

**CONSTITUTION**

**OF**

**TERRA VITAE VINEYARDS LIMITED PREVIOUSLY  
CALLED SEDDON VINEYARDS OF MARLBOROUGH  
LIMITED**

**(to come into effect as the Constitution of the  
Amalgamated Company on the date on which the  
amalgamation of Seddon Vineyards of Marlborough  
Limited and Terra Vitae Vineyards Limited is effective)**

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## CONSTITUTION OF TERRA VITAE VINEYARDS LIMITED

### 1. INTERPRETATION

#### 1.1 **Definitions:** In this Constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

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

“**Alternate Director**” means a person appointed to act as an alternate for a Director appointed pursuant to Clause 14.6.(a).

“**Amalgamation**” means the amalgamation of Seddon Vineyards of Marlborough Limited and Terra Vitae Group Limited pursuant to an amalgamation proposal approved by the shareholders of each of those companies on 30 June 2006 (“**Amalgamation Proposal**”).

“**Annual Meeting**” means a meeting of Shareholders held pursuant to Clause 12.1.

“**Associated Person**” has the meaning given to that term in section 1 of the Rules.

“**Balance Date**” means the date adopted by the Company as the end of its financial year for the purpose of its annual financial statements.

“**Board**” means the Directors numbering not less than the required quorum acting together as the board of Directors of the Company, and where one Director is a quorum it means that Director so acting alone.

“**Call**” means a resolution of the Board under Clause 9.1 requiring Shareholders to pay all or part of the unpaid amount of the issue price of any Shares and, where the context requires, means the obligation of a Shareholder to meet the amount due pursuant to such a resolution, and, further, includes any sum which by the terms of Clause 9.3 is deemed to be a call.

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

“**Chairperson**” means the chairperson of the Board, elected under Clause 16.2(a).

“**Company**” means Terra Vitae Vineyards Limited the company previously called Seddon Vineyards of Marlborough Limited but whose name is changed to Terra Vitae Vineyards Limited pursuant to the Amalgamation.

“**Constitution**” means this constitution of the Company and all amendments to it from time to time.

“**Director**” means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company.

“**Interests Register**” means a register kept by the Company at its registered office as required by section 189(1)(c) of the Act.

“**Listed**” means listed on the NZSX or the NZAX.

**“Managing Director”** means a Director who is appointed under Clause 18 as an employee of the Company, with the responsibility for the management of the Company (together with any other employee).

**“Minimum Holding”** means a parcel or number of 1,000 Ordinary Shares in the Company.

**“month”** means calendar month.

**“NZAX”** means the alternative exchange operated by NZX.

**“NZSX”** means the main board equity security market operated by NZX.

**“NZX”** means New Zealand Exchange Limited.

**“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.

**“Ordinary Share”** means a Share which confers on the holder:

- (a) the right to vote at meetings of Shareholders and on a poll to cast one vote for each Share held;
- (b) subject to the rights of any other Class of Shares, the right to an equal share in Dividends authorised by the Board; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company on its liquidation.

**“Register”** means the register of Shares required by section 87 of the Act to be kept.

**“Registrar”** means the Registrar of Companies appointed under section 357(1) of the Act.

**“Rules”** means such of the listing rules of NZAX or NZX, as amended from time to time, as apply to the Company if and for so long as the Company is Listed.

**“Share”** means a share in the Company.

**“Shareholder”** means a person:

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

**“Working Day”** means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day;

- (b) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday; and
- (d) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

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

- (a) Writing includes all modes of representing or reproducing words, figures or symbols in a visible form including reproduction by facsimile machine;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a person includes any firm, company or other body corporate, local authority, statutory authority and the Crown;
- (d) words importing one gender include the other genders;
- (e) subject to this Clause 1, expressions contained in this Constitution bear the same meaning as specified in the Act as amended from time to time;
- (f) a reference to a Clause means a clause of this Constitution;
- (g) the clause headings are included for convenience only and do not affect the construction of this Constitution;
- (h) references to a statute include amendments to, re-enactments of, and regulations passed under, that statute;
- (i) if the Act is amended in a way that, but for this clause, would cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in a manner having the effect that the Constitution does not contravene or become inconsistent with the Act.

2. **LISTING RULES**

2.1 **Incorporation of Rules while Listed:** If and for so long as the Company is Listed, this Constitution is deemed to incorporate all provisions of the Rules required under the Rules to be contained or incorporated by reference in this Constitution, as those provisions apply from time to time (and as modified by any ruling relevant to the Company).

2.2 **Company must comply with Rules while Listed:** If and for so long as the Company is Listed, the Company must comply with the Rules. If this Constitution contains any provision inconsistent with the Rules, as modified by any ruling relevant to the Company, then the Rules prevail.

2.3 **NZX's rulings:** If NZX has granted a ruling in relation to the Company authorising any act or omission which in the absence of that ruling would be in contravention of the Rules or this Constitution, that act or omission will be deemed to be authorised by the Rules and by this Constitution.

2.4 **Failure to comply with the Rules has limited effect in some cases:** Any failure to comply with the Rules shall not itself affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of,

or voting at, any meeting) done or entered into by or affecting the Company, except that a party to a transaction or contract who knew of the failure to comply with the Rules or those provisions of this Constitution at the time of entering into the transaction or contract shall not be entitled to enforce that transaction or contract provided however that this clause does not affect the rights of any holder of Shares of the Company against the Company, or the Directors of the Company, arising from the failure to comply with the Rules.

2.5 **Application:** The provisions of this clause 2 shall only apply if and for so long as the Company is Listed.

