.4.1. That giving the assistance in question is of benefit to those shareholders not receiving the assistance; and
13.4.2. That the terms and conditions under which the assistance is given are fair and reasonable to those shareholders not receiving the assistance.

## Disclosure Document for Special Financial Assistance

13.5. Before financial assistance is given pursuant to a resolution under clause 13.4, the company must send to each shareholder a disclosure document that sets out:
13.5.1. The nature and terms of the financial assistance to be given, and to whom it will be given; and
13.5.2. If the financial assistance is to be given to a nominee for another person, the name of that other person; and
13.5.3. The text of the resolutions required by clause 13.4, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed transaction.
13.6. The financial assistance may be given not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder.

## Limited Financial Assistance

13.7. Where the financial assistance is given without the consent in writing of all shareholders or is not of benefit to and fair and reasonable to those shareholders not receiving the assistance, the company may give financial assistance only if
13.7.1. The amount of the financial assistance, together with any other financial assistance given by the company pursuant to this clause 13.7, repayment of which remains outstanding, would not exceed 5 per cent of the aggregate of amounts received by the company in respect of the issue of shares and reserves as disclosed in the most recent financial statements of the company that comply with s10 of the Financial Reporting Act 1993; and
13.7.2. The company receives fair value in connection with the assistance; and
13.7.3. Within 10 working days of providing the financial assistance, the company sends to each shareholder a notice containing the following particulars:
13.7.3.1. The class and number of shares in respect of which the financial assistance has been provided; and
13.7.3.2. The consideration paid or payable for the shares in respect of which the financial assistance has been provided; and
13.7.3.3. The identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner; and
13.7.3.4. The nature and, if quantifiable, the amount of financial assistance.

## Resolutions and Certificate

13.8. The resolutions referred to in this clause 13 must set out in full the reasons for the directors' conclusions.
13.9. The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein.
13.10. The company must not give financial assistance if, after the passing of the resolutions and before the assistance is given, the board ceases to be satisfied as to the matters resolved.

# PART 4 – SHAREHOLDERS

## 14. POWERS OF SHAREHOLDERS

### Powers Reserved to Shareholders

14.1. Powers reserved to the shareholders by the Act or this constitution may be exercised only

- 14.1.1. At an annual or special meeting of the shareholders; or
- 14.1.2. By a resolution in lieu of a meeting.

### Ordinary Resolutions

14.2. An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.

14.3. Unless otherwise specified in the Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution.

### Special Resolutions

14.4. A special resolution is a resolution approved by a majority of 75 percent of the votes of those shareholders entitled to vote and voting on the question.

14.5. The shareholders must exercise the following powers by special resolution, namely to:

- 14.5.1. Adopt a constitution, or alter or revoke the constitution;
- 14.5.2. Approve a major transaction;
- 14.5.3. Approve an amalgamation of the company;
- 14.5.4. Put the company into liquidation;
- 14.5.5. Appoint a liquidator;
- 14.5.6. Remove the company from the register; or
- 14.5.7. Transfer the place of incorporation.

### Unanimous Shareholder Agreement

14.6. If all shareholders have agreed or concur, in writing and notwithstanding any other provisions in this constitution:

- 14.6.1. A dividend may be authorised otherwise than in accordance with s53;
- 14.6.2. A discount scheme may be approved otherwise than in accordance with s55;
- 14.6.3. Shares in the company may be acquired otherwise than in accordance with s59 to s65;
- 14.6.4. Shares in the company may be redeemed otherwise than in accordance with s69 to s72;
- 14.6.5. Financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with s76 to s80;
- 14.6.6. The provision of remuneration and other benefits to directors may be authorised otherwise than in accordance with s161(1);
- 14.6.7. Shares may be issued otherwise than in accordance with ss42, 44 or 45; and
- 14.6.8. On the company entering into a transaction in which a director is interested, nothing in s140 and s141 shall apply to that transaction;

14.7. A power referred to in clause 14.6.1 to 14.6.6 must not be exercised unless the board is satisfied on reasonable grounds that the company will, immediately after the exercise, satisfy the solvency test.

