

Constitution

of

Ultrafast Fibre Limited

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Constitution of Ultrafast Fibre Limited

1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

A Shares mean the Shares referred to as such in clause 5.1 and having the rights and limitations set out in respect of those Shares in clause 5;

Access Seeker means a person who is obtaining a contract for services, or has indicated to the Company a desire to contract for the Services, from the Company;

Act means the Companies Act 1993;

Agreed Pricing Table means the agreed pricing table included in Schedule 1 of the UFB1 Deed of Undertaking which contains details of the Services to be offered by the Company and the pricing of such Services to be charged by the Company from time to time;

Alternate Director has the meaning giving to it in clause 23.1;

Associated Person has the meaning specified in clause 1.3;

B Shares means the Shares referred to as such in clause 5.1 and having the rights and limitations set out in respect of those Shares in clause 5;

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

Business Day means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland and Hamilton;

CFH means Crown Fibre Holdings Limited;

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

Co-Location Services means the co-location services that are listed in the Agreed Pricing Table from time to time;

Communal Infrastructure has the meaning given to that term in the UFB2 Network Infrastructure Project Agreement;

Company means Ultrafast Fibre Limited;

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

Coverage Area means the UFB1 Coverage Area and the UFB2 Coverage Area;

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

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

End User has the meaning given to that term in the Telecommunications Act 2001;

Government Share means the Share referred to as such in clause 5.1 and having the rights and limitations set out in respect of that Share in clause 5;

Government Shareholder means Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance;

Government Authority includes every Minister, department of state, government authority or other statutory, municipal, local or regulatory authority having jurisdiction or authority to perform or exercise functions or powers;

Interest Group has the meaning set out in section 116 of the Act;

Interested has the meaning set out in section 139 of the Act (and **Interest** shall be interpreted accordingly);

Layer 1 Services means Telecommunications Services which operate at layer 1 of the OSI Model, being passive fibre optic network infrastructure;

Layer 2 Services means Telecommunications Services which operate at layer 2 of the OSI Model, being active fibre optic network infrastructure;

Layer 3 Services means Telecommunications Services which operate at layer 3 of the OSI Model, being the network layer;

Layer 4 Services means Telecommunications Services which operate at layer 4 of the OSI Model, being the transport layer;

Minister means a Minister of the Crown;

NBAP means a Non Building Access Point, being a location for connection that does not have a physical address (for example, a bus shelter, lamp post) other than a location that is a concentration point for regulated backhaul services (for example, a fibre to the node cabinet owned or controlled by Chorus Limited);

Network means the UFB1 Network and the UFB2 Network;

New Shares has the meaning given to it in clause 7.2;

Ordinary Resolution means a resolution passed by a simple majority of the votes of Shareholders entitled to vote and voting on the resolution;

Ordinary Share means an ordinary share in the capital of the Company having the rights and limitations set out in clause 5.5;

OSI Model means the seven-layer model of network architecture known as the "Open Systems Interconnection Model" as described in the ISO X 200 recommendations;

Partner means Waikato Networks Limited;

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;

Related Body Corporate has the meaning set out in section 12(2) of the Financial Markets Conduct Act 2013;

Representative means a person appointed as a proxy or representative under clause 20 or a Personal Representative or in the case of the Government Shareholder a person appointed as a representative by the person named in the last notice received by the Company under clause 5.6(a);

Retail Services means Telecommunication Services provided to an End User pursuant to a contractual relationship between the relevant person and the End User;

Service Provider means an entity that has a contractual relationship with the Company for use of all or part of the Network and that has, or is to have, a contractual relationship with End Users for the provision of a Telecommunications Service;

Services means the services to be provided by the Company as specified in the Services and Pricing Schedule;

Services and Pricing Schedule means Schedule 1 of the UFB1 Deed of Undertaking, including the Agreed Pricing Table which contains details of the Services to be offered by the Company and the pricing of such Services to be charged by the Company from time to time;

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

Shareholder means a person whose name is entered in the share register as the holder for the time being of one or more Shares;

Special Resolution means a resolution passed by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the resolution;

Specified Layer 1 Services means the Layer 1 Services that are listed or described in the Agreed Pricing Table from time to time;

Specified Layer 2 Services means the Layer 2 Services that are listed or described in the Agreed Pricing Table from time to time;

Telecommunications Service means a telecommunications service as defined in the Telecommunications Act 2001;

Treasury Stock means Shares which have been acquired by the Company and are held by the Company as treasury stock in accordance with the Act;

UFB Coverage Area means any area that forms part of an area which is covered by or forms part of any contractual arrangement between CFH and another third party in relation to the UFB1 Objective or the UFB2 Objective;

UFB1 Coverage Area means (i) the areas defined in Annexure A of the UFB1 Deed of Undertaking plus any greenfield areas that arise in, or are adjoining, those areas, and (ii) such other areas as agreed in writing by CFH and the Partner;

UFB1 Deed of Undertaking means the deed of undertaking given by the Company, the Partner and WEL in favour of CFH and the Crown dated 6 September 2016;

UFB1 Network means the fibre-optic communications network built in accordance with the UFB1 NIPA and which is, or will be, owned and/or operated by the Company from time to time;

UFB1 Network Infrastructure Project Agreement or **UFB1 NIPA** means the network infrastructure project agreement between the Company, the Partner and CFH dated 15 December 2010, as amended;

UFB1 Objective has the meaning set out in the UFB2 Network Infrastructure Project Agreement;

UFB1 Open Access means compliance with the UFB1 Open Access Requirements;

UFB1 Open Access Deed means the deed poll made by the Company in favour of the Crown in respect of UFB1 Open Access and the UFB1 Network dated on or about the date of the UFB1 Network Infrastructure Project Agreement;

UFB1 Open Access Requirements means the open access requirements set out in the UFB1 Open Access Deed;

