

CONSTITUTION
OF
BALLANCE AGRI-NUTRIENTS LIMITED

~~I hereby confirm that this Constitution was adopted
by Special Resolution of the shareholders
on the 21st September 2011.~~

~~DS Graham
Chairman of Directors~~

RUSSELL McVEAGH

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CONSTITUTION
OF
BALLANCE AGRI-NUTRIENTS LIMITED

1. DEFINITIONS AND INTERPRETATION

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

"**Board**" means:

- (a) Directors who number not less than the required quorum acting together as a board of Directors; or
- (b) if the Company has only one Director, that Director.

"**Class**" means a class of Shares having attached to them identical rights, privileges, limitations and conditions.

"**Companies Act**" means the Companies Act 1993.

"**Company**" means Ballance Agri-Nutrients Limited.

"**Co-operative Companies Act**" means the Co-operative Companies Act 1996.

"**Constitution**" means this constitution, as altered from time to time.

"**Director**" means a person appointed as a director of the Company in accordance with this Constitution.

"**Director Identification**" means the identification of the position on the Board held by each of the Ward Directors as set out in clause 29.2.

"**Distribution**" means:

- (a) the direct or indirect transfer of money or property, other than Shares, to or for the benefit of a Shareholder; or
- (b) the incurring of a debt to or for the benefit of a Shareholder,

in relation to Shares held by that Shareholder, whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness or by some other means, but does not include a discount accepted by a Shareholder of the nature referred to in section 55 of the Companies Act.

"**Interest Group**", in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more Classes, except where action is taken in relation to some holders of Shares in a Class and not others, or a proposal expressly distinguishes between some holders of Shares in a Class and other

holders of Shares in that Class, in which case the holders of Shares in that Class may fall into two or more interest groups.

"Interested", in relation to a Director, has the meaning set out in section 139 of the Companies Act.

"month" means calendar month.

"Nominal Value Share" means a Share having a nominal value.

"Ordinary Resolution" means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

"person" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

"Personal Representative" means:

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

"Records" means the documents required to be kept by the Company under section 189(1) of the Companies Act.

"Relevant Interest" has the meaning set out in the Securities Markets Act 1988.

"Representative" means:

- (a) a person appointed as a proxy under clause 26;
- (b) a Personal Representative; or
- (c) a representative appointed by a corporation under clause 27.1.

"Restricted Holding" means Shares which have been declared by the Board to be a Restricted Holding pursuant to clause 16.1.

"Restricted Shares" means Shares which have been declared by the Board to be Restricted Shares pursuant to clause 16.2.

~~**"Re-election"** has the meaning set out in clause 29.5(b).~~

"Share" means a share issued, or to be issued, by the Company, as the case may require.

"Share Quota" means at any date and in respect of any Shareholder such number of Shares of any Class or Classes as may be fixed in accordance with the quota policy determined by the Board from time to time in accordance with clauses 33.7 and 33.8.

"Shareholder" means:

- (a) a person whose name is entered in the Share Register as the holder for the time being of one or more Shares;
- (b) until the person's name is entered in the Share Register, a person named as a Shareholder in an application for the registration of the Company at the time of registration of the Company; and
- (c) until the person's name is entered in the Share Register, a person who is entitled to have that person's name entered in the Share Register as a Shareholder under a registered amalgamation proposal in respect of which the Company is the amalgamated company.

"Share Register" means the share register for the Company kept in accordance with the Companies Act.

"Special Resolution" means a resolution approved by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the question.

"Transacting Shareholder" has the meaning in section 4 of the Co-operative Companies Act.

~~**"Transition Period"** means the period from the date of the adoption of this Constitution until the date on which the annual Shareholders' meeting is held in 2013.~~

~~**"Vacated Director Position"** has the meaning set out in clause 29.5;~~

"Ward Director" means a Director elected to represent a Ward.

"Ward" means a ward for the purposes of election of Directors, determined in accordance with clauses 29.2 and 29.4.

"Working Day" has the meaning set out in section 2 of the Companies Act.

1.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) the table of contents, headings, and descriptions relating to sections of the Companies Act or Co-operative Companies Act are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (d) "written" and "in writing" include any means of reproducing words, figures and symbols in a tangible and visible form;

- (e) words and expressions defined or explained in the Companies Act have the same meaning in this Constitution;
- (f) words and expressions cognate with words or expressions defined in this Constitution have meanings corresponding to those of the defined words and expressions;
- (g) references to clauses and sections (other than sections of the Companies Act or of the Co-operative Companies Act) are references to clauses and sections in this Constitution, unless stated otherwise.

1.3 **Constitution to prevail:** If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Companies Act or the Co-operative Companies Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Companies Act or the Co-operative Companies Act and a word or expression defined or explained in this Constitution;

the provision, word or expression in this Constitution prevails.

2. PRINCIPAL ACTIVITY

- 2.1 **Supply of fertiliser:** The principal activity of the Company is the supply or provision to Shareholders of fertiliser and related products and other goods or services.

3. ISSUE, CONSOLIDATION AND SUBDIVISION OF SHARES

- 3.1 **Board may issue Shares and other securities:** The Board may issue Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares, to any person, and in any number it thinks fit, and on such terms as it thinks fit. The provisions of sections 45(1) and 45(2) of the Companies Act shall not apply to any issue or proposed issue of Shares by the Company.
- 3.2 **Consideration for issue of Shares:** The consideration for the issue of Nominal Value Shares shall be the nominal value of those Shares, the consideration for the issue of Shares which are not Nominal Value Shares shall be decided by the Board in accordance with sections 46 to 49 of the Companies Act.
- 3.3 **Compulsory issue of shares:** The Board may at any time allot to any Shareholder who already holds Nominal Value Shares such number of Nominal Value Shares as are necessary to cause that Shareholder to hold that Shareholder's Share Quota, or such lesser number of Nominal Value Shares as the Board may determine. Each allotment to a Shareholder by the Board in accordance with this clause shall bind that Shareholder as if that Shareholder had applied and subscribed for the Shares so allotted. The Board may require payment of the amounts payable in respect of those Shares whether or not the Board exercises the power specified in clause 3.4. For the purposes of this clause, the transfer to a Shareholder of a Share which the Company holds in itself pursuant to section 24 of the Co-operative Companies Act shall be deemed to be an allotment of a Share, and all of the provisions of this clause shall apply accordingly.
- 3.4 **Deductions:** The Board may deduct from moneys of any nature payable by the Company to a Shareholder amounts payable on Shares held by that Shareholder (whether allotted pursuant to clause 3.3 or otherwise) and apply the amounts deducted

on behalf of that shareholder in payment of the amounts payable on Shares. Any such deduction may take place at the time of allotment of the Shares in question, or subsequently, and may be made in one sum or by instalments.

3.5 **Consolidation and subdivision of Shares:** The Board may (subject in respect of Nominal Value Shares to section 15(4) of the Co-operative Companies Act):

- (a) consolidate and divide the Shares or any Class; and
- (b) subdivide the Shares or any Class;

in each case in proportion to those Shares or the Shares in that Class, as the case may be.

3.6 **Bonus issues:** The Board may resolve to apply any amount which is available for Distribution either:

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
 - (i) Shareholders selected in accordance with clause 3.10; and
 - (ii) if applicable, the holders of any other securities of the Company who are entitled by the terms of issue of such securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by Shareholders selected in accordance with clause 3.10;

or partly in one way and partly in the other.

3.7 **Shares in lieu of dividends:** The Board may exercise the right conferred by section 54 of the Companies Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

3.8 **Issues of Shares under Co-operative Companies Act:** Without limiting anything in this section, the Board may exercise:

- (a) the right conferred by section 17 of the Co-operative Companies Act to issue Nominal Value Shares from reserves of the Company; and/or;
- (b) the right conferred by section 31 of the Co-operative Companies Act to issue shares in lieu of the payment of rebates.

3.9 **Fractional entitlements:** The Board may, in exercising any powers pursuant to this section, deal with fractional entitlements to Shares or other securities in such manner as the Board considers equitable and in the interests of the Company.

3.10 **Bonus Issues - Shareholders:** The Board may determine:

- (a) which Shareholders are to receive new Shares or other securities to be issued in terms of clause 3.6(a)(i), and the number of new Shares or other securities to be issued to each Shareholder; and

- (b) which Shareholders are to have paid up amounts unpaid on their shares in terms of clause 3.6(b), and the amounts to be paid in respect of each Shareholder;

on such basis as the Board may deem appropriate. Without limitation, the Board may make that determination on the basis of the numbers of Shares held by each Shareholder, or on the basis of purchases of fertiliser made, or in the opinion of the Board likely to be made, from the Company and / or a subsidiary of the Company during any period determined by the Board.