14.8. The directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, the company will, immediately after the exercise of the power, satisfy the solvency test.

14.9. If, after a resolution is passed under clause 14.7 and before the power is exercised, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the power is exercised, satisfy the solvency test, any exercise of the power is deemed not to have been authorised.

### Management Review by Shareholders

14.10. The chairperson of a meeting of shareholders must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management.

14.11. A meeting of shareholders may pass a resolution relating to the management of the company but this shall not be binding on the board.

14.12. The provisions of clause 15 govern proceedings at meetings of shareholders at which a resolution under clause 14.11 is passed.

## 15. MEETINGS AND RESOLUTIONS

### Annual Meeting of Shareholders

15.1. The board of a company must call an annual meeting of shareholders to be held

15.1.1. Either:

15.1.1.1. In the case of an exempt company, if all the shareholders of the company agree not later than 10 months after the balance date of the company; or

15.1.1.2. In any other case, not later than 6 months after the balance date of the company; and

15.1.2. Not later than 15 months after the previous annual meeting; and

15.1.3. At such time and place as the board may appoint.

15.2. The company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.

15.3. The company must hold the meeting on the date on which it is called to be held.

### Special Meetings of the Shareholders

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

15.4.1. May be called at any time by the board; and

15.4.2. Must be called by the board on the written request of shareholders holding shares carrying together not less than 10% of the voting rights entitled to be exercised on the issue.

### Resolution in Lieu of Meeting

15.5. A resolution in writing signed by:

15.5.1. In the case of a resolution under s196(2) that no auditor be appointed, all the shareholders who are entitled to vote on the resolution;

15.5.2. In any other case, not less than 75 percent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75 percent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.

15.6. The company need not hold an annual meeting of shareholders if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in lieu of a meeting in accordance with 15.5.

15.7. Within 5 working days of a resolution in lieu of a meeting being passed, the company must send a copy of the resolution to every shareholder who did not sign the resolution or on behalf the resolution was not signed.

15.8. A resolution in lieu of a meeting may be signed without any prior notice being given to shareholders.

15.9. A resolution in writing in lieu of a meeting may consist of several documents (including letters, facsimiles, electronic mail or other similar means of communication) in like form each singed or assented to by one or more shareholders.

# 16. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

## Chairperson

16.1. If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of the shareholders, he or she must chair the meeting.

16.2. 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 meeting, the shareholders present may choose one of their number to be chairperson of the meeting.

16.3. The chairperson may (and if so directed by the meeting must) adjourn the meeting from time to time and from place to place. No business may be transacted at any adjourned meeting except the business which was left unfinished at the meeting which was adjourned.

## Notice of Meetings

16.4. Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than 10 working days before the meeting.

16.5. The notice must state:

16.5.1. 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;

16.5.2. The text of any special resolution to be submitted to the meeting.

16.6. 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.

16.7. The proceedings of a meeting are not invalidated by the accidental omission to give notice of the meeting to a person who is entitled to receive notice of it, or by non-receipt of the notice by such a person.

16.8. If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

## Entitlement to Notice of Meetings

16.9. The shareholders who are entitled to receive notice of a meeting of shareholders are:

16.9.1. If the board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date; or

16.9.2. If the board does not fix a date for the purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

16.10. A date must not be fixed under the preceding clause that proceeds by more than 30 working days or less than 10 working days the date on which the meeting is to be held.

## Methods of Holding Meetings

16.11. A meeting of shareholders may be held either:

16.11.1. By a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

16.11.2. By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

## Quorum

16.12. No business may be transacted at a meeting of shareholders if a quorum is not present.

16.13. At shareholder meetings, a quorum necessary for the transaction of business shall be 10% of the total number of members if the Co-op has 300 or fewer members; or 30 if the Co-op has more than 300 members.

16.14. If a quorum is not present within 30 minutes after the time appointed for the meeting:

16.14.1. In the case of a meeting called by the board on the written request of shareholders under s121(b), the meeting is dissolved, and

16.14.2. In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as the directors may appoint, and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present are a quorum.