UFB2 Coverage Area means (i) Putaruru, Kihikihi, Raglan, Ngaruawahia, Huntly, Eltham, Stratford, Inglewood, Waitara, Katikati, Te Puke and Omokoroa as identified in the maps set out in Schedule 8 to the UFB2 Network Infrastructure Project Agreement, plus any Adjoining Greenfield Sites (as that term is defined in the UFB2 Network Infrastructure Project Agreement), and (ii) such other areas as agreed in writing by CFH and the Company;

UFB2 Deed of Undertaking means the deed of undertaking given by the Company and WEL in favour of CFH and the Crown on or about the date of the adoption of this Constitution;

UFB2 Network means the fibre-optic communications network built in accordance with the UFB2 NIPA which is, or will be, owned and/or operated by the Company from time to time;

UFB2 Network Infrastructure Project Agreement or **UFB2 NIPA** means the network infrastructure project agreement between the Company and CFH dated on or about the date of adoption of this Constitution, as amended from time to time

UFB2 Objective has the meaning set out in the UFB2 Network Infrastructure Project Agreement;

UFB2 Open Access means compliance with the UFB2 Open Access Requirements;

UFB2 Open Access Deed means the deed poll made by the Company in favour of the Crown in respect of UFB2 Open Access and the UFB2 Network dated on or about the date of the adoption of this Constitution;

UFB2 Open Access Requirements means the open access requirements set out in the UFB2 Open Access Deed;

Vertically Integrated Telecommunications Business means a business which both owns any form of telecommunications or open access network and has a contractual relationship with End Users for the provision of Telecommunications Services;

WEL means WEL Networks Limited; and

Wholesale Services Agreement means a wholesale services agreement between the Company and an Access Seeker.

1.2 Meaning of relevant interest

- (a) For the purposes of this Constitution, a person has a **relevant interest** in a Share (whether or not that person is the registered holder of it) if that person:
- (i) is a beneficial owner of the Share; or
 - (ii) has the power to exercise any right to vote attached to the Share; or
 - (iii) has the power to control the exercise of any right to vote attached to the Share; or
 - (iv) has the power to acquire or dispose of the Share; or
 - (v) has the power to control the acquisition or disposition of the Share by another person; or
 - (vi) under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the Share (whether or not that person is a party to it):
 - (A) may at any time have the power to exercise any right to vote attached to the Share; or
 - (B) may at any time have the power to control the exercise of any right to vote attached to the Share; or
 - (C) may at any time have the power to acquire or dispose of the Share; or
 - (D) may at any time have the power to control the acquisition or disposition of the Share by another person.
- (b) For the purposes of this Constitution, where two or more persons act jointly or in concert in respect of the exercise of the rights attaching to a Share in which any one or more of those persons has a relevant interest, then each of those persons shall be deemed to have a relevant interest in the Share.
- (c) A body corporate or other body has a relevant interest in a Share in which a Related Body Corporate of that body corporate or other body has a relevant interest.
- (d) A person who has, or may have, a power referred to in clause 1.2(a) has a relevant interest in a Share regardless of whether the power:
- (i) is expressed or implied;
 - (ii) is direct or indirect;
 - (iii) is legally enforceable or not;
 - (iv) is related to a particular Share or not;
 - (v) is subject to restraint or restriction or is capable of being made subject to restraint or restriction;
 - (vi) is exercisable presently or in the future;
 - (vii) is exercisable only on the fulfillment of a condition; or

- (viii) is exercisable alone or jointly with another person or persons.
- (e) A power referred to in clause 1.2(a) exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.
- (f) A reference to a power includes a reference to a power that arises from, or is capable of being exercised as the result of, a breach of any trust, agreement, arrangement, or understanding, or any of them, whether or not it is legally enforceable.
- (g) For the purposes of clause 5.8, notwithstanding clauses 1.2(a) to (f), no account shall be taken of a relevant interest of a person in a Share if that person has the relevant interest by reason only that he or she has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at any meeting of shareholders or class of shareholders of the Company.

1.3 Meaning of Associated Person

In this Constitution, a person is an Associated Person of another person if:

- (a) they are acting jointly or in concert; or
- (b) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
- (c) they are Related Bodies Corporate; or
- (d) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
- (e) they are both, directly or indirectly, under the control of the same person; or
- (f) the persons have a business relationship, personal relationship, or an ownership relationship such that they should, under the circumstances, be regarded as associated; or
- (g) the first person is an associate of a third person who is an associate of the other person (in both cases under any of paragraphs (a) to (f)) and the nature of the relationships between the first person, the third person and the other person (or any of them) is such that, under the circumstances, the first person should be regarded as an associate of the other person.

1.4 Construction

In this Constitution, unless the context otherwise requires:

- (a) the **headings** appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to **clauses** are to clauses of this Constitution;
- (c) a reference to any **statute, statutory regulations or other statutory instrument** includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) the **singular** includes the plural and vice versa and one gender includes the other genders;

- (e) the words **written** and **writing** include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (f) the word **person** includes any association of persons whether corporate or unincorporated, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (g) a reference to **include** means include without limitation and **including** is to be construed accordingly;
- (h) unless otherwise expressly stated in this Constitution, **words or expressions** defined in the Act have the same meaning in this Constitution; and
- (i) a reference to a **document** includes all amendments or supplements to, or replacements or novations of, that document.

2. **Companies Act 1993**

2.1 **Effect of Constitution**

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

2.2 **Place of Incorporation**

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

3. **[Not Used]**

[Not used.]