4. RIGHTS ATTACHING TO SHARES

4.1 **Classes of Shares:** Without prejudice to any special rights previously conferred on any Shareholders or any Class and without limiting the Classes which may be issued by the Company, any Share may be issued upon the basis that such Share:

- (a) confers preferential rights to distributions of capital or income;
- (b) confers special, limited or conditional voting rights;
- (c) does not confer voting rights; or
- (d) is redeemable in accordance with terms of issue that are incorporated in this Constitution.

4.2 **Nominal value shares:** In accordance with section 15 of the Co-operative Companies Act:

- (a) Shares may have a nominal value, and Shares of different Classes may have different nominal values; and
- (b) this Constitution may with the prior approval of the Board be amended by altering the nominal value of Shares, or Shares of any Class, or by removing the provision that specifies the nominal value of Shares, or Shares of any Class.

4.3 **Nominal Value:** As at ~~21 September 2011, being~~ the date of adoption of this Constitution:

- (a) all existing Shares are Nominal Value Shares having a nominal value of ~~\$7,508.10~~; and
- (b) all existing Shares rank equally.

4.4 **New shares:** All Shares issued by the Company after the date of adoption of this Constitution shall, unless the Board specifies otherwise, at the time of issue or as a condition of issue, be deemed to be Nominal Value Shares having the nominal value specified in clause 4.3, or such other nominal value as may at the time of issue be specified by this Constitution.

5. ALTERATION OF SHAREHOLDER RIGHTS

5.1 **Special Resolution required:** Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution or the Companies Act must be approved by Special Resolution of each Interest Group.

5.2 **Meetings of Interest Groups:** The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, except that the necessary quorum shall be two persons holding or representing the holders of not less than one third of the Shares of the relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

5.3 **Issue of further Shares:** The issue of further Shares ranking equally with or in priority to existing Shares, whether as to voting rights, Distributions or otherwise, is deemed not to be an action affecting the rights attaching to those existing Shares.

6. SURRENDER OF NOMINAL VALUE SHARES

6.1 **Agreed surrender:** The Board may (subject to section 18 of the Co-operative Companies Act) accept the surrender of any Nominal Value Shares offered for surrender in accordance with section 20(1) of the Co-operative Companies Act.

6.2 **Surrender at option of shareholder:** The Board shall (subject to section 18 of the Co-operative Companies Act) accept the surrender of all Nominal Value Shares which a Shareholder, or the Personal Representative of a deceased Shareholder, requires to be surrendered pursuant to section 20(2) or 20(3) of the Co-operative Companies Act. The Board may, for the purposes of section 20(3)(a) of that Act, at any time determine a period other than five years as the period referred to in that subsection.

6.3 **Compulsory surrender:** The Company shall have the authority to require Shareholders to surrender Nominal Value Shares in accordance with section 21 of the Co-operative Companies Act. Accordingly, the Board may, subject to section 18, and in accordance with section 21, of that Act require any Shareholder to surrender all or any of the Nominal Value Shares held by that Shareholder if:

- (a) that Shareholder has ceased to be a Transacting Shareholder; or
- (b) that Shareholder has failed to comply in a material respect with requirements related to transactions with the Company contained in any contract between the Company and that Shareholder; or
- (c) the Board is of the view that:
 - (i) that Shareholder (or a person who in the opinion of the Board is a related company or associated person of that Shareholder) is, or is likely to become, a competitor of the Company; or
 - (ii) that Shareholder has never been a Transacting Shareholder; or
 - (iii) that Shareholder is bringing the Company into disrepute or causing significant loss or disruption to the business of the Company,

and the Board resolves that the surrender of the Nominal Value Shares held by that Shareholder is in the best interests of the Company; or

- (d) that Shareholder has not been a Transacting Shareholder throughout the immediately preceding period of 12 months.

6.4 **Compulsory surrender of excess shares:** The Board may (subject to section 18 of the Co-operative Companies Act) require any Shareholder to surrender such number of Nominal Value Shares as is necessary to ensure that the number of Nominal Value

Shares held by that Shareholder does not exceed that Shareholder's Share Quota, or to surrender such lesser number of Nominal Value Shares as the Board may determine.

6.5 **Consideration:** The consideration payable by the Company upon the surrender of each Nominal Value Share shall be the lesser of:

- (a) the nominal value of that Nominal Value Share on the date on which the surrender takes effect, or, if less, the amount paid up on that Nominal Value Share;
- (b) if clause 6.6 or clause 6.7 applies, an amount determined in accordance with that clause.

6.6 **Alternative consideration-shareholders' funds:** The Board may at any time determine that the amount to be paid on surrender of all or any Nominal Value Shares is to be an amount reflecting the proportional interest of the holder of those Nominal Value Shares in the shareholders' funds of the Company as at the date on which the surrender is to take effect. That amount shall be determined having regard to:

- (a) the shareholders' funds of the Company as at that date, as determined by the Board; and
- (b) the number of shares in the Company, and the respective rights of those shares to capital and income.

6.7 **Alternative consideration - early payment:** The Board may at any time determine a policy whereby:

- (a) the amount paid on surrender of Nominal Value Shares may be paid (whether by instalments or in one sum) at a later time or times than the date on which the surrender takes effect in accordance with the Co-operative Companies Act; and
- (b) that amount is to be nominal value if paid at a time or times specified in that policy, but is to be less than nominal value if paid at some earlier time or times;

and may determine that the amount to be paid on surrender of all or any Nominal Value Shares is to be fixed in accordance with that policy.

The Board may at any time amend or revoke any such policy.

6.8 **Directors certificate:** A certificate signed by any Director on behalf of the Board as to any amount referred to in clause 6.6 or 6.7 shall, unless clause 6.9 applies, be conclusive and binding on all Shareholders.

6.9 **Arbitration:** If either the Shareholder whose Nominal Value Shares are to be surrendered, or the Company, objects to the consideration determined in accordance with clause 6.6 or 6.7, that person may require the matter to be referred to arbitration in accordance with the Arbitration Act 1996.

6.10 **Payment of consideration:** The consideration for the surrender of Nominal Value Shares shall be payable on the date upon which the surrender takes effect in accordance with the Co-operative Companies Act, or at such later time as the Board may, either generally or in any particular case, and whether pursuant to a policy determined under clause 6.7 or otherwise, determine.

- 6.11 **Holding of shares surrendered:** The Company may, if the Board so elects, hold, in accordance with section 24 of the Co-operative Companies Act, Nominal Value Shares which have been surrendered.

7. ACQUISITION OF COMPANY'S OWN SHARES

- 7.1 **Company may purchase Shares:** The Company may purchase or otherwise acquire Shares from one or more Shareholders in accordance with the provisions of the Companies Act and the Co-operative Companies Act and may, subject to any requirements or restrictions imposed by law, hold any Shares so purchased or acquired.

8. SHARE CERTIFICATES

- 8.1 **Issue of Share certificates:** The Company may issue Share certificates in respect of all or any Shares.

- 8.2 **Replacement Share certificates:** The Company:

- (a) may issue a replacement certificate for any Share certificate that is worn out or defaced; and
- (b) shall issue a replacement Share certificate for one that has been lost or destroyed;

subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

9. EQUITABLE INTERESTS IN SHARES

- 9.1 **No notice of trusts:** No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.

- 9.2 **No recognition of equitable interests:** Except as required by law, no person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Share, or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share.

10. CALLS ON SHARES

- 10.1 **Board may make calls:** The Board may, from time to time, make such calls as it thinks fit upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.

- 10.2 **Time of call:** A call is deemed to be made at the time when the resolution of the Board making the call is passed.

- 10.3 **Fixed instalments deemed calls:** 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 amount is payable.

- 10.4 **Notice of call:** At least 14 days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.
- 10.5 **Differential calls:** The Board may, on the issue of Shares, differentiate between the Shareholders as to the amounts to be paid in respect of the Shares and the times of payment of such amounts.
- 10.6 **Manner of payment:** A Shareholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.
- 10.7 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.
- 10.8 **Default interest:** If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board may reasonably determine, unless the Board waives payment of interest wholly or in part.
- 10.9 **Proceedings for recovery of call:** In any proceedings for recovery of a call:
- (a) it is sufficient to prove that:
 - (i) 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
 - (ii) 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;and proof of the matters mentioned in this clause is conclusive evidence of the debt; and
 - (b) it is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.
- 10.10 **Payment in advance of calls:** 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.

11. FORFEITURE OF SHARES FOR NON PAYMENT

- 11.1 **Notice requiring payment of call:** If a Shareholder fails to pay any call or instalment of a 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.
- 11.2 **Contents of notice:** The notice shall specify a further date (not earlier than 14 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 or instalment of a call is due, is liable to be forfeited.
- 11.3 **Forfeiture for non-payment:** 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.