## Voting

16.15. In the case of a meeting of shareholders assembled together, unless a poll is demanded, voting shall be by whichever of the following methods is determined by the chairperson of the meeting:

16.15.1. Voting by voice; or

16.15.2. Voting by show of hands.

16.16. In the case of a meeting of shareholders held by means of audio, or audio and visual communication, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.

16.17. 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.

16.18. At a meeting of shareholders a poll may be demanded by:

16.18.1. Not less than 5 shareholders having the right to vote at the meeting;

16.18.2. A shareholder or shareholders representing not less than 10 per cent of the total voting rights of all shareholders having the right to vote at the meeting;

16.18.3. 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

16.18.4. The chairperson of the meeting.

16.19. A poll may be demanded either before or after the vote is taken on a resolution.

16.20. 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.

16.21. The chairperson of a shareholders' meeting is not entitled to a casting vote.

16.22. 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.

## Proxies

16.23. A shareholder may exercise the right to vote either by being present in person or by proxy.

16.24. A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

16.25. A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting of a specified term.

16.26. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced at least 48 hours before the start of the meeting.

## Vote Before Notice of Revocation

16.27. A vote given in accordance with the terms of a notice of appointment of proxy is valid notwithstanding:

- 16.27.1. The previous death or insanity of the shareholder;
- 16.27.2. The revocation of the notice or of the authority under which the notice was executed; or
- 16.27.3. Transfer of the share in respect of which the notice is given:

  if no notice in writing of the death, insanity, revocation, or transfer has been received by the c0ompany at the registered office before the commencement of the meeting or adjourned meeting at which the notice is used, or presented at the meeting or adjourned meeting before the vote is given.

## Postal Votes

16.28. A shareholder may not exercise the right to vote at a meeting by casting a postal vote unless the board determines prior to the meeting that the postal voting procedure will be available for such meeting and gives notice thereof in the notice of meeting.

16.29. If the board determines that the postal voting procedure will be available for a meeting (but not otherwise), such postal votes shall be cast and counted in accordance with the following provisions:

- 16.29.1. The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the board to receive and count postal votes at that meeting.
- 16.29.2. If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- 16.29.3. A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the shareholder's shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 16.29.4. It is the duty of a person authorised to receive and count postal votes at a meeting:
  - 16.29.4.1. To collect together all postal votes received by it, or by the company; and
  - 16.29.4.2. In relation to each resolution to be voted on at the meeting, to count:
    - 16.29.4.2.1. The number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
    - 16.29.4.2.2. The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
  - 16.29.4.3. To sign a certificate that it has carried out the duties set out in clauses 16.29.4.1 and 16.29.4.2 and which sets out the results of the counts required by clause 16.29.4.2; and
  - 16.29.4.4. To ensure that the certificate required by clause 16.29.4.3 is presented to the chairperson of the meeting.

16.29.5. If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson at the meeting must:

16.29.5.1. On a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution, or

16.29.5.2. On a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

16.29.6. The chairperson of a meeting must call for a poll on a resolution on which it holds sufficient postal votes that it believes that if a poll is taken the result may differ from that obtained by a show of hands.

16.29.7. The chairperson of a meeting must ensure that a certificate of postal votes held by it is annexed to the minutes of the meeting.

## Minutes

16.30. The board must ensure that minutes are kept of all proceedings at meetings of shareholders.

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

## Shareholder Proposals

16.32. 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.

16.33. 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.

16.34. 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.

16.35. 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.

16.36. If the directors intend that the 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.

16.37. The board is not required to include in or with the notice given by the board:

16.37.1. Any part of a statement prepared by a shareholder which the directors consider to be defamatory (within the meeting of the Defamation Act 1992), frivolous or vexation; or

16.37.2. Any part of a proposal or resolution by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).

16.38. 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.

## Corporations May Act by Representatives

16.39. 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.

### Votes of Join Holders

16.40. Where 2 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.

### Loss of Voting Rights if Calls Unpaid

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

### Other Proceedings

16.42. Except as provided in this constitution and the Act, a meeting of shareholders may regulate its own procedure.

# PART 5 – DIRECTORS

## 17. APPOINTMENT AND REMOVAL OF DIRECTORS

### First Directors

17.1. A person named as a director in the application for registration of the company or in an amalgamation proposal affecting the company holds office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with the Act or this constitution.