### 3. **ISSUE OF SHARES**

#### 3.1 **Power to issue Shares**

- (a) Subject to the Act, this Constitution, the Rules (if applicable) and the terms of issue of any existing Shares, the Board may issue Shares (and rights or options to acquire Shares) of any Class at any time, to any person and in such numbers as the Board thinks fit.
- (b) Section 45 of the Act does not apply to the Company.
- (c) Subject to this Constitution, the Company may issue Shares that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares. Any such issue will not be treated as an action affecting the rights attached to those existing Shares unless the terms of issue of those Shares expressly provide otherwise.
- (d) Subject to relevant provisions of this Constitution, the Rules (if applicable) and the Act, the Company may issue Shares that are redeemable on a specified date or at the option of the Company or at the option of the holder of the Shares.
- (e) If the Company is not Listed, the Company shall not issue any Shares unless:
  - (i) the precise terms and conditions of the specific proposal to issue those Shares have been approved by separate resolutions (passed by a simple majority) of holders of each Class of Shares whose rights or entitlements could be affected by the issue of such Shares; or
  - (ii) the issue of Shares is made in accordance with either Clause 3.2(f) or 3.2(g).
- (f) If the Company is not Listed, the Company may issue Shares if:
  - (i) those Shares are offered to holders of existing Shares of the Company on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Shares in respect to voting and distributions and that offer is renounceable; or
  - (ii) those Shares are issued to holders of existing Shares of the Company as fully paid Shares on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Shares) in respect to voting and distributions.

Notwithstanding sub-paragraphs (i) and (ii) of this Clause 3.2(f) the Board shall be entitled:

(iii) to issue any Shares in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such Shares are not materially more favourable to the persons to whom they are issued than the terms of the original offer.

(g) If the Company is not Listed, the Company may issue Shares if:

(i) the issue of Shares is not made in whole or in part to any Director, Associated Person of a Director or employee of the Company; and

(ii) the total number of Shares issued, and all other Shares of the same Class issued pursuant to this Clause 3.2(g) during the period of 12 months preceding the date of the issue of the Shares, will not exceed the aggregate of:

(aa) 20% of the total number of Shares of that Class on issue at the commencement of that period;

(bb) 20% of the number of the Shares of that Class issued during that period pursuant to Clauses 3.2(e)(i) and 3.2(f); and

(cc) any Shares of that Class issued pursuant to this Clause 3.2(g) during that period, the issue of which has been ratified by an Ordinary Resolution;

less

(dd) 20% of the number of Shares of that Class which have been acquired or redeemed by the Company during that period (other than Shares held as Treasury Stock).

**3.2 Consolidation and subdivision of Shares:** Notwithstanding anything contained in Clause 3.2 the Board may authorise:

(a) the consolidation and division of Shares or any Class of Shares in proportion to those Shares or the Shares in that Class; and

(b) the subdivision of the Shares or any Class of Shares in proportion to those Shares or the Shares in that Class.

#### **4. PURCHASE OF OWN SHARES; TREASURY STOCK**

**4.1 Purchase by Company of its Shares:** The Company is expressly permitted to purchase or otherwise acquire Shares, subject to and in accordance with sections 58 to 65, 107, 108 and 110 to 112 of the Act, and subject to the Rules (if applicable), and the Board may make an offer to acquire Shares to one or more Shareholders pursuant to section 60(1)(b)(ii) of the Act.

#### **4.2 Treasury stock**

(a) The Company is expressly permitted to hold Shares in itself for the purposes of section 67A of the Act and the Board may resolve that Shares acquired by the Company shall not be cancelled on their acquisition.

- (b) Any Share held by the Company in accordance with Clause 4.2(a) may be transferred by the Company as if the transfer of that Share were the issue of that Share.

## 5. TRANSFER OF SHARES

5.1 **Entry in Register:** Subject to Clause 5.2, Shares may be transferred by entry of the name of the transferee on the Register.

5.2 **Signed transfer:** For the purpose of transferring Shares, a form of transfer signed by the present holder of the Shares or the holder's personal representative must be delivered to the Company or to the agent of the Company who maintains the Register.

### 5.3 Form of transfer

- (a) The form of transfer may be in the form set out in the First Schedule to the Securities Transfer Act 1991 or in any usual or common form, or any other form approved by the Board.
- (b) The form of transfer must be signed by the transferee if registration as holder of the Shares would impose a liability to the Company on the transferee.

### 5.4 Board's right to refuse or delay registration of transfer

- (a) The Board may, within 30 Working Days of the receipt of a form of transfer of Shares, refuse or delay the registration of the transfer if:
  - (i) the Company has a lien on those Shares;
  - (ii) the holder of the Shares has failed to pay an amount due to the Company in respect of those Shares; or
  - (iii) the Board considers that to effect the transfer would result in a breach of the law or non-compliance with the terms of issue of the Shares; or
  - (iv) the Board, acting in good faith, decides in its sole discretion that registration of the transfer would not be in the best interests of the Company and/or any of the Shareholders; or
  - (v) the proposed transfer is to an infant or person of unsound mind; or
  - (vi) Clause 7.3 has not been complied with, if applicable, or the form of transfer has not been properly executed or does not comply with Clause 5.3; or
  - (vii) the proposed transfer would result in any Shareholder holding less than a Minimum Holding.
- (b) A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reasons for doing so, and a copy of the resolution must be sent to the transferor and transferee within five Working Days of the date of the resolution being passed.

5.5 **Registration of transfer:** Subject to Clauses 5.2 and 5.3, on receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the Register as holder of the Shares, unless the Board has resolved in accordance with Clause 5.4 to refuse or delay the registration of the transfer of the Shares.



## 6. **SHARE REGISTER AND MINIMUM HOLDING**

6.1 **Registration of separate parcels:** A holder of Shares or a transferee may request the Company to register the Shares held by that person in two or more separately identifiable parcels. Where the Company agrees to such a request, the Company may, so far as it considers convenient, communicate with the holder of the Shares, pay dividends and otherwise act in respect of such parcel, as if the separately identifiable parcels belong to different persons.

### 6.2 **Compulsory sale of less than Minimum Holding**

6.2.1 The Company may at any time give notice to a Shareholder holding less than a Minimum Holding that if, at the expiration of 3 months after the date the notice is given, Shares then registered in the name of the holder are less than a Minimum Holding the Company may sell those Shares through NZAX or in some other manner approved by NZX.