- 11.4 **Notice of forfeiture:** 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 Register details of the forfeiture.
- 11.5 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.
- 11.6 **Effect of forfeiture:** 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.

12. LIEN ON SHARES

- 12.1 **Lien on Shares:** The Company has a first and paramount lien upon each Share, the proceeds of sale of the Share, and all Distributions made in respect of the Share, for:
- (a) all unpaid calls owing in respect of the Share and interest thereon (if any);
 - (b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived; and
 - (c) all liabilities and obligations of the Shareholder to the Company, (including without limitation liabilities arising by reason of the assignment to the Company of a debt or liability owed by the Shareholder to some other person) whether solely or jointly with any other person, whether incurred or arising before or after notice to the Company of any equitable interest in any person other than the Shareholder, and whether or not the date for payment, fulfilment or discharge thereof has arrived.
- 12.2 **Waiver of lien:** Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share, except as provided in clause 18.2.

13. SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN

- 13.1 **Company may sell Shares:** The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any Shares:
- (a) unless the amount in respect of which a lien exists is due and payable;
 - (b) until the expiry of 14 days after written notice demanding payment of the amount has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Shares.
- 13.2 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale or, if applicable in either case, to the Personal Representative of the holder.

13.3 **Evidence:** A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.

13.4 **Sale procedure:** For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.

14. FORFEITURE OF SHARES OF UNTRACEABLE SHAREHOLDERS

14.1 **Power to forfeit:** The Company may, in accordance with section 28 of the Co-operative Companies Act, forfeit the Shares of any Shareholder to whom that section applies. The provisions of sections 11 and 13 shall not apply to any such forfeiture.

15. TRANSFER OF SHARES

15.1 **Power to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share by an instrument of transfer complying with this Constitution.

15.2 **Form of transfer:** Any Share disposed of by an "authorised transaction" within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with that Act. Every other instrument of transfer shall:

- (a) be in any usual or common form or any other form which the Board may approve;
- (b) be executed by or on behalf of the transferor; and
- (c) if registration as holder of the Share imposes a liability to the Company on the transferee, be signed by the transferee.

15.3 **Delivery to Company:** An instrument of transfer, together with the Share certificate (if any) relating to the Shares to be transferred, shall be delivered to the Company or to the agent of the Company who maintains the Share Register and the transferee shall provide such evidence as the Board or the agent reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

15.4 **Board may refuse to register:** Subject to section 84 of the Companies Act (which imposes certain procedural requirements on a board), the Board may refuse to register a transfer of any Share if:

- (a) the Company has a lien on the Share;
- (b) the Share is not fully paid up;
- (c) the instrument of transfer is not accompanied by the relevant Share certificate (if any) and such other evidence as the Board reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share;
- (d) the Board, in its absolute discretion, is not satisfied that the transferee is, or will upon registration of the transfer become, a Transacting Shareholder;

- (e) the Board, in its absolute discretion, believes that registration of the transfer would not be in the best interests of the Company;
- (f) the Board, in its absolute discretion, believes that any Shares the subject of the transfer are part of a Restricted Holding (unless upon registration of the transfer those Shares will cease to be part of a Restricted Holding) or will upon registration of the transfer become part of a Restricted Holding;

provided that the Board resolves to exercise its power under this clause within 30 Working Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board.

- 15.5 **When transfer effective:** A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.
- 15.6 **Company to retain transfer:** If the Company registers a transfer it shall retain the instrument of transfer.
- 15.7 **Multiple registers:** The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places.

16. RESTRICTED HOLDINGS

- 16.1 **Declaration of Restricted Holding:** The Board may at any time declare any Shares exceeding 100,000 in number to constitute a Restricted Holding if the Board is satisfied that:
 - (a) those Shares are held or beneficially owned by one person; or
 - (b) those Shares are held or beneficially owned by persons associated with each other.

For the purposes of (b), persons shall be deemed to be associated with each other if one of those persons has a Relevant Interest in Shares held or beneficially owned by the other or others, or if one person has a Relevant Interest in Shares held or beneficially owned by each of those persons.

- 16.2 **Declaration of Restricted Shares:** If the Board declares Shares to constitute a Restricted Holding, the Board may (at the same time or subsequently);
 - (a) declare Shares in that Restricted Holding to be Restricted Shares (but so that at least 100,000 Shares in that Restricted Holding shall not be Restricted Shares);
 - (b) if the Shares in that Restricted Holding are held by more than one Shareholder, determine, on such basis as the Board sees fit, the number of Shares held by each such Shareholder which are Restricted Shares, but so that the total number of Restricted Shares held by all of those Shareholders does not exceed the number declared by the Board under (a) to be Restricted Shares.
- 16.3 **Cessation:** The Board may at any time determine that any Shares have ceased to form part of a Restricted Holding, or have ceased to be Restricted Shares.
- 16.4 **Notice to Shareholders:** The Board shall, as soon as practicable after making a declaration or determination pursuant to clause 16.1, 16.2 or 16.3, give notice of that

declaration or determination to the Shareholders holding the Shares affected by that declaration or determination.

16.5 **Provision of information:** The Board may at any time give written notice to any Shareholder requiring that Shareholder to provide to the Board, if so required by the Board in the form of a statutory declaration, such information as the Board may specify which the Board considers necessary or desirable to establish:

- (a) whether clause 16.1 or 16.2 may apply to Shares held by that Shareholder; or
- (b) who are persons associated with that Shareholder for the purposes of clause 16.1;

or otherwise to enable the Board properly to administer the provisions of clauses 16.1, 16.2, or 16.3.

16.6 **Failure to provide information:** If any Shareholder fails to provide, to the satisfaction of the Board, the information requested by the Board pursuant to clause 16.5, within 10 Working Days after the Board gives notice under clause 16.5, the Board may, by notice to that Shareholder, determine that no votes shall be exercised in respect of the Shares held by that Shareholder (whether at a meeting of Shareholders or on an election of Directors under clause ~~29 or~~ 29) until such time as that information is provided to the satisfaction of the Board.

16.7 **Declaration conclusive:** Any declaration or determination made by the Board under clauses 16.1, 16.2 or 16.3 shall be final and conclusive for all purposes, and not open to challenge.

17. COMPULSORY SALE OF SHARES

17.1 **Not a Transacting Shareholder:** If the Board at any time forms the opinion that any Shareholder is not, or has ceased to be, a Transacting Shareholder, the Board may give notice to the Shareholder to that effect, and of the Board's intention to sell that Shareholder's Shares under this clause 17. If at the expiration of one month after the date of that notice the Shareholder has not either satisfied the Board that the Shareholder is a Transacting Shareholder, or disposed of all of the Shareholder's Shares to a Transacting Shareholder, the Board may exercise the power of sale set out in this clause 17.

17.2 **Compulsory sale of Restricted Shares:** The Board may at any time after the Board declares any Shares to be Restricted Shares in accordance with clause 16.2 give notice to the holder of those Restricted Shares of the Board's intention to sell those Shares under this clause 17. If at the expiration of one month after the date of that notice the Shareholder has not either satisfied the Board that those Shares are not, or have ceased to be, Restricted Shares, or disposed of all of those Shares so that those Shares have ceased to be Restricted Shares, the Board may exercise the power of sale set out in this clause 17.

17.3 **Procedure for sale:** If the power of sale referred to in clause 17.1 or 17.2 becomes exercisable:

- (a) the Board may arrange for the sale of the relevant Shares (the "**Relevant Shares**") on behalf of the Shareholder at a price:
 - (i) in the case of Nominal Value Shares to be sold pursuant to clause 17.1, equal to the amount certified by any Director to be the amount

which the Shareholder would have received if those Shares had been surrendered pursuant to clause 6 on the date of sale;

- (ii) in the case of all other Shares, at a price certified by any Director to be the best price reasonably obtainable in all the circumstances;
 - (b) the Shareholder shall be deemed to have authorised the Company or any person authorised for that purpose by the Board to act on behalf of the Shareholder in relation to the sale of the Relevant Shares and to sign all necessary documents relating to that sale;
 - (c) the Company shall account to the Shareholder for the net proceeds of sale (after deduction of reasonable sale expenses) which shall be held on trust by the Company for, and paid (together with interest at such rate (if any) as the Board deems appropriate) to the Shareholder, on surrender of the certificate (if any) relating to the Relevant Shares; and
 - (d) the title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale contained in this clause, and the receipt by the Company shall be a good discharge to the purchaser for the purchase price.
- 17.4 **Evidence:** A certificate by a Director that any power of sale has arisen and is exercisable under this clause 17 shall be conclusive evidence of those facts.
- 17.5 **Liability:** Neither the Company nor any Director shall be under any liability whatsoever to any Shareholder or other person for or in connection with the exercise or purported exercise of a power referred to in this clause 17.