4. **Objectives and activities**

4.1 **Objectives**

The overriding objectives of the Company are to:

- (a) complete the roll-out of Communal Infrastructure within the UFB2 Coverage Area by 20 December 2022;
- (b) maintain and operate the Network in the Coverage Area;
- (c) generate widespread uptake of any services delivered by the Company on the Network within the Coverage Area, including by residential End Users (by building the Network at a cost that can allow pricing of services delivered by the Company on the Network in a way which is competitive with alternative technologies);
- (d) maximise the availability of Layer 1 Services and Layer 2 Services within the Coverage Area;

- (e) offer, as a minimum the Specified Layer 1 Services, the Specified Layer 2 Services, the Co-Location Services and access to NBAPs;
- (f) provide the Specified Layer 2 Services within the Coverage Area, and where the Company invests in additional Layer 2 Services and CFH consents to the Company doing so, to make those Layer 2 Services available within the Coverage Area;
- (g) comply with any matters that may be agreed between CFH, the Partner (or any other Shareholder) and the Company; and
- (h) otherwise operate on a purely commercial basis,

provided that paragraphs (d) through (g) will not apply to or in respect of the Network on and after 1 January 2020.

4.2 Permitted scope of activities

- (a) The Company's only business operations will be to:
 - (i) deploy, own and make fibre available in:
 - (A) the Coverage Area; and
 - (B) if the Company chooses to do so, any areas outside the UFB Coverage Area;
 - (ii) provide:
 - (A) UFB1 Open Access to all Services provided on the UFB1 Network; and
 - (B) UFB2 Open Access to all Services provided on the UFB2 Network;
 - (iii) provide:
 - (A) the Specified Layer 1 Services, the Specified Layer 2 Services, the Co-Location Services and access to an NBAP when requested by an Access Seeker;
 - (B) services on a fibre network in areas outside the UFB Coverage Area; and
 - (C) on and after 1 January 2020, services on a fibre network;
 - (iv) if the Company chooses to do so, and CFH consents to the Company doing so, provide:
 - (A) any Layer 1 Service in addition to the Specified Layer 1 Services;
 - (B) any Layer 2 Service in addition to the Specified Layer 2 Services; and
 - (C) any other services in relation to the Network which are not Layer 1 Services or Layer 2 Services, subject, in the case of any Layer 3 Services or Layer 4 Services, to having obtained the prior approval of the Minister for Communications,

provided that the Company may offer any Layer 1 Service or Layer 2 Service on and after 1 January 2020 without CFH consent.

- (b) In conducting its business operations, the Company must comply with (in each case, while the document is enforceable against the Company and has not expired or terminated in accordance with its terms):
- (i) the UFB1 Deed of Undertaking;
 - (ii) the UFB2 Deed of Undertaking;
 - (iii) the UFB1 Open Access Deed;
 - (iv) the UFB2 Open Access Deed; and
 - (v) any Wholesale Services Agreement to which the Company is a party.

4.3 Restricted activities

The Company must not:

- (a) provide any services including any Retail Services (using the Network or otherwise) other than the services set out in clause 4.2 and for the avoidance of doubt, the Company must provide Co-Location Services; and
- (b) supply any services (including the Services) directly to End Users.

5. Rights attaching to Shares

5.1 Classes of Shares

The Company's issued share capital will consist of Ordinary Shares, A Shares, B Shares and the Government Share, and any other class of Share issued by the Board, each of which constitutes a separate Class.

5.2 Rights of A Shares

- (a) Each A Share confers on the holder the rights set out below (in addition to any other rights set out in this Constitution):
 - (i) the right to receive notice of, and attend, every meeting of the Shareholders;
 - (ii) the right to vote at a meeting of the Shareholders on any resolution, including any resolution to:
 - (A) appoint or remove an auditor; or
 - (B) subject to clause 5.6, adopt or revoke a constitution of the Company; or
 - (C) subject to clause 5.6, alter the Company's constitution; or
 - (D) approve a major transaction; or
 - (E) approve an amalgamation of the Company under section 221 of the Act; or
 - (F) put the Company into liquidation;
 - (iii) the right to receive an offer to acquire New Shares as set out in clause 7; and

- (iv) subject to the rights of Shares which confer special rights as to surplus assets, the right to an equal share in the distribution of the surplus assets of the Company on a per Share basis.
- (b) The A Shares will not confer on the holders the right to any dividends authorised by the Board other than the right to an equal share in any special dividends authorised by the Board on a per A Share basis.

5.3 Rights of B Shares

- (a) Each B Share confers on the holder the rights set out below (in addition to any other rights set out in this Constitution):
 - (i) the right to receive notice of, and attend, every meeting of the Shareholders;
 - (ii) the right to receive an offer to acquire New Shares as set out in clause 7;
 - (iii) subject to the rights of Shares which confer special rights as to surplus assets, the right to an equal share in the distribution of the surplus assets of the Company on a per Share basis; and
 - (iv) subject to the rights of Shares which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board on a per B Share basis.
- (b) Other than voting at a Class meeting of holders of B Shares, the B Shares do not confer on the holders any right to vote at a meeting of the Shareholders on any resolution.

5.4 Conversion of A Shares and B Shares into Ordinary Shares

Each A Share and each B Share will automatically convert into one Ordinary Share at the election of the holder of those Shares.

5.5 Rights of Ordinary Shares

Each Ordinary Share will confer on the holder:

- (a) the right to receive notice of, and attend, every meeting of the Shareholders;
- (b) the right to vote at a meeting of the Shareholders on any resolution, including any resolution to:
 - (i) appoint or remove an auditor; or
 - (ii) subject to clause 5.6, adopt or revoke a constitution of the Company; or
 - (iii) subject to clause 5.6, alter the Company's constitution; or
 - (iv) approve a major transaction; or
 - (v) approve an amalgamation of the Company under section 221 of the Act; or
 - (vi) put the Company into liquidation;
- (c) subject to the rights of Shares which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board on a per Share basis;

- (d) the right to receive an offer to acquire New Shares as set out in clause 7; and
- (e) subject to the rights of Shares which confer special rights as to surplus assets, the right to an equal share in the distribution of the surplus assets of the Company on a per Share basis.