6.2.2 The Board may authorise the transfer of the Shares sold under this clause to a purchaser of the Shares through NZAX or in some other manner approved by NZX, and the holder is deemed to have authorised the Company to act on behalf of the holder and to sign all necessary documents relating to the sale. The purchaser is not bound to see to the application of the purchase money, nor shall the title to the Shares be affected by any irregularity or invalidity in the procedures under this Constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.

6.2.3 The proceeds of the sale of any Shares sold under this clause must be applied as follows:

- (a) first, in payment of any reasonable sale expenses;
- (b) second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Shares;
- (c) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.

6.2.4 A certificate, signed by a Director that records that a power of sale under this clause has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

### 6.3 **Trust not to be registered or recognised**

- (a) No notice of a trust, whether express, implied, or constructive, may be entered on the Register.
- (b) Except as required by law, no person will be recognised by the Company as holding any Share upon trust or holding any interest in a Share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the Share vested in the registered holder.
- (c) A personal representative of a deceased holder of Shares is entitled to be entered in the Register as the holder of such Shares as a personal representative.
- (d) The registration of a trustee, executor or administrator as a personal representative of a deceased Shareholder does not constitute notice of a trust.

## 7. **SHARE CERTIFICATES**

7.1 **Application for Share certificate:** If the Company is not Listed, a Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares.

### 7.2 **Issue of Share certificate**

(a) If the Company is not Listed, the Company must, within 20 Working Days after receiving an application for a Share certificate under Clause 7.1, send to the Shareholder a certificate stating the name of the Company, and the Class and number of Shares to which the certificate relates;

(b) If the application relates to some but not all of the applicant's Shares, the Company must separate the Shares shown in the Register as owned by the applicant into separate parcels; one parcel being the Shares to which the Share certificate relates, and the other parcel being any remaining Shares.

7.3 **Transfer to be accompanied by Share certificate:** If the Company is not Listed, notwithstanding Clause 5 and section 84 of the Act, where a Share certificate has been issued, a transfer of the Shares to which it relates must not be registered by the Company unless the form of transfer is accompanied by the Share certificate relating to the Shares (or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board).

7.4 **Surrendered Share certificate:** If the Company is not Listed, where Shares to which a Share certificate relates are transferred, and the Share certificate has been sent to the Company to enable registration of the transfer, the Share certificate will be cancelled and no further Share certificate will be issued except at the request of the transferee.

## 8. **TRANSMISSION OF SHARES**

8.1 In the case of the death of a Shareholder, the survivor (where the deceased was a joint holder) or the legal personal representative of the deceased (where the deceased was the sole holder) will be the only person recognised by the Company as having any title to the deceased's interest in the Shares. Nothing contained in this Clause 8.1 will release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by the deceased with other persons.

8.2 Notwithstanding Clause 6.6, the assignee of the property of a bankrupt Shareholder is entitled to be registered as the holder of the Shares held by the bankrupt.

## 9. **CALLS ON SHARES**

### 9.1 **Board may make Calls**

(a) Subject to the terms of issue of any Shares and to Clause 9.3, the Board may resolve to require the holders of unpaid or partly paid Shares to pay all or part of the amount unpaid on the Shares. The terms of the resolution will constitute the terms of the obligation to pay the Call (including payment by instalments). The Call may be revoked or postponed at any time by the Board. A Call is deemed to be made on the date the resolution of the Board making the Call was passed.

(b) Subject to the terms of issue of any Class of Shares and to Clause 9.5, unless all the holders of a Class of Shares subject to a Call unanimously agree, a Call

(or the postponement or revocation of a Call) will apply to all the holders of Shares of the Class equally.

## 9.2 **Notice of Calls**

- (a) Notice of the Call must be given to the current registered holders of the Shares which are the subject of the Call. A notice given pursuant to this Clause 9.2(a) shall specify the day by which and the place at which the Call must be paid (which must not be less than 10 working days after the date the notice is sent to the Shareholder). The Shareholder shall, on the day and at the place specified in that notice, pay the amount required by the Call to the Company.
- (b) Failure to give notice to a Shareholder will not invalidate a Call but it will not be payable by that Shareholder until the notice has been served on the Shareholder.
- (c) Notice of a Call sent by post to a Shareholder to the address recorded in the Register as the address of the Shareholder will be deemed to have been received by the Shareholder the day after it was posted.

9.3 **Deemed Calls:** Notwithstanding anything in this Clause 9 and in pursuance of Clause 3.8(a), any sum which by the terms of issue of a Share becomes payable on issue or at any fixed time shall, for the purposes of this Constitution, be deemed to be a Call duly made and payable at the time at which, by the terms of issue, the sum becomes payable.

## 9.4 **Liability for Calls**

- (a) The joint holders of Shares are jointly and severally liable to pay all Calls in respect of the Shares.
- (b) If a Call is not paid before or on the day payment of that Call is due under Clause 9.2 or 9.3, the person from whom the sum is due shall pay interest on the sum specified in the Call from the day payment was due at a rate which the Board may determine and all expenses which the Company may incur by reason of non-payment of the Call, unless the Board waives payment of all or part of that interest or those expenses.
- (c) The liability for a Call which has become due and payable attaches to the current Shareholder and not a prior Shareholder, notwithstanding that at the date of the Call (or the date the Call fell due for payment) another person was the holder of the Shares or that the notice of the Call was served on the then Shareholder and not the current Shareholder.
- (d) Following the registration in the Register of a change of ownership of Shares in respect of which a Call has been made, a notice of the Call is not required to be served on the new Shareholder.

9.5 **Agreement to differentiate between Calls:** The Board may, on the issue of Shares, by agreement with the Shareholders concerned, differentiate between the holders of the same Class as to the amount to be paid on the Shares and the times for payment.

9.6 **Payment of Call in advance:** A Shareholder may advance any amount unpaid upon any Shares held by that Shareholder to the Company prior to a Call being made in respect of those Shares. Where such an amount is advanced by a Shareholder, the Company may pay interest at a rate agreed between that Shareholder and the Board until such time as that amount becomes payable by that Shareholder. The Board may repay to a Shareholder who has advanced such amounts to the Company all or part

of the amount advanced, and in the event of such a repayment, any interest payable by the Company shall cease to be payable in respect of the amount repaid.