18. TRANSMISSION OF SHARES

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

19. EXERCISE OF POWERS OF SHAREHOLDERS

- 19.1 **Alternative forms of meeting:** A meeting of Shareholders may be held either:
- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - (b) if determined by the Board 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.
- 19.2 **Exercise of power by meeting or written resolution:** A power reserved to the Shareholders by the Companies Act or by this Constitution may be exercised either:
- (a) at a meeting of Shareholders; or
 - (b) by a resolution in writing signed in accordance with section 122 of the Companies Act.
- 19.3 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Companies Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by Ordinary Resolution.

20. MEETINGS OF SHAREHOLDERS

- 20.1 **Annual meetings:** The Company shall hold an annual meeting in each calendar year in addition to any other meetings in that year not later than:
- (a) 6 months after the balance date of the Company; and
 - (b) 15 months after the previous annual meeting.
- 20.2 **Time and place of annual meeting:** Each annual meeting shall be held at such time and place as the Board appoints.
- 20.3 **Special meetings:** All meetings other than annual meetings shall be called special meetings.
- 20.4 **Calling of special meetings:** A special meeting:
- (a) may be called by the Board at any time:
 - (b) shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

21. NOTICE OF MEETINGS OF SHAREHOLDERS

- 21.1 **Written notice:** Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director, and to the auditor (if any) of the Company, not less than 10 Working Days before the meeting but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice and in such manner as those Shareholders agree.
- 21.2 **Contents of notice:** A notice of meeting shall 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.

- 21.3 **Waiver of notice irregularity:** 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.
- 21.4 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, any person, does not invalidate the proceedings at that meeting.
- 21.5 **Notice of adjourned meeting:** 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. In any other case, notice of the adjourned meeting shall be given in accordance with clause 21.1.

22. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

- 22.1 **Requirement for quorum:** Subject to clause 22.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 22.2 **Quorum:** Subject to clause 22.3, a quorum for a meeting of Shareholders is seven Shareholders present in person or by Representative.
- 22.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called by the Board on the written request of Shareholders entitled to exercise that right, 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 after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.
- 22.4 **Regulation of procedure:** Subject to the provisions of the Companies Act, and except as provided in this Constitution, the chairperson may regulate the procedure at meetings of Shareholders.
- 22.5 **Adjournment of meeting:** The chairperson may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.
- 22.6 **Adjournment or dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefore either adjourn or dissolve the meeting.
- 22.7 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the chairperson pursuant to clause 22.6, the unfinished business of the meeting shall be dealt with as follows:

- (a) in respect of a resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution;
- (b) in respect of a resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors;
- (c) the chairperson may direct that any other item or uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion, in accordance with clause 25.4.

23. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 23.1 **Chairperson:** If the Directors have elected a chairperson of the Board, and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.
- 23.2 **Directors may appoint chairperson:** If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.
- 23.3 **Shareholders may appoint chairperson:** If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

24. VOTING AT MEETINGS OF SHAREHOLDERS

- 24.1 **Voting at meeting in one place:** In the case of a meeting of Shareholders held under clause 19.1(a), unless a poll is demanded in accordance with clause 25.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.
- 24.2 **Voting at audio/visual meeting:** In the case of a meeting of Shareholders held under clause 19.1(b) unless a poll is demanded in accordance with clause 25.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 24.3 **Postal votes:** If the Board so determines Shareholders may exercise the right to vote at a meeting of Shareholders by casting postal votes and in such case the provisions of clause 7 of the first schedule to the Companies Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.
- 24.4 **Electronic votes:** To the extent permitted by law the Board may permit, in relation to any particular meeting or generally:
- (a) postal votes to be cast by electronic means; and

- (b) votes to be cast on resolutions at meetings of Shareholders (or of other groups) by electronic means.

The procedures in relation to such electronic voting shall be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic voting in accordance with this clause, such electronic votes may be cast notwithstanding any other provision of this Constitution.

- 24.5 **Entitlement to vote:** A Shareholder may exercise the right to vote either in person or by Representative.
- 24.6 **Number of votes:** Subject to clauses 16.6, 24.11 and 24.12, and to any rights or restrictions for the time being attached to any Class of Shares:
- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
- (b) on a poll every Shareholder present in person or by Representative has one vote in respect of each Share held by that Shareholder.
- 24.7 **Declaration by chairperson:** A declaration by the chairperson of a 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 25.1.
- 24.8 **Chairperson's casting vote:** The chairperson of a meeting of Shareholders is not entitled to a casting vote.
- 24.9 **Joint Shareholders:** Where two or more persons are registered as joint Shareholders, 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.
- 24.10 **Voting by non-Transacting Shareholders:** Notwithstanding section 33 of the Co-operative Companies Act, all Shareholders, whether or not Transacting Shareholders, are entitled to vote.
- 24.11 **No vote when amount owing on Share:** A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) or on an election of Directors under clause ~~29 or 30~~29, in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.
- 24.12 **No vote on Restricted Shares:** For so long as any Shares are Restricted Shares, they shall carry no vote, and accordingly no vote shall be cast at any meeting of Shareholders (including a meeting of an Interest Group) or on any election of Directors under clause ~~29 or 30~~29, in respect of any Restricted Share.

25. POLLS

- 25.1 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:
- (a) the chairperson; or
- (b) not less than five Shareholders having the right to vote at the meeting; or
- (c) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or

- (d) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.

25.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

25.3 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of a poll is deemed to be a resolution of the meeting at which the poll is demanded.

25.4 **When poll taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

25.5 **Votes:** On a poll:

- (a) votes may be given either personally or by Representative;
- (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares;
- (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

25.6 **Scrutineers:** The auditors of the Company shall be scrutineers unless they are unable or unwilling to act, or the chairperson of the meeting directs otherwise, in which case the scrutineers shall be appointed by the chairperson.

25.7 **Declaration of result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers stating that sufficient votes to determine the result of the resolution have been counted and setting out the basis of that determination.

26. PROXIES

26.1 **Right to appoint:** A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting and to demand or join in demanding a poll, as if the proxy were the Shareholder.

26.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term.

26.3 **Proxy form to be sent with notice of meeting:** The Company shall send a form of notice of appointment of proxy to every Shareholder entitled to attend and vote at a meeting, with the notice convening the meeting.

26.4 **Proxy form must not name proxy:** The Company shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Company may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Shareholder desires to appoint them or any of them.

- 26.5 **Production of notice:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is delivered to the Company not later than 48 hours before the start of the meeting.
- 26.6 **When poll taken:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.
- 26.7 **Electronic proxy appointment:** The Board may permit, in relation to a particular meeting or generally, the appointment of proxies to be made by electronic means. The procedures in relation to such electronic appointment shall be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic appointment of proxies in accordance with this clause, such electronic appointments may be made notwithstanding any other provision of this Constitution.

27. CORPORATE REPRESENTATIVE

- 27.1 **Appointment of representative:** A corporation which is a Shareholder may appoint a person to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy and subject to the same restrictions as would apply if the Shareholder were to appoint a proxy. In any such case the provisions of clause 26.7 shall apply equally to the appointment of such Representatives.

28. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

- 28.1 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Companies Act apply to any notice given pursuant to this clause.
- 28.2 **Management review by Shareholders:** The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but the resolution will not be binding on the Board.

29. APPOINTMENT AND REMOVAL OF DIRECTORS ~~DURING TRANSITION PERIOD~~

~~29.1 **Purpose of Transition Period:** Prior to the adoption of this Constitution, there were four Wards for the purposes of appointing Ward Directors, and the Shareholders were entitled to appoint up to eight Ward Directors (two to represent each of the four Wards). Following the adoption of this Constitution, there will be three Wards for the purposes of appointing Ward Directors. The purpose of this clause 29 is to reduce the number of Ward Directors over the Transition Period so that, following the Transition Period, there will be a total of six Ward Directors (two to represent each of the three Wards).~~

~~29.2 **Effect of Transition Period:** The provisions of this clause 29 shall:~~

- ~~(a) only apply during the Transition Period; and~~

(b) ~~during the Transition Period, replace clauses 30.8 and 30.10.~~

~~29.3 **Appointment of Ward Directors during Transition Period:** During the Transition Period, the Shareholders in Wards A and C may elect up to two Ward Directors to represent each of Ward A and Ward C, and the Shareholders of Ward B may elect up to:~~

~~(a) four Ward Directors prior to, and to be announced at, the 2011 annual Shareholders' meeting to represent Ward B;~~

~~(b) three Ward Directors prior to, and to be announced at, the 2012 annual Shareholders' meeting to represent Ward B; and~~

~~(c) two Ward Directors prior to, and to be announced at, the 2013 annual Shareholders' meeting to represent Ward B.~~

29.1 **Number of Directors:** The number of Directors shall not at any time be less than six nor more than nine.