5.6 Government Share

The following rights and limitations shall attach to the Government Share:

- (a) The Government Share may be held only by, and shall be registered in the name of, the Government Shareholder. Any Minister may from time to time give written notice to the Company of the person who is entitled to exercise the rights and powers of the Government Shareholder. The Company shall regard as the person entitled to exercise the rights and powers of the Government Shareholder the person named in the last such notice received by the Company.
- (b) Notwithstanding any provision of this Constitution to the contrary, none of the following provisions shall be amended, removed, or altered in effect, without the written consent of the Government Shareholder:
 - (i) the following definitions in clause 1.1 (Definitions):
 - (A) Access Seeker;
 - (B) Act;
 - (C) Agreed Pricing Table;
 - (D) Associated Person;
 - (E) Board;
 - (F) Business Day;
 - (G) CFH;
 - (H) Class;
 - (I) Co-Location Services;
 - (J) Communal Infrastructure;
 - (K) Company;
 - (L) Constitution;
 - (M) Crown;
 - (N) Director;
 - (O) End User;
 - (P) Government Authority;
 - (Q) Government Share;

- (R) Government Shareholder;
- (S) Interest Group;
- (T) Layer 1 Services;
- (U) Layer 2 Services;
- (V) Layer 3 Services;
- (W) Layer 4 Services;
- (X) Minister;
- (Y) NBAP;
- (Z) Network;
- (AA) New Shares;
- (BB) Ordinary Resolution;
- (CC) Ordinary Shares;
- (DD) OSI Model;
- (EE) Partner;
- (FF) Related Body Corporate;
- (GG) Representative;
- (HH) Retail Services;
- (II) Service Provider;
- (JJ) Services;
- (KK) Services and Pricing Schedule;
- (LL) Share;
- (MM) Shareholder;
- (NN) Special Resolution;
- (OO) Specified Layer 1 Services;
- (PP) Specified Layer 2 Services;
- (QQ) Telecommunications Service;
- (RR) UFB Coverage Area;
- (SS) UFB1 Coverage Area;

- (TT) UFB1 Deed of Undertaking;
 - (UU) UFB1 Network;
 - (VV) UFB1 Open Access;
 - (WW) UFB1 Open Access Deed;
 - (XX) UFB1 Open Access Requirements;
 - (YY) UFB2 Coverage Area;
 - (ZZ) UFB2 Deed of Undertaking;
 - (AAA) UFB2 Network;
 - (BBB) UFB2 Objective;
 - (CCC) UFB2 Open Access;
 - (DDD) UFB2 Open Access Deed;
 - (EEE) UFB2 Open Access Requirements;
 - (FFF) Vertically Integrated Telecommunications Business;
 - (GGG) Wholesale Services Agreement; and
 - (HHH) any definition of a term that is used in a clause or definition referred to in this clause 5.6(b);
- (ii) clause 1.2 (Meaning of relevant interest);
 - (iii) clause 1.3 (Meaning of Associated Person);
 - (iv) clause 2.2 (Place of Incorporation);
 - (v) clause 4 (Objectives and activities);
 - (vi) clause 5 (Rights attaching to Shares);
 - (vii) clause 6.5 (Prohibited issues);
 - (viii) clause 8 (Alteration of Shareholder's Rights);
 - (ix) clause 13.6 (Transfer of Shares); and
 - (x) clause 22.4 (Board Composition).
- (c) Notwithstanding any provision of this Constitution to the contrary, except with the written consent of the Government Shareholder no act or omission to act that contravenes or fails to comply with any of the provisions specified in clause 5.6(b) shall be valid or effective, whether or not the act or omission is that of the Company, the Board or the Shareholders and whether or not the act or omission has been approved by a Special Resolution.

- (d) For the avoidance of doubt, each of the matters referred to in clauses 5.6(b) and 5.6(c) is deemed to be an action which affects the rights attached to the Government Share and, accordingly, is not effective without the approval of the Government Shareholder in accordance with section 117 of the Act.
- (e) The Government Shareholder shall be entitled to receive notice of and, either by the person named in the last notice given pursuant to clause 5.6(a) or by that person's representative, to attend any meeting of Shareholders or any meeting of any Class of Shareholders, and to speak on any matter relating to rights attaching to the Government Share but the Government Share shall carry no right to vote or any other rights at any such meeting.
- (f) The Government Share will not confer:
 - (i) the right to participate in any dividend declared by the Board;
 - (ii) the right to participate in the distribution of the surplus assets of the Company; or
 - (iii) the right to receive an offer to acquire New Shares as set out in clause 7.
- (g) Notwithstanding any provision of this Constitution to the contrary, no Share or other security may be issued which:
 - (i) has the same rights as those attached to the Government Share; or
 - (ii) ranks equally with the Government Share for the purposes of any provision of this Constitution which requires that the consent of the Government Shareholder be obtained.
- (h) Nothing in clauses 6.1 or 8.3 applies to or in respect of the Government Share.
- (i) Notwithstanding any other provision of this Constitution, the Government Shareholder shall, for the purposes of this Constitution and the Act, in relation to any of the matters referred to in clauses 5.6(b) and 5.6(c), constitute a separate interest group.
- (j) The Government Share will be retained by the Government Shareholder even after CFH has ceased to be a Shareholder.
- (k) No amount is payable for calls or otherwise on the Government Share.

5.7 Alteration of rights attached to Government Share

Notwithstanding any other provision of this Constitution, and without limiting section 117 of the Act, the rights attached to the Government Share under clause 5.6 shall not be altered without the prior written consent of the Government Shareholder.

5.8 Limitations on ownership

No person that owns or operates a Vertically Integrated Telecommunications Business in New Zealand or has a direct or indirect retail presence in the New Zealand telecommunications market, nor any other person where the first-mentioned person and that other person are Associated Persons, may hold or have a relevant interest in any Shares unless the prior written consent of the Government Shareholder has been given to such holding or interest.