### Subsequent Directors

17.2. Subsequent directors of the company must be appointed by ordinary resolution.

17.3. Two or more directors may be appointed in a single resolution.

### Rotation of Board Membership

17.4. Membership of the board will be rotated as follows:

- 17.4.1. No director other than the Managing Director shall hold office for a period of longer than three years without retiring and offering himself or herself for re-election.
- 17.4.2. At each annual meeting, at least one third of the currently occupied seats must be up for re-election.
- 17.4.3. For the purpose of the rotation of Directors, persons who became Directors on the same day must retire in the order determined by lot, unless the Board resolves otherwise.
- 17.4.4. If no new director is elected and if the retiring director is offering himself or herself for re-election, the retiring director shall be deemed to be re-elected unless it is expressly resolved by ordinary resolution not to fill the vacated office or a resolution for the re- election of that director is put to the annual meeting and lost.

## Consent Required

17.5. A person must not be appointed a director of the company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the company.

## Removal

17.6. A director of the company may be removed from office by ordinary resolution passed at a meeting called for the purpose or for purposes that include the removal of the director.

17.7. The notice of meeting must state that the purpose or a purpose of the meeting is the removal of the director.

## Vacation of Office

17.8. The office of director of the company is vacated if the person holding that office:

- 17.8.1. Resigns by signing a written notice of resignation and delivering it to the address for service of the company, such notice to be effective when it is received at that address or at such later time specified in the notice; or
- 17.8.2. is removed from office in accordance with clauses 17.6 or 17.9.3; or
- 17.8.3. Becomes disqualified from being a director pursuant to s151 of the Act; or
- 17.8.4. Dies.

## Class Directors

17.9. If the holders of any class of share are entitled to exclusively appoint one or more of directors of the company, then notwithstanding clauses 17.2 and 17.6:

- 17.9.1. A person named as a director in the application for registration of the company or in an amalgamation proposal affecting the company who is intended to represent such holders shall be deemed to be a class director appointed by such holders;
- 17.9.2. Subsequent class directors may be appointed by ordinary resolution of those holders, provided that the number of class directors appointed by such holders and holding office at any time shall not exceed the number of directors which such holders are entitled to appoint; and
- 17.9.3. Class directors appointed by such holders may only be removed from office by an ordinary resolution of those holders, passed at a meeting of those holders called for the purpose or for purposes that include the removal of the director.

## Board Membership

17.10. The Board shall consist of not less than three (3) nor more than seven (7) directors, as the Board may from time to time determine.

17.11. Seats on the Board will be distributed among holders of the transacting share classes and other individuals, as determined by the Board at its discretion. The Board will make all reasonable attempts but is not bound to distribute the seats according to the following rules:

- 17.11.1. One seat will be reserved for the Managing Director.
- 17.11.2. Up to two seats may be reserved for persons who are not Transacting Shareholders
- 17.11.3. One seat may be reserved for an Employee Shareholder for every five employee shareholders, up to a maximum of two seats.
- 17.11.4. If there are insufficient shareholders within a share class to require a seat to be reserved for that share class, the Board may reserve a seat for that share class, or may reserve a seat to be voted for by holders of that shares of that share class and of other share classes.

### Additional Directors

17.12. The directors may from time to time appoint any person to be an additional director, either to fill a casual vacancy or as an addition to the existing directors, who shall hold office only until the next annual meeting.

### Alternate Directors

17.13. A director may from time to time appoint any person (except an existing director) to be his or her alternate director. An alternate director's appointment may be cancelled at any time by the director who made the appointment.

17.14. An alternate director may only attend meetings, vote and sign resolutions in the absence of the director who appointed him or her.

## 18. POWERS OF DIRECTORS

### Management of Company

18.1. The business and affairs of the company must be managed by, or under the direction or supervision of, the board.

18.2. The board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

## 19. MANAGING DIRECTOR

### Appointment

19.1. The board may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as the board thinks fit, and subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.