#### **9.7 Proof of liability**

- (a) On the trial or hearing of any action for recovery of any sum due in respect of any Call it shall be conclusive evidence of the debt to prove that:
  - (i) the name of the Shareholder was entered in the Share Register as the holder or one of the holders of the Shares in respect of which the Call was made or deemed made;
  - (ii) the Board resolution in respect of the Call was duly recorded in the minute book of Board proceedings (unless the Call was deemed to have been made pursuant to Clause 9.3); and
- (b) notice of the Call was duly given to that Shareholder (unless the Call was deemed to have been made pursuant to Clause 9.3).
- (c) Without limiting Clause 9.7(a), on any trial or hearing of any action for recovery of any sum due in respect of a Call it shall not be necessary to prove the appointment or qualification of the Directors who made such Call nor any other matter whatsoever.

### **10. FORFEITURE AND LIEN**

#### **10.1 Forfeiture**

- (a) If a Shareholder fails to pay any Call or instalment of a Call on the due date for payment of it the Board may, while any part of the Call or instalment remains unpaid, serve a notice on him or her requiring payment of so much of the Call or instalment as is unpaid together with any interest, which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.
- (b) The notice shall name a further day (not earlier than the expiration of 10 Working Days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the Call was made will be liable to be forfeited.
- (c) If the requirements of the notice are not complied with, any Share in respect of which the notice has been given may, at any time after the notice is given and before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all Dividends and any other Distribution in respect of the forfeited Shares and not actually paid before the forfeiture.
- (d) When any Share has been forfeited:
  - (i) notice of the resolution shall be given to the Shareholder in whose name the Share was registered immediately before the forfeiture;
  - (ii) an entry of the forfeiture, with the date of the forfeiture, shall be made in the Register; and
  - (iii) the Share certificate of any Shares forfeited shall be immediately cancelled by the Company and the Shareholder shall return the Share

certificate for the forfeited Share to the Company within 10 Working Days of receiving notice of the resolution.

- (e) A person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all money which at the date of the forfeiture was payable by him or her to the Company in respect of the Shares but his or her liability shall cease if and when the Company receives payment in full of all such money in respect of the Shares.
- (f) The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes payable at a fixed time and which is deemed to be a Call pursuant to Clause 9.3(a).
- (g) Any failure to give the notice, or to make the entry, required under Clause 10.1(d) does not invalidate the forfeiture.

## 10.2 **Lien**

- (a) The Company has a first and paramount lien upon every Share registered in the name of a Shareholder (whether solely or jointly with others) and upon the proceeds of sale of those Shares. This lien is for:
  - (i) unpaid calls and instalments payable in respect of any such Shares; and
  - (ii) interest on any such calls or instalments; and
  - (iii) sale expenses owing to the Company in respect of any such Shares; and
  - (iv) any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other legislation in respect of the Shares of that Shareholder, whether the period for payment has arrived or not.
- (b) The lien extends to all dividends from time to time declared in respect of the Shares.

## 10.3 **Sale on exercise of lien**

- (a) Where the Company has a lien on a Share pursuant to Clause 10.2, and a sum in respect of which the lien exists is due and payable, the Company may proceed to sell that Share by notice in writing to the current registered holder of the Share (or the person entitled to that Share by reason of the registered holder's death or bankruptcy).
- (b) A notice given pursuant to Clause 10.3(a) shall:
  - (i) state, and demand payment of, the amount due and payable;
  - (ii) name a day (not being earlier than the expiration of 10 Working Days from the date that notice was sent) on or before which the payment required by the notice is to be made; and

- (iii) state that, unless payment is made on or before the time appointed, the Shares in respect of which the notice was given will be liable to be sold by the Company.
- (c) If the requirements of any notice given pursuant to Clause 10.3(b) are not complied with, the Shareholder holding the Shares in respect of which that notice was given shall be deemed to have given full authority to the Board to sell all the Shares the subject of that notice at such price as the Board may determine to be the fair price. At any time before the Shares are sold the sale may be cancelled on whatever terms the Board decides. If any Shares are sold, the residue, if any, of the proceeds of the sale after payment of all costs and expenses of the sale and all sums owing to the Company in respect of the Shares sold and costs and expenses of any prior attempted sale in respect of the Shares shall be paid to the Shareholder whose Shares have been sold (or to that Shareholder's executors, administrators or assigns).
- (d) A Shareholder whose Shares have been sold pursuant to this Clause 10.3 shall cease to be a Shareholder in respect of those Shares, but shall remain liable to pay to the Company all money which, at the time of the sale, was payable by the Shareholder to the Company in respect of those Shares, but that liability shall cease if and when the Company receives payment in full of all the money in respect of those Shares.
- (e) A certificate signed by a Director stating that the power of sale provided in this Clause 10.3 has arisen, and is exercisable by the Company under this Constitution or that a Share has been sold on a date stated in the certificate, will be conclusive evidence of the facts stated in the certificate.
- (f) For giving effect to any sale enforcing a lien in purported exercise of the powers given in this Constitution, the Board may authorise some person to transfer the Shares sold to the purchaser. The purchaser will be registered as the holder of the Shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the Shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the Company exclusively. If the Share certificate for the Shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the Share certificate not delivered up.

## 11. DISTRIBUTIONS

- 11.1 **Board deductions from distribution:** The Board may, at its discretion, deduct from any dividend or other distribution payable to a shareholder any amount owed by the Shareholder to the Company in respect of which the Company has a lien over the specific Shares on which the dividend or other distribution is payable. The Board must deduct from any dividend or other distribution payable to any shareholder any amount it is required by law to deduct, including withholding and other taxes.
- 11.2 **Distributions do not bear interest:** No dividend or other distribution shall bear interest against the Company unless the applicable terms of issue of a Share expressly provide otherwise.
- 11.3 **Unclaimed distributions:** All dividends and other distributions unclaimed for one year after the due date for payment may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust but, subject to compliance with

the solvency test, shall pay the distribution to the person producing evidence of entitlement.