5.9 Limitation on restructure

- (a) The Company may not become a Vertically Integrated Telecommunications Business with a retail presence in New Zealand unless the prior written consent of the Government Shareholder has been given.
- (b) The Company may not:
 - (i) enter into any arrangement or agreement, or complete any transaction, pursuant to which the ownership, control or management of the Network or a material part of the Network is transferred directly or indirectly from the Company to any other party (an **Acquiring Party**); or
 - (ii) enter into any amalgamation or merger pursuant to which the ownership, control or management of the Network or a material part of the Network is transferred directly or indirectly from the Company to an Acquiring Party,

unless the Company has obtained the prior written approval of the Government Shareholder.

5.10 Services and Pricing Schedule

[Not used.]

5.11 Indemnity for enforcing rights

If the Government Shareholder issues or is party to proceedings to enforce any rights attaching to the Government Share under this Constitution and has judgment awarded in its favour, the Company shall indemnify the Government Shareholder against all the costs of that action on a solicitor and own client basis.

5.12 Approvals in absolute discretion

Any approval or consent required of the Government Shareholder under this Constitution may be given or withheld by the Government Shareholder in its absolute discretion and, if given, may be given on such terms and conditions as the Government Shareholder thinks fit. The giving of any such approval or consent shall not derogate from the need to obtain any other approval or consent of the Crown under any enactment.

5.13 Power to sell where clause 5.8 breached

- (a) The provisions of this clause 5.13 shall apply if either the Board determines, or the Government Shareholder determines after consultation with the Board, that there are reasonable grounds for believing that a person holds or has a relevant interest in Shares in breach of clause 5.8 or has failed to comply with any terms or conditions of a consent given by the Government Shareholder under clause 5.8.
- (b) Where the Government Shareholder makes such a determination and the Board fails to act pursuant to the following provisions of this clause 5.13 within such period of time as the Government Shareholder considers is reasonable, or fails (in the opinion of the Government Shareholder) to act in a manner which remedies the basis of the determination, the Government Shareholder may act pursuant to the following provisions of this clause 5.13, and where the Government Shareholder has so acted, those provisions shall apply in relation to the Shares in question as if every reference therein to the Board was a reference to the Government Shareholder and not to the Board, and the Company, the Board and every officer of the Company shall do everything necessary on

its, his, or her part to enable the exercise by the Government Shareholder of the powers given to the Government Shareholder under those provisions.

- (c) After such determination, the Board may, by notice in writing served on any registered holder of Shares to which the determination relates, require that holder to lodge with the Board within 14 days of the date on which such notice is served by the Board, a statutory declaration (or other disclosure if required by the Board) giving such information as the Board may reasonably require for the purposes of determining whether to exercise its powers under this clause 5.13.
- (d) Where the registered holder of any Shares does not comply with clause 5.13(c), or the Board in its discretion considers that any disclosure required by clause 5.13(c) or other information reveals that any person, without the written consent of the Board and/or the Government Shareholder, as the case may be, holds or has a relevant interest in any Shares in contravention of clause 5.8 or has failed to comply with the terms and conditions of a consent given by the Government Shareholder under clause 5.8, the Board may, subject to clause 5.13(e), serve a notice on the registered holder of those Shares declaring those Shares to be affected Shares.
- (e) The Board shall give notice to the registered holder of any Shares of its intention to declare those Shares to be affected Shares. The holder may make representations to the Board as to why any such Shares should not be treated as affected Shares, within 14 days of receiving the above mentioned notice from the Board. If after taking into consideration any such representations, the Board in its discretion determines that such Shares shall be treated as affected Shares, it may immediately serve a notice on the registered holder declaring those Shares to be affected Shares.
- (f) Notwithstanding any other provision of this Constitution:
 - (i) no Director appointed by the registered holder of affected Shares may vote on any Board resolution (whether at a Board meeting or by way of a resolution in writing);
 - (ii) if the chairperson is, an Associated Person of a person who holds or has a relevant interest in the affected Shares, he or she must immediately cease to fill the office of chairperson and a new chairperson must be appointed by the Board;
 - (iii) any requirements for a quorum to include a Director or Directors appointed by the holder of affected Shares shall cease to apply while that shareholder holds affected Shares;
 - (iv) the provisions of clauses 25.4, 25.7, 25.8 and 25.9 will be deemed to be modified accordingly to give effect to clauses 5.13(f)(i), (ii) and (iii) above; and
 - (v) a registered holder of affected Shares shall not be entitled to vote in respect of such affected Shares at any Shareholders meeting or Class meeting of the Company or at any meeting of an Interest Group and in that event the votes attached to such affected Shares shall vest in and may be exercised by the chairperson of any such meeting who may act entirely at his or her discretion. This shall be without prejudice to the right of any such registered holder of affected Shares to attend or speak at any such meeting.
- (g) A registered holder of affected Shares shall, within three months (or such longer period as the Board may determine) of receiving the notice declaring those Shares to be affected Shares, ensure that either the affected Shares or one or more persons' relevant interests therein are disposed of, in whole or in part, so that no person holds or has a relevant interest in the affected Shares in breach of clause 5.8. If, after three months (or such longer period as set out above), the Board is not satisfied that such a disposal has been made, the Board may arrange for the sale of some or all of the affected Shares on behalf of the registered holder at the best price reasonably obtainable at the relevant time, based upon advice

obtained by it for the purpose, so that no person holds or has a relevant interest in the affected Shares in breach of clause 5.8.