19.2. The appointment of a managing director is automatically terminated if he or she ceases to be a director.

### Powers

19.3. Subject to s130, the board may entrust to and confer on a managing director any of the powers exercisable by the board on such terms and conditions and with such restrictions as the board may think fit, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

19.4. The Board may loan and borrow funds on terms and conditions at its discretion, provided that the Board acts in the best interests of the Co-op.

## 20. DUTIES OF DIRECTORS

### Duty to Act in Good Faith and in Best Interests

20.1. Subject to clauses 20.2 to 20.4, a director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.

### Subsidiary

20.2. If the company is a wholly-owned subsidiary, a director may, when exercising powers or performing duties as a director, act in a manner which he or she believes to be in the best interests of the company's holding company even though it may not be in the best interests of the company.

20.3. If the company is a subsidiary (but not a wholly-owned subsidiary), a director may, when exercising powers or performing duties as a director, with the prior agreement of the shareholders (other than its holding company), act in a manner which it believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.

### Joint Venture

20.4. If the company is carrying on a joint venture between its shareholders, a director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.

### Exercise of Powers in Relation to Employees

20.5. Nothing in clause 20.1 limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business.

### Powers to be Exercised for Proper Purpose

20.6. A director must exercise a power for a proper purpose.

### Directors to Comply with Act and Constitution

20.7. A director must not act, or agree to the company acting, in a manner that contravenes the Act or this constitution.

### Reckless Trading

20.8. A director must not

20.8.1. Cause or allow or agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.

### Duty in Relation to Obligations

20.9. A director must not agree to the company incurring an obligation unless the director believes at that time on reasonable grounds that the company will be able to perform the obligation when it is required to do so.

### Director's Duty of Care

20.10. A director when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation

20.10.1. The nature of the company;

20.10.2. The nature of the decision; and

20.10.3. The position of the director and the nature of the responsibilities undertaken by it.

## 21. RELIANCE ON INFORMATION AND ADVICE

21.1. A director of the company, on exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons

21.1.1. An employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

21.1.2. believes on reasonable grounds to be within the person's professional or expert competence;

21.1.3. Any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.

21.2. Clause 21.1 applies to a director only if the director

21.2.1. Acts in good faith; and

21.2.2. Makes proper inquiry where the need for inquiry is indicated by the circumstances; and

21.2.3. Has no knowledge that such reliance is unwarranted.

# 22. SELF INTEREST TRANSACTIONS

## Interests Register

22.1. A director must, forthwith after becoming aware of the fact that it is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than one director, disclose to the board the nature and extent of the director's interest and the monetary value of it if the monetary value of the director's interest is able to be quantified.

22.2. A general notice entered in the interests register and, if the company has more than one director, disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or trustee for another named person or company and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

22.3. A director of the company is not required to comply with clause 22.1 if:

22.3.1. The transaction or proposed transaction is between the director and the company; and

22.3.2. The transaction or proposed transaction is or is to be entered into in the ordinary course

22.3.3. of the company's business and on usual terms and conditions.

22.4. A transaction entered into by the company in which a director of the company is interested may be avoided by the company at any time before the expiration of three months after the transaction is disclosed to all the shareholders (whether by means of the company's annual report or otherwise).

22.5. A transaction cannot be avoided if the company receives fair value under it.

22.6. Nothing in clauses 22.1 to 22.5 applies in relation to an indemnity given, insurance provided, or remuneration or any other benefit given to a director in accordance with this constitution.

## Interested Directors May Vote

22.7. A director of the company who is interested in a transaction entered into, or to be entered into, by the company, may

22.7.1. Vote on a matter relating to the transaction; and

22.7.2. Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and

22.7.3. Sign a document relating to the transaction on behalf of the company; and

22.7.4. Do any other thing in his or her capacity as a director in relation to the transaction, as if the director were not interested in the transaction.