~~29.4~~29.2 **Existing Ward Directors:** As at the date of the adoption of this Constitution, the following Ward Directors (or any replacement thereof) represent each Ward ("**Existing Ward Directors**") and shall have the following Director Identifications:

Ward	Name of Director	Director Identification
A <u>North Island Ward</u>	DE <u>Oliver Cother Saxton</u> <u>Sarah Jane von Dadelszen</u> <u>David Egerton Peacocke</u> OC Saxton <u>Gray Walter Baldwin</u>	A1 A2 <u>N1</u> <u>N2</u> <u>N3</u> <u>N4</u>
B	GW Baldwin DR Nikora DP Hurst DS Graham	B1 B2 B3 B4
C <u>South Island Ward</u>	AD <u>Andrew David Morrison</u> MJ <u>Murray James Taggart</u>	C1 C2 <u>S1</u> <u>S2</u>

~~29.5 **Rotation and Vacation of Director Positions during Transition Period:** At each of the annual meetings during the Transition Period, each of the Existing Ward Directors shall either:~~

~~(a) vacate office as a Ward Director and the position held by that Ward Director (using the relevant Director Identification set out in clause 29.4) shall not be subject to re-election ("**Vacated Director Position**"); or~~

~~(b) retire from office as a Ward Director and the position held by that Ward Director (using the relevant Director Identification set out in clause 29.4) shall be subject to re-election ("**Re-election**");~~

~~in accordance with the timetable below:~~

Year	Ward A	Ward B	Ward C
2011	A1—Re-election	No-Election	C1—Re-election
2012	No-Election	B1—Re-election B3—Vacated Director Position	C2—Re-election
2013	A2—Re-election	B2—Re-election B4—Vacated Director Position	No-Election

30. APPOINTMENT AND REMOVAL OF DIRECTORS

30.1 Number of Directors: ~~The number of Directors shall not at any time be less than six nor more than:~~

- ~~(a) 10 during the Transition Period; and~~
- ~~(b) 9 following the Transition Period.~~

~~30.229.3~~ **Wards:** ~~Subject to the power of the Board to adjust Ward boundaries pursuant to clause 30.3, for~~For the purposes of the election of Directors there are ~~three~~two Wards, as follows:

~~**Ward A**—Far North District, Whangarei District, Kaipara District, Auckland City, Waikato District, Hamilton City, Waipa District, Otorohanga District, Waitomo District, Thames-Coromandel District and Hauraki District~~

~~**Ward B**—Matamata-Piako District, South Waikato District, New Plymouth District, Stratford District, South Taranaki District, Ruapehu District, Wanganui District, Rangitikei District, Manawatu District, Palmerston North City, Horowhenua District, Kapiti Coast District, Porirua City, Upper Hutt City, Wellington City, Taupo District, Western Bay of Plenty District, Tauranga District, Rotorua District, Kawerau District, Whakatane District, Opotiki District, Gisborne District, Wairoa District, Hastings District, Napier City, Central Hawkes Bay District, Tararua District, Masterton District, Carterton District and South Wairarapa District.~~

~~**Ward C**—All of South Island.~~

~~The references above to "City" or "District" are to local authority districts.~~

~~Shareholders residing and farming in any district not specified will be regarded as falling within the Ward in closest proximity to their property.~~

~~30.3~~ **Adjustment of Wards:** ~~The Board may from time to time amend the Ward boundaries in order to maintain reasonable equality between Wards having regard to all or any of numbers of Shareholders, numbers of Shares and volume of business in each Ward.~~

[North Island Ward – All of North Island.](#)

[South Island Ward – All of South Island.](#)

~~30.4~~**29.4 Residence of Shareholders:** Upon an election of Directors each Shareholder will (subject to clause 29.5) be entitled to vote only in the Ward in which the Shareholder ordinarily resides. It is the Shareholder's responsibility to advise the Company in writing of his or her ordinary residential address. In the absence of any such written advice to the contrary the address for each Shareholder is deemed to be that appearing from time to time in the Share Register. If any Shareholder does not have an ordinary place of residence in any of the Wards, or in the case of a Shareholder which is a body corporate, the following provisions apply to determine the place at which such Shareholder is deemed to reside:

- (a) if all the land on which the Shareholder carries on farming activities is situated in one of the Wards, the place of residence is deemed to be in that Ward;
- (b) if such land is situated in more than one of the Wards, the Shareholder shall notify the Company of the Ward in which the Shareholder wishes to be recorded. In the absence of such notice, the Board shall in its discretion record that Shareholder as resident in a Ward and the Shareholder will be deemed to be resident in that Ward. Once a Shareholder has given a notification in terms of this subclause, that Shareholder shall not be entitled to change the Ward in which that Shareholder wishes to be recorded unless the Board so agrees.

~~30.5~~**29.5 Allocation in respect of major shareholding:** Notwithstanding anything elsewhere in this Constitution, if more than 100,000 Shares are held by one Shareholder or group of persons associated with each other (in terms of clause 16.1) (a "**Group**") then the Board may in respect of any election of Directors determine that the votes which may be cast by that Shareholder or the members of that Group shall be divided amongst Wards in accordance with the following principles:

- (a) The total votes which may be cast by the Shareholder or Group shall so far as practicable be allocated amongst Wards in proportion to the purchases of fertiliser for delivery in each Ward during the financial year of the Company preceding the date on which the determination is made (or if details of purchases in that financial year are not available, in the financial year preceding that financial year).
- (b) In the case of a Group, the Board may determine on such terms as it considers fair and equitable, and having regard to the principles in (a), which member of the Group should vote in which Ward, and if appropriate how the votes to be cast by each member of the Group should be allocated amongst the Wards.

If the Board makes a determination under this clause the Board shall forthwith after making that determination give notice of that determination to all Shareholders to which it applies.

~~30.6~~**29.6 Determination Conclusive:** Any determination by the Board as to the Ward in which any Shareholder is entitled to vote, or as to the number of votes a Shareholder is entitled to cast in a Ward, shall be final and conclusive for all purposes, and no election of Directors shall be open to challenge on the grounds that any Shareholder voted in the wrong Ward.

~~30.7~~29.7 **Eligibility:** Intending Directors are eligible for election only in the Ward in which they are entitled to vote. A Director elected in a Ward may continue in office notwithstanding that during the term he or she ceases to be entitled to vote in that Ward.

~~30.8~~29.8 **Election of Ward Directors:** Subject to the rotation provisions set out below, the Shareholders in each Ward may elect ~~up to two Directors to represent that Ward;~~

(a) ~~up to two Directors to represent the North Island Ward; and~~

(b) ~~up to two Directors to represent the South Island Ward.~~

29.9 **Adjustment of Ward Director numbers:** The Ward system is intended to provide for Director representation on the Board in respect of a Ward that is approximately proportionate to the number of Shares held by Shareholders in that Ward relative to the total number of Shares. If the Board determines that the number of Directors in respect of a Ward is no longer appropriate (having regard to this intent), the Board may amend the number of Ward Directors as set out in clause 29.8 in respect of a Ward. If the number of Ward Directors is adjusted in accordance with this clause 29.9, the Directors shall determine the process for the rotation of the Directors (with the intent that each Ward Director shall be required to retire by rotation after three years).

~~30.9~~29.10 **Director Identification:** Each Ward Director will have a Director Identification which shall be determined based on the table in clause ~~29.4~~29.2 and the rotation ~~procedures~~procedure in ~~clauses~~clause ~~29.5 and 30.10~~29.11. Where any Ward Director ceases to hold office for any reason (including by way of rotation in accordance with clause ~~29.5 or 30.10~~29.11), the Ward Director elected or appointed in his or her place will assume the same Director Identification for the purpose of rotation in clause ~~29.5 or 30.10~~29.11. If both Ward Directors representing any Ward are replaced simultaneously, the Director Identification shall be determined by agreement between the replacement Ward Directors or allocated by lot.

~~30.10~~29.11 **Rotation:** At each annual meeting, two Ward Directors shall retire from office, and the position held by such retiring Ward Director (represented by the relevant Director Identification), shall be subject to re-election. Each Ward Director shall retire three years after the most recent retirement by rotation of that Ward Director or, if that Ward Director has never retired by rotation, three years after the most recent retirement by rotation of the Ward Director whose Director Identification he or she has assumed pursuant to clause ~~30.9~~29.10. The Ward Directors to retire in ~~2014~~2016 to ~~2016~~2018 (inclusive) shall be determined in accordance with the timetable below (using the relevant Director Identifications) and hereafter, this timetable shall, subject to clause 29.9, be repeated for every three year period):

Year	<u>North Island Ward-A</u>	<u>South Island Ward-B</u>	
<u>2016</u> 2014	<u>A1N1 and N2</u>	No Election	C
<u>2015</u> 2017	<u>No ElectionN3</u>	<u>B1S1</u>	C
<u>2018</u> 2016	<u>A2N4</u>	<u>B2S2</u>	A

A retiring Director retains office until the dissolution or adjournment of the meeting at which he or she is re-elected or his or her successor is appointed.