## **12. MEETINGS OF SHAREHOLDERS**

### **12.1 Annual Meeting**

- (a) The Board must, in accordance with section 120 of the Act, call an Annual Meeting of Shareholders to be held:
  - (i) once in each calendar year (other than in the year of the Company's incorporation);
  - (ii) not later than six months after the Balance Date of the Company; and
  - (iii) not later than 15 months after the previous Annual Meeting, or in respect of the first Annual Meeting not later than 18 months after the date of the Company's incorporation.
- (b) The Company must hold the Annual Meeting on the date on which it is called to be held.
- (c) It shall not be necessary for the Company to hold an Annual Meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with sections 122(2) and 122(3) of the Act.

### **12.2 Special Meetings: A Special Meeting:**

- (a) may be called at any time by the Board; and
- (b) must be called by the Board on the written request of Shareholders holding not less than 5% of the votes entitled to be cast on the issue.

### **12.3 Chairperson of meetings of Shareholders**

- (a) If the Directors have elected a Chairperson, and that Chairperson is present at a meeting of Shareholders, he or she must chair the meeting.
- (b) If no Chairperson has been elected or if, at any meeting of Shareholders, the Chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

### **12.4 Shareholders entitled to notice of meeting**

- (a) The Shareholders entitled to receive notice of a meeting of Shareholders are those Shareholders of the relevant Class:
  - (i) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register on that date; or
  - (ii) if the Board does not fix a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.

- (b) A date fixed by the Board under Clause 12.4(a)(i) must not precede by more than 30 Working Days nor less than 10 Working Days the date on which the meeting is to be held.
- 12.5 **Notice of meeting:** Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting, and to every Director and the auditor of the Company, not less than 10 Working Days before the meeting.
- 12.6 **Contents of notice:** The notice referred to in Clause 12.5 must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
  - (b) the text of any special resolution to be submitted to the meeting;
- and if the Board determines under Clause 13.4 that Shareholders may cast votes by post in respect of such business,
- (c) the postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
  - (d) that the postal vote must be received by the person referred to in paragraph (c) at least 48 hours prior to the start of the meeting.
- 12.7 **Irregularities in notice**
- (a) 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.
  - (b) The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.
- 12.8 **Method of holding 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) 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.
- 12.9 **Adjournments**
- (a) The Chairperson of a Meeting of Shareholders may, in his sole discretion, or at the request of those Shareholders present in person or by proxy who are between them able to exercise a majority of the votes available at the meeting, adjourn the meeting.
  - (b) No business shall be transacted of any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
  - (c) 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 Clauses 12.5 and 12.6.

#### 12.10 Minutes

- (a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Shareholders.
- (b) Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

### 13. VOTING AT MEETINGS

#### 13.1 Quorum

- (a) A quorum for a meeting of Shareholders is present if five Shareholders having the right to vote at the meeting are present in person or by proxy or (being a corporation) by representative or (if permitted pursuant to Clause 13.4(a)) have cast postal votes.
- (b) Subject to Clause 13.1(c), no business may be transacted at a meeting of Shareholders if a quorum is not present.
- (c) If a quorum is not present within 30 minutes after the time appointed for the meeting:
  - (i) in the case of a meeting called pursuant to a requisition of Shareholders under Clause 12.2(b), the meeting is dissolved:
  - (ii) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint, and if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders present or their proxies are a quorum.

#### 13.2 Voting

- (a) In the case of a meeting of Shareholders held under Clause 12.8(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
  - (i) voting by voice; or
  - (ii) voting by show of hands.
- (b) In the case of a meeting of Shareholders held under Clause 12.8(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- (c) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded in accordance with Clause 13.2(d).
- (d) At a meeting of Shareholders, a poll may be demanded by:
  - (i) the chairperson of the meeting; or

- (ii) not less than five Shareholders having the right to vote at the meeting; or
  - (iii) 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
  - (iv) 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.
- (e) A poll may be demanded either before or after the vote is taken on a resolution.
  - (f) If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present (in person or by proxy) and voting.
  - (g) The chairperson of a Shareholders' meeting is not entitled to a casting vote.
  - (h) For the purposes of this clause , the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

### 13.3 Proxies and representatives

- (a) A Shareholder may exercise the right to vote either by being present or by proxy. A proxy form shall be sent with each notice calling a meeting of Shareholders.
- (b) A notice appointing a proxy shall be in such form as the Board may direct.
- (c) Proxy forms must provide for two-way voting on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote, and must not be sent with any name or office (eg "chairman of directors") filled in as proxy holder.
- (d) So far as reasonably practicable, resolutions must be framed in a manner which facilitates two-way voting instructions for proxy holders.
- (e) A proxy for a Shareholder is entitled to attend, be heard, and vote at a meeting of Shareholders as if the proxy were the Shareholder.
- (f) A proxy must be appointed by notice in writing signed by the Shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- (g) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received at the registered office of the Company or such other address as may be specified for that purpose in the notice convening the meeting not less than 48 hours before the start of the meeting.
- (h) A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

- 13.4 **Postal votes:** The Board may determine whether Shareholders may exercise the right to vote at a meeting of Shareholders by casting a postal vote pursuant to and in accordance with the provisions of clause 7 of the first schedule to the Act.
- 13.5 **Votes of joint holders:** Where two or more persons are recorded in the Register as the holder of a Share, the vote of the person named first in the Register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.
- 13.6 **Unpaid sums:** If a sum due to the Company in respect of a Share has not been paid, that Share may not be voted at a Shareholders' meeting other than at a meeting of an Interest Group.
- 13.7 **Meetings of Interest Groups:** The provisions of Clauses 12 and 13 shall, with such consequential amendments as may be necessary, govern the proceedings of any meeting of an Interest Group required by this Constitution or the Act, provided that the quorum for such a meeting will be the Shareholders comprising the Interest Group (present in person or by proxy or by representative) who hold at least 10 percent of the votes able to be cast at that meeting.
- 13.8 **Other proceedings:** Except as provided in this Constitution the Shareholders may regulate their own procedure.