## 23. USE OF COMPANY INFORMATION

23.1. A director of the company who has information in its capacity as a director or employee of the company, being information that would not otherwise be available to it, must not disclose that information to any person, or make use of or act on the information, except:

23.1.1. For the purposes of the company; or

23.1.2. As required by law; or

23.1.3. In accordance with clauses 23.2 or 23.3; or

23.1.4. In complying with s140 of the Act.

### Disclosure – Nominee Director to Appointor

23.2. A director of the company may, unless prohibited by the board, disclose information to a person whose interests the director represents or in accordance with those directions or instructions the director may be required to is accustomed to act in relation to the director’s powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.

### Disclosure and Use of Information Generally

23.3. A director of the company may disclose, make use of, or act on the information if:

23.3.1. Particulars of the disclosure, use, or the act in question are entered in the interests register; and

23.3.2. The director is first authorised to do so by the board; and

23.3.3. The disclosure, use, or act in question will not, or will not be likely to, prejudice the company.

## 24. PROCEEDINGS OF DIRECTORS

### Chairperson

24.1. The directors may elect one of their number as a chairperson of the board to hold office until it does or resigns or until the directors elect a chairperson in its place.

24.2. If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 10 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.

### Notice of Meeting

24.3. A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with clause 24.4.

24.4. Not less than 2 working days’ notice of a meeting of the board must be sent to every director, whether or not it is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.

24.5. An irregularity in the notice of a meeting or a failure to give notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

### Methods of Holding Meetings

24.6. A meeting of the board may be held either:

24.6.1. By a number of the directors, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

24.6.2. By means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

### Quorum

24.7. No business may be transacted at a meeting of the board if a quorum is not present.

24.8. In the absence of any special quorum rights affecting class directors, a quorum for a meeting of the board is a majority of the directors.

### Voting

24.9. In the absence of any special voting rights affecting class directors, every director has one vote.

24.9.1. The chairperson shall not have a casting vote.

24.9.2. A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.

24.9.3. A director 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 it abstains from or votes against the resolution at the meeting.

### Minutes

24.10. The board must ensure that minutes are kept of all proceedings of the board.

### Unanimous Resolution

24.11. A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

24.12. 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.

24.13. A copy of any such resolution must be entered in the minute book of board proceedings.

### Other Proceedings

24.14. Except as provided in this constitution and the Act, the board may regulate its own procedure.

## 25. RENUMERATION AND OTHER BENEFITS

25.1. The board may authorise the following if the board is satisfied that to do so is fair to the company:

25.1.1. Payment of remuneration or the provision of other benefits by the company to a director for services as a director or in any other capacity;

25.1.2. Payment by the company to a director or former director of compensation for loss of office;

25.1.3. Making of loans by the company to a director;

25.1.4. Giving of guarantees by the company for debts incurred by a director; and

25.1.5. Entering into of a contract to do any of the things permitted by this clause 25.1.

25.2. If a payment, benefit, loan, guarantee or contract is authorised under clause 25.1:

25.2.1. The board must ensure that particulars thereof are forthwith entered in the interests register, and

25.2.2. Directors who vote in favour thereof must sign a certificate stating that, in their opinion, it is fair to the company, and the grounds for that opinion.

## 26. INDEMNITY, AND INSURANCE

### Company may Indemnify a Director or Employee

26.1. The company may indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding

26.1.1. That relates to a liability for any act or omission in its capacity as a director or employee; and

26.1.2. in which the judgement is given in its favour, or in which it is acquitted, or which is discontinued.

26.2. The company may indemnify a director or employee of the company or a related company in respect of

26.2.1. Liability to any person other than the company or a related company for any act or omission in its capacity as a director or employee; or

26.2.2. Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability, not being criminal liability in respect of a breach in the case of a director, of the duty specified in s131 or, in the case of an employee, of any fiduciary duty owed to the company or a related company.

## 27. INSURANCE FOR A DIRECTOR OR EMPLOYEE

27.1. The company may, with the prior approval of the board, effect insurance for a director or employee of the company or a related company in respect of

27.1.1. Liability, not being criminal liability, for any act or omission in its capacity as a director or employee; or

27.1.2. Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or

27.1.3. Costs incurred by that director or employee in defending any criminal proceedings:

27.1.3.1. That have been brought against the director or employee in relation to any act or omission in its capacity as a director or employee; and

27.1.3.2. In which it is acquitted.

27.1.4. The directors who vote in favour of authorising insurance under this clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.