~~30.11~~29.12 **Nominations:** Not less than 56 days before the date fixed for the annual meeting in each year, the Company shall send to each Shareholder entitled to vote in the Wards in which elections are to be held in that year written notice that nominations for Directors will be received. Every candidate for such office must be nominated in writing signed by the proposer, who must be a Shareholder who is both entitled to vote in the Ward in which the candidate is eligible for appointment and is qualified for appointment as a Director pursuant to clause 29.23 (ignoring clause 29.23(b)). Such nomination must be delivered to the Company at least 42 days prior to the date of the annual meeting and must be accompanied by an acceptance of the nomination signed by the candidate. Each Shareholder is entitled to nominate up to two Directors for election in the Shareholder's Ward. The nomination process in this clause 29.12 will not apply to Directors who are due to retire by rotation in accordance with clause 29.11 at an upcoming annual meeting and such Directors will be nominated for re-election in respect of that annual meeting, unless the relevant Director notifies the Company in writing that he or she does not wish to stand for re-election.

~~30.12~~29.13 **Notice of Nomination:** Notice of every valid nomination for the office of Director shall either be included in the notice of the meeting or be sent by the Company to each Shareholder entitled to receive notice of the meeting not less than 21 days before the date of the meeting. The Board may, in its discretion, enclose with the notice of nomination a short personal statement by the candidate. The decision of the Board as to the form and content of any such statement will be final.

~~30.13~~29.14 **Voting Paper:** Should more than the requisite number of qualified candidates be nominated for the vacancies in that year, the Company must not less than 21 days prior to the annual meeting, send a voting paper to every Shareholder entitled to vote on the election of Directors in the Wards in which the elections are to be held in that year. The voting paper shall be in such form as the Board determines [and shall specify where the voting papers are to be returned to.](#)

~~30.14~~29.15 **Accidental Omission:** The accidental omission to send to any Shareholder the notices or documents required to be sent pursuant to clauses 29.12 or 29.13, or a voting paper, or the failure by any shareholder to receive any such notice, document, or voting paper, shall not invalidate any election of Directors.

~~30.15~~29.16 **Voting:** Upon the holding of an election for the office of Director in any Ward, any Shareholder who is entitled to vote in the election shall be entitled to cast one vote in his or her Ward for every Share held, subject to clauses 16.6, 24.11 and 24.12.

~~30.16~~29.17 **Counting of Votes:** All voting papers must be returned to the [Company at its registered office address specified on the voting paper](#) not later than 4.00 p.m. on the day seven days prior to the date of the annual meeting. Votes may also be submitted electronically in such manner as determined by the Board. The Board shall appoint not less than one person to count the votes, and not less than one additional person to act as scrutineer. Such persons may be third parties, but shall not be members of the Board. The result of the election or elections in each year shall be notified to the annual meeting, but the number of votes cast for each candidate shall not be disclosed to the meeting unless the Chairperson otherwise determines.

~~30.17~~29.18 **Casual Vacancy:** Any casual vacancy of a Ward Director occurring on the Board may be filled by the Board. Any person so appointed must be eligible for election in the Ward in which the vacancy arises, and the person so appointed shall hold office so long only as the vacating Director would have retained office if no vacancy had occurred and shall assume the Director Identification for the purposes of Director rotation. The Board may:

- (a) on making an appointment under this clause, determine that the Director so appointed should retire, as if retiring by rotation, at an annual meeting earlier than that at which the Director he or she replaces would have retired by rotation. Any such early retirement shall be additional to retirement by rotation required by clause 29.11, and shall not affect the principle that the appointee assumes the Director Identification for the purposes of rotation of the Director he or she replaces;
- (b) allow a casual vacancy to remain open until, at the latest, the date on which the Director who has vacated office would have been required to retire by rotation under clause 29.11.

29.19 **Shareholder election:** [Notwithstanding clause 29.18, the Board may elect to fill any casual vacancy of a Ward Director occurring on the Board by conducting a postal ballot to allow the relevant Shareholders in respect of that Ward to elect a new Ward Director, rather than calling a meeting of Shareholders. In such circumstances, the Board shall determine the process and timing for nominations and how the postal ballot shall be carried out and shall notify this to the relevant Shareholders.](#)

~~30.18~~29.20 **Insufficient Number of Directors:** The Board may act notwithstanding any vacancy but, if and so long as the number of Directors is reduced below the minimum number provided by clause ~~30.1~~29.1, the continuing Directors may act for the purpose of increasing the number of Directors to such minimum number or for summoning a meeting of the Company, but for no other purpose.

~~30.19~~29.21 **Appointment and Removal by Resolution:** The Company may at any time by Special Resolution:

- (a) remove any Director from office; and
- (b) if the Director who is being removed from the office under this clause is a Ward Director, appoint in place of that Director another person who must be eligible for election as a Director in the same Ward. The person appointed holds office so long only as the removed Director would have remained in office if he or she had not been removed and assumes the same Director Identification for the purpose of Director rotation, unless otherwise determined by the appointment resolution.

Notwithstanding section 156 of the Companies Act, no Director shall be subject to removal from office by Ordinary Resolution.

~~30.20~~29.22 **Appointment of Additional Directors:** The Board may by resolution from time to time appoint and remove up to three additional persons as Directors ("**additional Directors**"). In relation to such additional Directors:

- (a) there is no shareholding qualification;
- (b) they hold office for such term as is determined by the Board at the time of appointment, up to a maximum of three years. If no particular term is determined by the Board the additional Director holds office for a term of one year.

~~30.21~~29.23 **Shareholding Qualification:** To be elected or appointed as a Director (other than as an additional Director appointed under clause 29.22), a person:

- (a) must hold not less than 100 Shares;
- (b) must be less than 68 years of age at the date of election or appointment.

For the purposes of (a) a person holds not less than 100 Shares if he or she personally or as trustee:

- (i) holds a Relevant Interest in issued voting shares in a company which holds not less than 100 Shares; or
- (ii) is a member of a partnership which holds not less than 100 Shares.

~~30.22~~29.24 **Vacation of Office:** A Director ceases to be a Director if he or she:

- (a) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- (b) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (c) becomes disqualified from being Director pursuant to the Companies Act; or
- (d) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (e) is removed from office pursuant to clause 29.21; or

- (f) has for more than three months been absent without approval of the Board from meetings of the Board held during that period.

29.25 **Replacement of provisions:** If the Board determines that the Ward system is no longer appropriate for the appointment and removal of Directors, the Board may by unanimous resolution resolve that the provisions of clauses 29.1 to 29.21 (inclusive) no longer apply and that the provisions contained in the Schedule to this Constitution are to apply in their place (which provisions shall not, for the avoidance of doubt, otherwise apply until such time). Any change to the process for appointment and removal of Directors under this clause 29.25 shall take effect on the date specified in the Directors' resolution in relation to the same.

~~31.30.~~ **ALTERNATE AND MANAGING DIRECTORS**

~~31.1~~30.1 **Alternate Directors:** Each Director shall have power from time to time by notice to the Company to appoint any person who is not already a Director and who is approved by a majority of the other Directors to act as an alternate Director in his or her place. The following provisions shall apply to an alternate Director:

- (a) The appointment may at any time be revoked by notice to the Company given by the appointor or by a majority of the other Directors and is automatically revoked when the appointor vacates office.
- (b) The alternate Director is not entitled to any remuneration in his or her capacity as an alternate Director additional to that of the Director in whose place he or she acts.
- (c) Unless otherwise provided by the terms of the appointment, the alternate Director:
- (i) has the same rights, powers and privileges (including, without limitation, the power to sign resolutions of Directors, and the power to execute documents on behalf of the Company, but excluding the power to appoint an alternate Director); and
 - (ii) shall discharge all the duties and obligations;
- of the Director in whose place he or she acts.

~~31.2~~30.2 **Appointment of managing director:** The Board may from time to time appoint one or more Directors 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 such appointment. A managing director shall be subject to the same provisions as to vacation of office as apply to the other Directors and, if a managing director ceases for any reason to hold office as a Director, he or she shall immediately cease to hold the office of managing director.