#### 14. **APPOINTMENT AND REMOVAL OF DIRECTORS**

- 14.1 **Number of Directors:** The number of Directors (other than Alternate Directors) shall be determined by the Board from time to time, but shall not in any event be less than three nor more than five.

##### 14.2 **Directors – Appointment**

- (a) The Directors in office on the date this Constitution comes into force shall be those directors named in the Amalgamation Proposal, and they shall retire from office pursuant to Clause 14.3(e).
- (b) There shall be no shareholding qualification for a Director.
- (c) The Directors shall have power at any time, to appoint any other qualified person as a Director, either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum number fixed pursuant to Clause 14.1. Any Director so appointed shall retire at the next annual meeting of the Company but shall be eligible for re-election at that meeting.

##### 14.3 **Rotation of Directors**

- (a) Subject to Clauses 14.3(c), 14.3(d) and 14.3(e) at the annual meeting in each year one third of the Directors for the time being, or if their number is not a multiple of three, then the number nearest one third shall retire from office.
- (b) The Directors to retire in each year shall be those who have been longest in office. As between two or more who have been in office an equal length of time the Director or Directors to retire shall in default of agreement between them be determined by lot. The length of time a Director has been in office shall be computed from that person's last election where such person has previously retired or vacated office. A retiring Director shall be eligible for re-election and shall act as a Director throughout the meeting at which such person retires.

- (c) The following Directors shall be exempt from the obligation to retire pursuant to Clause 14.3(a):
  - (i) Directors appointed by the Board, who are subject to re-election pursuant to Clause 14.2(c);
  - (ii) the Managing Director for the time being or, if there is no Managing Director in office, one executive Director; and
  - (iii) any Director appointed and holding office pursuant to Clause 14.7.
- (d) The Managing Director or executive Director (as the case may be) referred to in Clause 14.3(c)(ii) and the Director referred to in Clause 14.3(c)(iii) shall be included in the number of Directors upon which the calculation in Clause 14.3(a) is based. The Directors referred to in Clause 14.3(c)(i) shall be excluded from that number.
- (e) All of the Directors referred to in Clause 14.2(a) shall retire from office at the first Annual Meeting of the Company after the date the Amalgamation becomes effective. Each of those Directors shall then be eligible for election, subject to Clause 14.7(e), and shall act as a Director throughout the meeting at which such person retires.
- (f) Subject to Clause 14.4(a), the Company at any meeting at which any Directors retire in the manner aforesaid may fill the vacated offices by electing a like number of persons to be Directors, and in default, a retiring Director, if offering himself or herself for re-election, shall be deemed to have been re-elected unless at that meeting it is expressly resolved not to fill the vacated office, or unless a resolution for the re-election of that Director is put to the meeting and lost.

#### 14.4 Nominations and voting

- (a) No person (other than a Director retiring at the meeting) shall be elected as a Director at a meeting of Shareholders of the Company unless that person has been nominated by a Shareholder entitled to attend and vote at the meeting by written notice accompanied by the consent in writing of that person to the nomination. Other than in the case of a nomination of a person who is recommended by the Directors, the opening date for nominations shall be 3 months, and the closing date for nominations shall be 2 months, before the date of the meeting at which the election is to take place. In the case of a nomination of a person who is recommended by the Directors, there shall be no opening date and the closing date shall be the day before the notice of the meeting is given in accordance with the next sentence of this Clause. Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.
- (b) No resolution to appoint or elect a Director (including a resolution to re-elect any Director appointed under Clause 14.2(c)) shall be put to Shareholders unless:
  - (i) the resolution is for the appointment of one Director; or
  - (ii) the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.

Nothing in this Clause 14.4(b) shall prevent the election of two or more Directors by ballot or poll including where the number of candidates for the office of Director exceeds the vacancies available and the ballot or poll will result in the election of those candidates, equal to the number of vacancies to be filled, who receive the highest number of votes.

- (c) The appointment of a Director shall not take effect until the consent so to act in writing of the person appointed is received by the Company.

#### **14.5 Removal and Disqualification of Directors**

- (a) The Company may by Ordinary Resolution of which special notice has been given in accordance with the Act remove any Director before the expiration of that Director's period of office, and may by an Ordinary Resolution appoint another person to replace that Director (excluding always any Director holding office as an appointee of Villa Maria Estate Limited pursuant to Clause 14.7). The person so appointed shall be subject to retirement at the same time as if such person had become a Director on the date on which the Director in whose place such person is appointed was last elected a Director.
- (b) The office of a Director shall be vacated, if the Director:
  - (i) becomes disqualified from being a Director by reason of section 151(2); or
  - (ii) becomes mentally disordered, or of unsound mind, or becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
  - (iii) resigns that person's office by notice in writing to the Company; or
  - (iv) is removed from office by a resolution passed under the provisions of Clause 14.5(a) or section 156 of the Act; or
  - (v) ceases to be a Director pursuant to Clause 14.7(c).
- (c) The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the number fixed by Clause 14.1 as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Company, but for no other purpose.

#### **14.6 Alternate Directors**

- (a) Every Director may, by notice given in writing to the Company, appoint any person (including any other Director) to act as an Alternate Director in the Director's place, either generally, or in respect of a specified meeting or meetings during the Director's absence from a meeting provided that person has consented to act as a Director and has certified that he or she is not disqualified from holding office as a director of a company and provided that the Board has approved the identity of the proposed alternate director.
- (b) At the Director's discretion, by notice in writing to the Company, the appointing Director may remove the Director's Alternate Director.
- (c) An Alternate Director may, while acting in the place of the appointing Director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as Chairperson) of the appointing Director.

The Alternate Director is subject in all respects to the same terms and provisions as the appointing Director, but excluding the right to remuneration (subject to Clause 14.6(i)) and the power to appoint an Alternate Director under this Constitution.