- (h) For the purposes of clause 5.13(g), the registered holder of affected Shares shall be deemed to have appointed, and does hereby appoint, the Company as its agent and its attorney, in each case with full authority to act on its behalf in relation to the sale of the affected Shares and to sign all documents relating to such sale and transfer of the affected Shares and the Board may register a transfer of the affected Shares so sold, whether or not the transfer has been properly completed and whether or not it is accompanied by the share certificates (if any) for the affected Shares.
- (i) If any share certificate for the affected Shares is not delivered up to the Company, the Board may issue a new share certificate distinguishing it as it thinks fit from the certificate not delivered up, and the certificate not delivered shall be deemed to have been cancelled. The person to whom such Shares are transferred shall not be bound to see to the application of the purchase money, nor shall his or her or its title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale of those Shares.
- (j) If the Board considers that no person holds or has a relevant interest in breach of clause 5.8, in any Shares which have been declared to be affected Shares, (whether because of the sale of the affected Shares or otherwise), it shall withdraw the declaration. On withdrawal, those Shares shall cease to be affected Shares. The Board shall serve notice on the then holder of those Shares of such withdrawal within 14 days of having so resolved.
- (k) The Board shall not be obliged to give any notice required under this clause 5.13 to be given to any person if it does not know either the identity or address of the person. The absence of service of such a notice in such circumstances, and any accidental error in or failure to give any notice to any person upon whom notice is required to be given under this clause 5.13 shall not prevent the implementation of or invalidate any procedure under this clause 5.13. Clause 30 shall apply to the service on persons of notices required under this clause 5.13 as if references in clause 30 to Shareholders were references to those persons.
- (l) Any resolution or determination of, or decision or declaration or exercise of any discretion or power by, the Board or by the chairperson of any meeting under or pursuant to this clause 5.13 shall be final and conclusive and any disposal or transfer made, or other things done, by or on behalf of, or on the authority of, the Board pursuant to this clause 5.13 shall be conclusive and binding on all persons concerned and shall not be open to challenge, whether as to its validity or otherwise on any ground whatsoever.
- (m) The proceeds of sale of any Shares sold on behalf of the registered holder under this clause 5.13 shall be applied as follows:
 - (i) first, in payment of any expenses incurred in connection with the sale; and
 - (ii) the balance (if any) shall be paid to, or in accordance with a direction of, the person who was the registered Shareholder of the Shares immediately before the sale.
- (n) A certificate signed by any two Directors, or signed by the Government Shareholder, that a power of sale under this clause 5.13 has arisen and is exercisable by the Board, or that a Share has been duly transferred under this clause 5.13 on the date stated therein, shall be conclusive evidence of the facts stated in that certificate.

6. Issue, consolidation, subdivision and repurchase of Shares

6.1 Issue of New Shares

Subject to clauses 5.6(g) and (h), 5.7 and 5.8, the Board may issue further Shares in the Company (including different Classes of Shares) which:

- (a) rank equally with, or in priority to, existing Shares; or
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
- (c) confer preferential rights to distributions of capital or income; or
- (d) confer special, limited or conditional voting rights; or
- (e) do not confer voting rights; or
- (f) are redeemable in accordance with section 68 of the Act.

6.2 Consolidation and subdivision of Shares

The Board may, with the approval of the Shareholders by Special Resolution:

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

6.3 Bonus issues

The Board may, with the approval of the Shareholders by Special Resolution, resolve to apply any amount which is available for distribution to Shareholders either:

- (a) in paying up in full Shares or other securities of the Company to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) if applicable, the holders of any other securities of the Company who are entitled by the terms of issue of those securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in clause 6.3(a)(i),

or partly in one way and partly in the other.

6.4 Shares in lieu of dividends

The Board may, with the approval of Shareholders by Special Resolution, exercise the right conferred by section 54 of the 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.

6.5 Prohibited issues

The Board may not issue any Shares if that issue is prohibited under or does not comply with clause 6.

6.6 Share repurchases

The Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders and hold its own Shares.

7. Pre-emptive rights on issue of New Shares

7.1 No pre-emptive rights during the Concession Period

[Not Used.]

7.2 Pre-emptive rights

(a) First offer to existing Shareholders

Subject to clauses 7.2(a)(i) and (ii), if the Company wishes to issue or allot any new Shares (**New Shares**) in the Company, the Company must, by prior notice in writing, offer to each Shareholder other than the Government Shareholder its pro rata entitlement of the total number of New Shares to be issued (the **New Share Offer**):

- (i) if any existing Shares do not have rights to receive an offer to acquire New Shares or have disproportionate rights to receive an offer to acquire New Shares, the offer to acquire New Shares must be made in accordance with the relative proportionate entitlements of all Shareholders; and
- (ii) fractional entitlements to New Shares must be disregarded.

(b) New Share Offer

The notice containing the New Share Offer must specify:

- (i) the number, class and terms of the New Shares offered, including the number of New Shares to which the relevant offeree is entitled;
- (ii) the subscription price and payment terms (including the date on which the offeree must pay the subscription amount to the Company (**Subscription Date**)); and
- (iii) the date (being not less than 15 Business Days and not more than 30 Business Days or such longer period as may reasonably be required to obtain any necessary approvals or consents of any Government Authority) (the **Closing Date**) by which the offeree must give a notice to the Company containing the details set out in clause 7.2(c) (**Acceptance Notice**).

(c) Acceptance Notice

Each Acceptance Notice must state:

- (i) whether or not the offeree wishes to purchase the offeree's entitlement; and
- (ii) if the offeree wishes to purchase all of the offeree's entitlement, whether or not the offeree also wishes to purchase any New Shares offered to, but declined by, other offerees (the **Declined New Shares**), and if so, the number of Declined New Shares the offeree wishes to acquire.

(d) **Allocation of Declined New Shares**

If, and to the extent that, an offeree does not accept their entitlement to New Shares under the New Share Offer their entitlement to New Shares will be used for satisfying requests for Declined New Shares received from other offerees upon the basis that the New Shares not claimed will be allocated to such offerees who have requested Declined New Shares in proportion to their existing shareholding, but no offeree will be allocated more Declined New Shares than the number requested by that offeree.

(e) **Notification of Allocation**

Within five Business Days of the Closing Date, the Company will send a notice to each Shareholder (other than the Government Shareholder) advising them of:

- (i) the allocation of New Shares amongst the Shareholders; and
- (ii) if that Shareholder has accepted the New Share Offer, the number of New Shares which the Shareholder has been allocated, the total subscription amount payable by that Shareholder to the Company and the Subscription Date.