~~32.31.~~ **REMUNERATION AND OTHER BENEFITS OF DIRECTORS**

~~32.1~~31.1 **Power to authorise:** The Board may not exercise the power conferred by section 161 of the Companies Act to authorise any payment of remuneration to Directors in their capacity as such, without the prior approval of an Ordinary Resolution. Each such resolution shall express the Directors' remuneration as either:

- (a) a monetary sum per annum payable to all Directors taken together; or

- (b) a monetary sum per annum payable to each person from time to time holding office as a Director.

An Ordinary Resolution dealing with Directors' remuneration may be moved and passed at any meeting of Shareholders notwithstanding that notice of the content of that resolution may not have been given in the notice of that meeting, so long as the notice of that meeting contains a reference to Directors' remuneration as an item of business.

~~32.2~~31.2 **Power to increase:** If at any time while the approved remuneration of the Directors is expressed in accordance with clause 31.1(a), the total number of Directors holding office is increased, the amount of remuneration then payable in accordance with that clause may be increased by the Board by such amount as is necessary to enable the Company to pay the additional Director or Directors by way of remuneration a fee not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).

~~32.3~~31.3 **Payment of expenses:** Notwithstanding the provisions of clause 31.1, Directors are entitled to be paid for all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board, or any committee of the Board, or meetings of Shareholders, or in connection with the business of the Company.

~~32.4~~31.4 **Special remuneration:** Notwithstanding the provisions of clause 31.1, the Board may authorise the Company to pay special remuneration to any non-executive Director who is or has been engaged by the Company to carry out any services which in the opinion of the Board are additional to those usually required of non-executive directors of similar companies.

~~33.32.~~ **INDEMNITY AND INSURANCE**

~~33.1~~32.1 **Indemnity of Directors:** Subject to clause 32.3 every Director shall be indemnified by the Company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or a director of a subsidiary of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in his or her capacity as a Director or a director of a subsidiary of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability;

and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by a Director prior to the date of such revocation or amendment, but shall be subject to any limitations contained in any deed or agreement from time to time in force between the Company and the Director relating to indemnities.

~~33.2~~32.2 **Other Indemnities:** Subject to clause 32.3 the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or a related company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and

- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, or costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

~~33.3~~32.3 **Exceptions:** An indemnity conferred by clause 32.1(b), or given pursuant to clause 32.2(b), shall not apply in respect of:

- (a) any criminal liability; or
- (b) in the case of an employee of the Company or a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (c) in the case of a Director or a director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Companies Act.

~~33.4~~32.4 **Further exception:** Any indemnity conferred by clauses 32.1 or 32.2 shall not apply in respect of any liability in respect of which an indemnity is prohibited by any legislation.

~~33.5~~32.5 **Express indemnity:** Without limiting the indemnity conferred by clause 32.1, the Company may, with the prior approval of the Board, by deed or agreement grant in favour of any Director an express indemnity to the same effect as that conferred by clause 32.1, but subject to the exceptions in clause 32.3 and 32.5.

~~33.6~~32.6 **Insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a director or employee of a related company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

~~33.7~~32.7 **Definitions:** In this clause 32:

- (a) "Director" includes a former Director and "director" includes a former director; and
- (b) other words given extended meanings in section 162(9) of the Companies Act have those extended meanings.

~~34.33.~~ **POWERS OF DIRECTORS**

~~34.1~~33.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

~~34.2~~33.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Companies Act, Co-operative Companies Act or this Constitution, to be exercised by the Shareholders.

34.333.3 Delegation of powers: The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the second schedule to the Companies Act.

34.433.4 Appointment of attorney: The Company may exercise the power conferred by section 181 of the Companies Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

34.533.5 Ratification by Shareholders: Subject to the provisions of section 177 of the Companies Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Companies Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

34.633.6 Resolution not to exercise certain powers: The Board may at any time resolve:

- (a) that the power of sale contained in clause 17.2, and/or the power to require surrender of Shares under clause 6.3, is not exercisable in respect of Shares held, or to be held, by any Shareholder or potential Shareholder specified in the resolution, or in respect of the Shares of any Class specified in the resolution; or
- (b) that Shares held, or to be held, by any Shareholder or potential Shareholder specified in the resolution are not capable of being declared to be Restricted Shares.

If the Board so resolves, that resolution shall be binding upon the Company and all Directors from time to time, shall be deemed to be incorporated in this Constitution as if set out in full, and shall not be capable of being revoked or altered otherwise than by an amendment to this Constitution.

34.733.7 Determination of quota policy: The Board may from time to time determine, and alter, a policy as to the number of Shares which are required to be held by Shareholders, having regard to purchases of fertiliser made by Shareholders. In determining the quota policy from time to time, the Board may, subject to clause 33.8, take into account such criteria as the Board sees fit including, without limitation, tonnes of fertiliser, value of fertiliser, and/or types of fertiliser, purchased by a Shareholder, or in the opinion of the Board likely to be purchased by a Shareholder, from the Company and/or a subsidiary of the Company during any period determined by the Board. The quota policy can provide for variable shareholding requirements in relation to differing levels in purchases above which there is no requirement to hold additional shares.

34.833.8 Determination for surrender purposes: In determining a Shareholder's Share Quota for the purposes of requiring the surrender of Nominal Value Shares under clause 6.4, the Board shall have regard only to purchases of fertiliser made by the Shareholder during the four financial years of the Company immediately preceding the date on which the Board requires the surrender of those Nominal Value Shares.

35.34. INTERESTS OF DIRECTORS

35.134.1 Disclosure of Interests: A Director shall comply with the provisions of section 140 of the Companies Act (as modified by section 29(g) of the Co-operative Companies Act)

(relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 34.4.

35.234.2 Personal involvement of Directors: Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Companies Act (as modified by section 29(g) of the Co operative Companies Act) (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Companies Act (prohibiting a director from acting as auditor of a company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing;

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

35.334.3 Interested Directors may not vote: A Director who is Interested in a transaction entered into, or to be entered into, by the Company:

- (a) may attend a meeting of the Board at which any matter relating to the transaction arises but shall not be included among the Directors present at the meeting for the purposes of a quorum and may not vote on any matter relating to the transaction except as provided in clause 34.4;
- (b) may sign a document relating to the transaction on behalf of the Company, and may 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.

35.434.4 Exception to voting prohibition: Notwithstanding the provisions of clause 34.3(a), a Director may be included amongst the Directors present for the purposes of a quorum, and vote, in respect of a matter in which he or she is Interested if:

- (a) that matter is one in respect of which, pursuant to an express provision of the Companies Act, Directors are required to sign a certificate;
- (b) that matter relates to a transaction of the nature referred to in section 29(g) of the Co-operative Companies Act; or
- (c) that matter relates to the grant of an indemnity pursuant to section 162 of the Companies Act.

36.35. PROCEEDINGS OF DIRECTORS

36.135.1 Third schedule of Companies Act not to apply: The provisions of the third schedule to the Companies Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

~~36.2~~35.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

~~36.3~~35.3 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure.

~~36.4~~35.4 **Notice of meeting:** The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings or as provided in clause 35.5):

- (a) Not less than two days' notice of a meeting of the Board shall be sent to each Director unless:
 - (i) the Director waives that right; or
 - (ii) the issue which is to be the subject of the meeting is, in the reasonable opinion of a majority of the Directors, a matter of urgency, in which event such notice as is practicable in the circumstances shall be given.
- (b) Notice to a Director of a meeting of the Board may be:
 - (i) delivered to the Director;
 - (ii) posted to the address given by the Director to the Company for such purpose;
 - (iii) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (iv) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
- (c) It is not necessary to give notice of a meeting to an alternate Director, unless the Director who appointed that person has given written notice to that effect to the Company.
- (d) A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual, communication, the manner in which each Director may participate in the proceedings of the meeting.
- (e) A notice given to a Director pursuant to this clause is deemed to be given:
 - (i) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (ii) in the case of posting, three days after it is posted;
 - (iii) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the

facsimile was sent in its entirety to the facsimile telephone number given by the Director;

- (iv) in the case of electronic means, at the time of transmission.
- (f) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with clause 35.4(e) but the Director cannot be contacted, notice of the meeting shall be deemed to have been duly given to that Director.

~~36.5~~35.5 **Director may convene meeting:** Without limiting the provisions of clauses 35.3 or 35.4, a Director has the right at any time to convene a meeting of the Board, or to require an employee of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than seven days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.

~~36.6~~35.6 **Waiver of notice irregularity:** An irregularity in a notice of a meeting or in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during, or after the meeting) to the waiver.

~~36.7~~35.7 **Quorum:** A quorum for a meeting of the Board is three Directors. No business may be transacted at a meeting of Directors if a quorum is not present.

~~36.8~~35.8 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and so long as the number of Directors holding office is less than the minimum number fixed by clause ~~30.1~~29.1, the continuing Directors may act only for the purposes of increasing the number of Directors to that number or calling a meeting of the Shareholders.