- (d) For the purpose of establishing a quorum of the Board, an Alternate Director is deemed to be the Director appointing him or her, and if the Alternate Director is a Director he or she can count separately in both capacities.
- (e) An Alternate Director does not have a right to attend, speak or vote at a meeting of the Board while his or her appointing Director is present.
- (f) An Alternate Director's appointment lapses upon his or her appointing Director ceasing to be a Director. An Alternate Director shall cease to be an Alternate Director upon the happening of any event which, if he or she were a Director, would cause him or her to vacate such office.
- (g) The notice of appointment of an Alternate Director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the Alternate Director until an address is provided to the Company.
- (h) An Alternate Director shall not be the agent of his or her appointer, and shall exercise his or her duties as a Director independently of his or her appointor.
- (i) An Alternate Director may be repaid reasonable expenses, and shall be entitled to be indemnified by the Company to the same extent as if the Alternate Director were a Director but shall not be entitled to receive remuneration or other benefits from the Company (except such proportion of the remuneration payable to his appointor as his appointor may specify by notice in writing to the Company).

#### **14.7 Right of Appointment by Villa Maria Estate Limited**

- (a) Notwithstanding anything contained in Clauses 14.3, 14.4 and 14.5, Villa Maria Estate Limited shall for so long as it holds at least 20% of the Ordinary Shares on issue, be entitled by notice in writing to appoint one Director and to remove any such Director, subject always to the Rules if and for so long as the Company is Listed. For the purposes of this Clause 14.7(a), sections 155 and 156 of the Act are expressly negated.
- (b) A notice given under Clause 14.7(a) takes effect upon receipt of it at the registered office of the Company (including receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect.
- (c) A Director appointed pursuant to Clause 14.7(a) shall cease to be a Director:
  - (i) if Villa Maria Estate Limited ceases to hold at least 20% of the Ordinary Shares on issue; or
  - (ii) if Villa Maria Estate Limited removes that Director under Clause 14.7(a); or
  - (iii) on such date as Villa Maria Estate Limited shall specify in a notice in writing to the Company under which Villa Maria Estate Limited notifies the Company that, as from the specified date, it relinquishes its right to appoint one Director under Clause 14.7(a) for such period as Villa Maria

Estate Limited may stipulate or until further notice in writing from Villa Maria Estate Limited to the Company; or

- (iv) pursuant to Clause 14.5(b) excluding always paragraph (iv) of Clause 14.5(b).
- (d) If Villa Maria Estate Limited exercises its right under Clause 14.7(a) to appoint a Director then for so long as such Director holds office as a Director of the Company pursuant to Clause 14.7(a), Villa Maria Estate Limited shall not be entitled to vote on the appointment of any other Director.
- (e) The Director named in the Amalgamation Proposal as the appointee of Villa Maria Estate Limited shall retire from office pursuant to Clause 14.3(e). If Villa Maria Estate Limited does not reappoint that person as a Director under its right of appointment under Clause 14.7(a), then that person shall be eligible for election as a Director by the Shareholders.

## 15. INDEMNITY AND INSURANCE

### 15.1 Indemnity of Directors and employees

- (a) The Board may cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by him or her in any proceeding:
  - (i) that relates to liability for any act or omission in his or her capacity as a Director or employee; and
  - (ii) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.
- (b) The Board may cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:
  - (i) liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee; or
  - (ii) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;not being:
  - (iii) criminal liability; or
  - (iv) liability for the breach of section 131 of the Act; or
  - (v) liability for breach of any fiduciary duty owed to the Company or related company.

### 15.2 Insurance of Directors and employees

- (a) The Board may, subject to section 162 of the Act, cause the Company to effect insurance for Directors and employees of the Company or a related company in respect of:
  - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or

- (ii) costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or
    - (iii) costs incurred by a Director or employee in defending any criminal proceedings in which he or she is acquitted.
  - (b) The Directors who vote in favour of authorising the effecting of insurance under Clause 17.2(a) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.
  - (c) The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related company are forthwith entered in the Interests Register.
- 15.3 **Definitions:** For the purpose of this Clause 17, "Director" includes a former Director and "employee" includes a former employee.

## 16. PROCEEDINGS OF THE BOARD

16.1 **Third Schedule:** The provisions of the third schedule to the Act are deleted and replaced as provided in this Clause 16.

### 16.2 Chairperson

- (a) The Directors may elect one of their number as Chairperson of the Board.
- (b) The Director elected as Chairperson holds that office until he or she ceases to be a Director or the Directors elect a Chairperson in his or her place.
- (c) If no Chairperson is elected, or if at a meeting of the Board the Chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

### 16.3 Notice of meeting

- (a) A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this Clause 16.3.
- (b) Not less than 10 Working Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. The notice must include the date, time and place of the meeting and the matters to be discussed.
- (c) The requirement to give notice of a meeting or an irregularity in the notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- (d) Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.
- (e) It is not necessary to give notice of a meeting of the Board to any Director for the time being absent from New Zealand but if a Director is resident outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand, and the Director has appointed an Alternate Director under the



provisions of this Constitution, notice must (subject to **Clause 16.6(g)**) be given to the Alternate Director.

#### 16.4 **Method of holding meetings**

- (a) A meeting of the Board may be held either:
  - (i) by a number of Directors sufficient to form a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - (ii) by means of audio, or audio and visual communication, by which all the Directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.
- (b) Where a meeting of the Board is held pursuant to Clause 16.4(a)(i), at the commencement of the meeting each Director must acknowledge his or her presence to all the other Directors taking part. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the Chairperson and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she had previously obtained the express consent of the Chairperson to leave the meeting.

#### 16.5 **Quorum**

- (a) The quorum necessary for the transaction of business of the Board may be fixed by the Board and, unless so fixed, shall be three.
- (b) No business may be transacted at a meeting of Directors if a quorum is not present.
- (c) In accordance with Clause 14.6, an Alternate Director present at a meeting may be included for the purpose of establishing a quorum.