(f) **Subscription**

On the Subscription Date:

- (i) each offeree who has been allocated Shares under the New Share Offer must pay the relevant subscription price for the New Shares allocated to it by the Company; and
- (ii) the Company must take all actions required to issue the New Shares to the relevant Shareholders.

(g) **Substitution right**

If a Shareholder does not take up its pro rata entitlement to the New Shares it may arrange for a third party to subscribe for all of those New Shares not taken up on the same terms and conditions. In those circumstances, the Shareholder must provide a notice to the Company advising the details of the third party to whom the relevant New Shares are to be issued and the Shareholder must procure that the third party delivers to the Company an Acceptance Notice in accordance with clause 7.2(c). Upon delivery of that Acceptance Notice to the Company, the relevant third party (rather than the Shareholder) will be deemed to be the accepting Shareholder in relation to the relevant New Shares for the purposes of this clause 7.2.

7.3 Treasury Stock

The provisions of this clause 7 also apply to the transfer of Shares held by the Company in itself as if the transfer was an issue of New Shares by the Company.

8. Alteration of Shareholders' rights

8.1 Special Resolution required

Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution, the Act, or the terms on which of the Shares were issued, must be approved by Special Resolution of each Interest Group.

8.2 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 a Shareholder or Shareholders or their Representatives holding or representing the holders of not less than one half of the Shares of the relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

8.3 Issue of further Shares

Without limiting clause 5.6(g) and subject to clause 5.6(h), the issue of further Shares ranking equally with, or in priority to, existing Shares (other than the Government Share) whether as to voting rights, distribution or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares of that Class provided the issue is made in accordance with clause 6 of this Constitution.

9. Share certificates

9.1 Issue of share certificates

The Company may issue share certificates in respect of all or any Shares and must, within 20 Business Days after receiving an application by a Shareholder, send to that Shareholder a share certificate, in accordance with section 95 of the Act.

9.2 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 any share certificate 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.

10. Calls on Shares

10.1 Board's power

The Board may, by notice in writing to a Shareholder or Shareholders, make calls in respect of all moneys unpaid on Shares and which are not, by the terms applicable to the Shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.

10.2 **Liability to pay**

Each relevant Shareholder shall be liable (jointly and severally in the case of joint Shareholders) to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant Shares.

10.3 **Differential calls**

The Board may, at the time of issue of any Shares, differentiate between the holders as to the amount of calls to be paid and the time of payment.

10.4 **Instalments**

The Board may determine that a call is payable by instalments.

10.5 **Time call is made**

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

10.6 **Interest on overdue amounts**

A call not paid when due shall bear interest from the due date to the date of actual receipt by the Company at the rate fixed in the notice of call or the terms applicable to the relevant Shares or, if there is no such rate, as the Board determines. The Board may waive payment of interest wholly or in part.

10.7 **Unpaid instalments**

Any amount payable on issue of a Share or on any fixed date or as at the time of instalment of a call shall be deemed to be a call and if not paid, the provisions of this clause 10 and clauses 11 and 12 shall apply as if that sum had become payable by the making of a call.

10.8 **Calls in advance**

The Board may, in its discretion, receive any moneys uncalled and unpaid upon any Shares in advance of its due date and may pay interest on the amount received at such rate (if any) and on such terms as the Board determines.

10.9 **Evidence**

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

- (a) the name of the Shareholder is entered in the share register of the Company as the holder (or one of the holders) of the relevant Shares;
- (b) the resolution making the call is recorded in the records of the Company; and
- (c) notice of the call was sent to the Shareholder,

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

11. Lien on Shares

11.1 Lien on unpaid and partly paid Shares

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

- (a) all unpaid calls, instalments, or other amounts, and any interest payable on those amounts, relating to that Share; and
- (b) any amounts the Company may be called upon to pay under any legislation in respect of that Share.

11.2 Power of sale

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

- (a) the Company may sell the Share in the manner set out in clause 7.2 as if it constituted an issue of New Shares; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Share to, or at the direction of, the purchaser.

11.3 Absolute title of purchaser

The title of a purchaser of any Shares sold pursuant to clause 11.2 shall not be affected by any irregularity or invalidity in any sale.

11.4 Application of sale proceeds

The net proceeds of sale of any Share sold pursuant to clause 11.2, after deducting expenses of sale shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the Share at the date of sale.

12. Forfeiture of Shares

12.1 Notice

If a call on a Share is not paid when due, the Board may give 14 days notice to the Shareholder requiring payment of the call, together with interest on the amount of the call. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Share will be liable to be forfeited.

12.2 Forfeiture

If the notice is not complied with, the Share may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.

12.3 Sale of forfeited shares

A forfeited Share may be sold or otherwise disposed of in the manner set out in clause 7 as if it constituted an issue of New Shares. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

12.4 Application of sale proceeds

The net proceeds of sale of any forfeited Share shall be applied in the same manner as set out in clause 11.4.

12.5 Absolute title of purchaser

The title of a purchaser of a forfeited Share shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Share.

12.6 Consequences of forfeiture

A person whose Shares have been forfeited shall cease to be a Shareholder in respect of those Shares and shall surrender the share certificate for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon.

12.7 Evidence of forfeiture

A statutory declaration by a Director or any other person authorised by the Board that a Share has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

13. Transfer of Shares

13.1 Transferor to remain holder until registration

The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the share register.

13.2 Authorised transactions

Any Shares disposed of by an "authorised transaction" within the meaning of the Financial Markets Conduct Act 2013 may be transferred by an instrument of transfer complying with the provisions of that Act or by an instrument complying with clause 13.4.

13.3 Transfer executed outside New Zealand

Where an instrument of transfer would have complied with the provisions of the Financial Markets Conduct Act 2013 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or otherwise in any usual manner for execution by such a corporation, or in any other case if the signature of the transferor has been witnessed by a person who has added his or her occupation and address after his or her signature.