~~36.9~~35.9 **Election of chairperson:** The Directors may from time to time elect a chairperson and (if they think fit) a deputy chairperson, of their meetings, and determine the period for which they respectively are to hold office. The chairperson, or failing the chairperson the deputy chairperson (if any), shall chair all meetings of the Directors. If at any time there is no such chairperson or deputy chairperson, or if at any meeting the chairperson or deputy chairperson is not present within 10 minutes after the time appointed for holding the meeting, or is present but not entitled to vote on a particular matter, the Directors present may choose one of their number to be chairperson of the meeting, or for consideration of the particular matter, as the case may be.

~~36.10~~35.10 **Voting:** Subject to clauses 34.3 and 34.4, every Director has one vote. The chairperson has a casting vote. 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 the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.

~~36.11~~35.11 **Written resolution:** A resolution in writing, signed or assented to by at least three-quarters of the Directors entitled to vote on that resolution is as valid and effective as if passed at a meeting of the Board provided that the Directors signing or assenting to the resolution would constitute a quorum and would have power to pass the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered in the Records. The Company shall, within seven days after any resolution is

passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.

~~36.12~~35.12 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

~~36.13~~35.13 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.

~~36.14~~35.14 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

~~37.36.~~ **METHOD OF CONTRACTING**

~~37.1~~36.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors; or
- (b) any Director, together with any other person authorised by the Board whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company.

~~37.2~~36.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

~~37.3~~36.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

~~38.37.~~ **DISTRIBUTIONS**

~~38.1~~37.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test may, subject to the Companies Act and this Constitution, authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

~~38.2~~37.2 **Form of Distribution:** Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit, but shall not differentiate between Shareholders as to the form in which a Distribution is made.

~~38.3~~37.3 **Entitlement to dividends:** Subject to section 107 of the Companies Act (relating to unanimous consent to certain actions) and section 30 of the Co-operative Companies Act (relating to rebates), the Board shall not authorise a dividend:

- (a) in respect of some but not all the Shares in a Class; or

- (b) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that 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, but a Shareholder may waive that Shareholder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of that Shareholder.

~~38.4~~**37.4 Deduction of money:** The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.

~~38.5~~**37.5 Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.

~~38.6~~**37.6 No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

~~38.7~~**37.7 Rebates:** Notwithstanding anything in this clause 37 or elsewhere in this Constitution, the Board may exercise the power of the Company under section 30 of the Co-operative Companies Act to give rebates to Transacting Shareholders.

~~38.8~~**37.8 Unclaimed Distributions:** Dividends or other monetary Distributions unclaimed for more than one year after having been authorised, may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for more than five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board may, nevertheless, at any time after such forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement.

~~39.38.~~ **INSPECTION OF RECORDS**

~~39.1~~**38.1 Inspection by Directors:** Subject to section 191(2) of the Companies Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.

~~39.2~~**38.2 Inspection by Shareholders:** No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Companies Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders (who are not also Directors).

~~40.39.~~ **NOTICES**

~~40.1~~**39.1 Reports, etc to Shareholders:** Annual reports, notices and other documents required to be sent to a Shareholder shall be sent in the manner provided in section 391 of the Companies Act.

40.239.2 Accidental omissions: The failure to send an annual report, notice, or other document to a Shareholder in accordance with the Companies Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.

40.339.3 Joint Shareholders: A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share.

40.439.4 Shareholder deceased or bankrupt: If a Shareholder dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Companies Act to the Personal Representative of the Shareholder at the address supplied to the Company for that purpose.

40.539.5 Waiver by Shareholders: Subject to section 212(2) of the Companies Act (which requires financial statements to be sent to Shareholders who elect not to receive annual reports), a Shareholder 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 at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

41.40. LIQUIDATION

41.140.1 Distribution of assets: If the Company is liquidated the liquidator may, with the approval of Shareholders and any other sanction required by the Companies Act:

- (a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

SCHEDULE

These provisions only apply if a Board resolution is passed in accordance with clause 29.25.

29 APPOINTMENT AND REMOVAL OF DIRECTORS

29.1 **Number of Directors:** The number of Directors shall not at any time be less than six nor more than nine.

29.2 **Appointment by Shareholders:** A person may be appointed a Director at any time by Ordinary Resolution (such directors to be referred to as "**Shareholder Appointed Directors**"). A Shareholder Appointed Director shall be subject to removal from office as director by Ordinary Resolution. The maximum number of directors elected pursuant to this clause 29.2 is six (or such other number as determined by the Board).

29.3 **Existing Shareholder Appointed Directors:** As at the date of the adoption of these provisions, the existing Ward Directors of the Company shall be deemed to be Shareholder Appointed Directors appointed pursuant to these provisions.

29.4 **Rotation:** At each annual meeting, one third of the Shareholder Appointed Directors shall retire from office, and the position held by such retiring Director shall be subject to re-election. The Shareholder Appointed Directors to retire shall be those who have been longest in office since they were last elected. In the case of Shareholder Appointed Directors who were last appointed Directors on the same day, those to retire shall be determined by agreement between those Directors or, if they cannot agree, by lot. A retiring Shareholder Appointed Director retains office until the dissolution or adjournment of the meeting at which he or she is re-elected or his or her successor is appointed.

29.5 **Nominations:** Not less than 56 days before the date fixed for the annual meeting in each year, the Company shall send to each Shareholder written notice that nominations for Directors will be received. Every candidate for such office must be nominated in writing signed by the proposer, who must be a Shareholder who is qualified for appointment as a Director pursuant to clause 29.23 (ignoring clause 29.23(b)). Such nomination must be delivered to the Company at least 42 days prior to the date of the annual meeting and must be accompanied by an acceptance of the nomination signed by the candidate. Each Shareholder is entitled to nominate up to two Directors for election.

29.6 **Notice of Nomination:** Notice of every valid nomination for the office of Director shall either be included in the notice of the meeting or be sent by the Company to each Shareholder entitled to receive notice of the meeting not less than 21 days before the date of the meeting. The Board may, in its discretion, enclose with the notice of nomination a short personal statement by the candidate. The decision of the Board as to the form and content of any such statement will be final.

29.7 **Voting Paper:** Should more than the requisite number of qualified candidates be nominated for the vacancies in that year, the Company must not less than 21 days prior to the annual meeting, send a voting paper to every Shareholder entitled to vote on the election of Directors. The voting paper shall be in such form as the Board determines and shall specify where the voting papers are to be returned to.

29.8 **Accidental Omission:** The accidental omission to send to any Shareholder the notices or documents required to be sent pursuant to clauses 29.5 or 29.6, or a voting paper, or the failure by any shareholder to receive any such notice, document, or voting paper, shall not invalidate any election of Directors.

29.9 **Voting:** Upon the holding of an election for the office of Director, any Shareholder shall be entitled to cast one vote for every Share held, subject to clauses 16.6, 24.11 and 24.12.

29.10 **Counting of Votes:** All voting papers must be returned to the address specified on the voting paper not later than 4.00 p.m. on the day seven days prior to the date of the annual meeting. Votes may also be submitted electronically in such manner as determined by the Board. The Board shall appoint not less than one person to count the votes, and not less than one additional person to act as scrutineer. Such persons may be third parties, but shall not be members of the Board. The result of the election or elections in each year shall be notified to the annual meeting, but the number of votes cast for each candidate shall not be disclosed to the meeting unless the Chairperson otherwise determines.

29.11 **Casual Vacancy:** Any casual vacancy of a Shareholder Appointed Director occurring on the Board may be filled by the Board. Any person so appointed shall hold office so long only as the vacating Director would have retained office if no vacancy had occurred. The Board may:

(a) on making an appointment under this clause, determine that the Director so appointed should retire, as if retiring by rotation, at an annual meeting earlier than that at which the Director he or she replaces would have retired by rotation. Any such early retirement shall be additional to retirement by rotation required by clause 29.4;

(b) allow a casual vacancy to remain open until, at the latest, the date on which the Director who has vacated office would have been required to retire by rotation under clause 29.4.

29.12 **Shareholder Election:** Notwithstanding clause 29.11, the Board may elect to fill any casual vacancy of a Shareholder Appointed Director occurring on the Board by calling a meeting of Shareholders and allowing the Shareholders to elect a new Shareholder Appointed Director. In such circumstances, the Board shall determine the process and timing for nominations and the calling of the meeting.

29.13 **Insufficient Number of Directors:** The Board may act notwithstanding any vacancy but, if and so long as the number of Directors is reduced below the minimum number provided by clause 29.1, the continuing Directors may act for the purpose of increasing the number of Directors to such minimum number or for summoning a meeting of the Company, but for no other purpose.