#### 16.6 **Voting**

- (a) Every Director has one vote.
- (b) The Chairperson does not have a casting vote.
- (c) 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 are in favour of it.
- (d) 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) the resolution at the meeting.
- (e) A Director may vote in respect of any transaction in which the Director is interested and if the Director does so the Director's vote will be counted and the Director will be counted in the quorum present at the meeting, subject always to the Rules if and for so long as the Company is Listed.
- (f) An Alternate Director may attend and vote at meetings of the Board in accordance with and subject to Clause 14.6 if the Director that has appointed the Alternate Director is absent from the meeting.

## 16.7 Minutes

- (a) The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.
- (b) Minutes of proceedings at meetings of the Board which have been signed correct by the Chairperson are prima facie evidence of the proceedings.

## 16.8 Unanimous resolution

- (a) A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- (b) Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.
- (c) A copy of any such resolution must be entered in the minute book of Board proceedings.

16.9 **Other proceedings:** Except as provided in this Clause 16 the Board may regulate its own procedure.

16.10 **Continuing Directors:** The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors. If their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors will comprise the Board only for the purpose of summoning a Special Meeting.

## 17. REMUNERATION AND INTERESTS OF DIRECTORS

### 17.1 Authority to remunerate Directors

- (a) In accordance with the Amalgamation Proposal, as at the date this Constitution comes into force, the aggregate Directors' fees are fixed at \$60,000 per annum to be allocated amongst the Directors as the Board sees fit.
- (b) Subject always to the Rules, if and for so long as the Company is Listed, the Board may with the approval of Shareholders by Ordinary Resolution authorise:
  - (i) the payment of remuneration (or the provision of other benefits) by the Company to a Director for his or her services as a Director (or in any other capacity), or by way of compensation for loss of office;
  - (ii) the making of loans by the Company to a Director;
  - (iii) the giving of guarantees by the Company for debts incurred by a Director; and
  - (iv) the entering into of a contract to do any of the things set out in sub clause s (a) to (c) (inclusive) of this Clause 17.1(a),

if the Board is satisfied that to do so is fair to the Company.

- (c) The payment of remuneration (or the giving of any other benefit) to a Director in accordance with a contract authorised pursuant to Clause 17.1(a) need not be separately authorised by the Board.
- (d) The Board must ensure that forthwith after authorising any payment, loan, guarantee, or contract under Clause 17.1(a), particulars are entered in the Interests Register.
- (e) The Directors who vote in favour of authorising a payment, loan, guarantee or contract under Clause 17.1(a) must sign a certificate stating that, in their opinion, the making of the payment or loan or the giving of the guarantee, or the entering into of the contract is fair to the Company. Grounds for that opinion must also be stated in the certificate.

#### **17.2 Other offices with Company held by Director**

- (a) Any Director may act by himself or herself, or by the Director's firm in a professional capacity for the Company; and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor for the Company.
- (b) A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the Director's office of Director, for such period and on such terms (as to remuneration and otherwise) as the Board may determine.
- (c) Other than as provided in Clause 17.3, a Director is not disqualified by virtue of his or her office from entering into any transaction with the Company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a Director and not in a fiduciary relationship with the Company. No such Director shall be liable to account to the Company for any profit realised by the transaction by reason of the Director holding that office or of the fiduciary relationship thereby established.

#### **17.3 Notice of Interest to be given**

- (a) A Director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, and, if the Company has more than one Director, disclose to the Board of the Company:
  - (i) if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
  - (ii) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- (b) A Director is not required to comply with Clause 17.3(a) if:
  - (i) the transaction or proposed transaction is between the Director and the Company; and
  - (ii) the transaction or proposed transaction is or is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.

- (c) For the purposes of Clause 17.3(a), a general notice entered in the Interests Register or disclosed to the Board to the effect that a Director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

17.4 **Voting rights:** The right of an interested Director to vote is set out in Clause 16.6(e).

## 18. **MANAGING DIRECTOR**

### 18.1 **Appointment and dismissal**

- (a) The Board may from time to time appoint one or more of their number to the office of Managing Director or Managing Directors of the Company, either for a fixed term or an indefinite term.
- (b) Every Managing Director is liable to be dismissed or removed by a resolution of the Board. The Board may enter into any agreement on behalf of the Company with any person who is or is about to become a Managing Director with regard to the length and conditions of the Managing Director's employment. The remedy of any such person for any breach of the agreement will be in damages only and the Managing Director will not have a right or claim to continue in office as Managing Director contrary to the will of the Board.

18.2 **Termination of employment:** A Managing Director is, subject to the terms of any contract, subject to the same provisions as regards resignation, removal and disqualification as the other Directors. If the Managing Director ceases to hold the office of Director for any reason, the Managing Director will immediately cease to be a Managing Director.

## 19. **LIQUIDATION**

19.1 **Appointment of Liquidator:** A liquidator of the Company may be appointed by a Special Resolution of those Shareholders entitled to vote and voting on the question.

### 19.2 **Distribution of surplus assets**

- (a) Subject to the terms of issue of any Shares, upon the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed among the holders of the Ordinary Shares in proportion to their shareholding; provided however, that a holder of Shares not fully paid up shall receive only a proportionate share of his or her entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares.
- (b) Upon the liquidation of the Company the liquidator may, with the sanction of an Ordinary Resolution and any other sanction required by law, divide amongst 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). The liquidator may for that purpose set such value, as the liquidator deems fair upon any assets to be divided as aforesaid and may determine how the division shall be carried out as between the Shareholders holding different classes of Shares. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit (but so that no Shareholders shall be compelled to accept any shares or other securities whereon there is any liability).

This document comprising pages numbered from 1 to 27 is certified as the Constitution of Terra Vitae Vineyards Limited (previously called Seddon Vineyards of Marlborough Limited) adopted by Special Resolution of Shareholders at a Special Meeting held on the 30<sup>th</sup> day of June 2006.

Dated this                      day of

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Chairman of Special Meeting