27.1.5. The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or a related company, are entered into the interests register.

# PART 6 – OTHER PROVISIONS

## 28. AMENDMENT OF CONSTITUTION

28.1. The shareholders of the company may, by special resolution, alter or revoke this constitution.

## 29. METHOD OF CONTRACTING

29.1. A contract or other enforceable obligation may be entered into by the company as follows

29.1.1. 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:

29.1.1.1. Two or more directors of the company; or

29.1.1.2. If there is only one director, by that director whose signature must be witnessed; or

29.1.1.3. A director, and another person or persons authorised to do so by the board whose signature or signatures must be witnessed; or

29.1.1.4. One or more attorneys appointed by the company in accordance with s181 of the Act.

29.1.2. An obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority.

29.1.3. An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.

## 30. COMPANY RECORDS

30.1. The company must keep the following documents at its registered office:

30.1.1. This constitution;

30.1.2. Minutes of all meetings and resolutions of shareholders within the last 7 years;

30.1.3. An interests register;

30.1.4. Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;

30.1.5. Certificates given by directors under the Act within the last 7 years;

30.1.6. full names and addresses of the current directors;

30.1.7. Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports;

30.1.8. Copies of all financial statements and group financial statements required to be completed by the Act or the Financial Reporting Act 1993 for the last 7 completed accounting periods of the company;

30.1.9. The accounting records required by s194 for the current accounting period and for the last 7 completed accounting periods of the company; and

30.1.10. The share register.

## 31. ACCOUNTS

31.1. The board of the company must cause accounting records to be kept that:

31.1.1. Correctly record and explain the transactions of the company; and

31.1.2. Will at any time enable the financial position of the company to be determined with reasonable accuracy; and

31.1.3. Will enable the directors to ensure that the financial statements of the company comply with s10 of the Financial Reporting Act 1993 and any group financial statements comply with s13 of that Act; and

31.1.4. Will enable the financial statements of the company to be readily and properly audited.

## 32. ANNUAL REPORT

32.1. The board must, within 5 months (or if the company is an exempt company, within 9 months) after the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that balance date.

32.2. The board must send to every shareholder of the company, not less than 20 working days before the date fixed for holding the annual meeting of shareholders:

32.2.1. A copy of the annual report; or

32.2.2. A notice containing the statements specified in s209(3) of the Act accompanied by any additional information or documentation that the board of the company thinks fit.

32.3. If the board has sent a notice to shareholders under clause 32.2.2, the board must:

32.3.1. Send a copy of the annual report and the concise annual report (if one has been prepared) to any shareholder if requested to do so within 15 working days of receipt of the notice of request in accordance with s209A of the Act.

32.3.2. Ensure that the annual report and concise annual report (if one has been prepared) are made available by electronic means in accordance with s209B of the Act.

32.4. Every annual report for the company must be in writing and dated and must contain the reports, financial statements and information required by s211.

32.5. Subject to clause 32.6, a shareholder of the company may from time to time, by written notice to the company, waive the right to receive all or any documents from the company and may revoke the waiver in the same manner and, while the waiver is in effect, the company need not send to the shareholder the documents to which the waiver relates.

32.6. If a shareholder of the company purports to waive the right to receive both a copy of the annual report and a notice under clause 32.2.2:

32.6.1. The purported waiver is invalid; and

32.6.2. The board of the company must send to the shareholder a copy of the annual report or a notice under clause 32.2.2.

## 33. AUDITOR

33.1. The company must, at each annual meeting, appoint an auditor to

33.1.1. Hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and

33.1.2. Audit the financial statements of the company for the accounting period next after the meeting.

33.2. Notwithstanding clause 33.1, the company need not appoint an auditor if, at or before the meeting, a unanimous resolution to that effect is passed by all the shareholders who would be entitled to vote on that resolution at a meeting of shareholders. Such a resolution shall cease to have effect at the commencement of the next annual meeting.

## 34. NOTICES

34.1. Notices, statements, reports, accounts, or other documents must be served in accordance with Part XXII of the Act.