13.4 Form of transfer

Every instrument of transfer of Shares not falling within clauses 13.2 and 13.3 shall comply with the following provisions:

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

13.5 Power to refuse to register

The Board may decline to register any transfer of Shares where:

- (a) the Company has a lien on any of the Shares; or
- (b) the Shares are not fully paid up; or
- (c) the transfer is not accompanied by the certificate (if any) for the Shares to which it relates or such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; or
- (d) the Board has notice of any agreement by the Shareholder to transfer the Shares only to some specified person or subject to some specified condition; or
- (e) the transferor has not complied with the provisions of this clause 13,

provided that the Board resolves to exercise its powers under this clause 13.5 within 30 Business Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Business Days of the resolution being passed by the Board.

13.6 No transfers in breach of clause 5.8 or Constitution

The Board must decline to register any transfer of Shares:

- (a) that would be in breach of clause 5.8; or
- (b) where the applicable provisions of this Constitution in relation to transfers of Shares have not been fully complied with.

13.7 Registration of transfers

Every instrument of transfer shall be delivered to the Company, together with the share certificate (if any) for the Shares to be transferred. If there is no share certificate for those Shares or if the share certificate has been lost, damaged or destroyed, the transferee shall provide such other evidence (if any) as the Board may reasonably require to show the right of the transferor to make the transfer.

13.8 Power to divide share register

The share register may be divided into two or more registers kept in different places.

13.9 **Transfer of securities other than Shares**

This clause 13 shall also apply to transfers of securities of the Company other than Shares with any necessary modifications.

13.10 **Registration of transfer shall not affect Government Shareholder**

The registration by the Board of any transfer shall not prejudice or affect in any way the powers exercisable by the Government Shareholder or the Board under clause 5.13.

14. **Exercise of powers of Shareholders**

14.1 **Methods of holding meetings**

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.

14.2 **Exercise of power by meeting or written resolution**

A power reserved to the Shareholders by the 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 Act.

14.3 **Powers of Shareholders**

Unless otherwise specified in the Act or this Constitution, any power reserved to Shareholders may be exercised and any approval of Shareholders may be given by Ordinary Resolution.

15. **Meetings of Shareholders**

15.1 **Annual meetings**

Subject to clause 15.3, the Company shall hold an annual meeting not later than:

- (a) six months after the balance date of the Company; and
- (b) fifteen months after the previous annual meeting.

The Company need not hold its first annual meeting in the calendar year of its registration but shall hold that meeting within 18 months of its registration.

15.2 **Time and place of annual meeting**

Each annual meeting shall be held at such time and place as the Board appoints.

15.3 **Resolution in lieu of annual meeting**

It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.

15.4 **Special meetings**

All meetings other than annual meetings shall be called special meetings.

15.5 **Calling of special meetings**

A special meeting:

- (a) may be called by the Board at any time; and
- (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.

16. **Notice of meetings of Shareholders**

16.1 **Written notice**

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 (if any) not less than ten Business Days before the meeting.

16.2 **Contents of notice**

The notice must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
- (b) the text of any Special Resolution to be submitted to the meeting; and
- (c) in the case of Special Resolutions required by section 106(1)(a) or (b) of the Act, the right of a Shareholder under section 110 of the Act.

16.3 **Irregularity in notice**

An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.

16.4 **Adjourned meetings**

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.

17. Chairperson of meetings of Shareholders

17.1 Chairperson of the Board to act

If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Shareholders, that Director must chair the meeting.

17.2 Other chairperson

If no chairperson of the Board has been elected or if at any meeting of Shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or the chairperson is unwilling or unable to act, the Directors present, if any, may elect one of their number to be chairperson of the meeting. If no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to be chairperson.

17.3 Adjourned meetings

The chairperson may, and if directed by the meeting must, adjourn the meeting to a new time and place. No business can be transacted at any adjourned meeting other than unfinished business at the original meeting.

17.4 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of Shareholders.

18. Quorum for meetings of Shareholders

18.1 Quorum required

Subject to clause 18.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

18.2 Size of quorum

A quorum for a meeting of Shareholders is present if one or more Shareholders or its or their Representatives are present who, individually or between them, hold or represent the holders of Shares having not less than 10% of the total voting rights of all Shares having the right to vote at that meeting.

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

19. Voting at meetings of Shareholders

19.1 Meetings in one place

In the case of a meeting of Shareholders held under clause 14.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:

- (a) voting by voice; or
- (b) voting by show of hands.

19.2 Audio-visual meetings

In the case of a meeting of Shareholders held under clause 14.1(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

19.3 Postal votes

Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that Shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the First Schedule to the Act together with any other procedures determined by the Board.

19.4 Number of votes

Subject to any rights or restrictions attached to any Share (including those set out in clauses 5.3(b) and 5.6(e)):

- (a) where voting is by voice or a show of hands, every Shareholder present in person or by Representative has one vote; and
- (b) on a poll every Shareholder present in person or by Representative has:
 - (i) one vote in respect of every fully paid Share held by that Shareholder; and
 - (ii) in respect of each Share held by that Shareholder which is not fully paid, a proportion of the vote or votes which would be exercisable if that Share was fully paid equivalent to the proportion of the total issue price of that Share which has been paid (disregarding any payment in advance).

19.5 Declaration of chairperson conclusive

A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 19.6.

19.6 Right to demand poll

At a meeting of Shareholders a poll may be demanded by:

- (a) not less than five Shareholders having the right to vote at the meeting; or

- (b) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
- (c) a Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right; or
- (d) the chairperson.

For the purposes of this clause 19.6, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

19.7 Time of demand for poll

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

19.8 Timing of poll

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

19.9 Counting of votes on poll

If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting.

19.10 Votes of joint holders

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

19.11 Validity of votes

In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination made in good faith shall be conclusive.

19.12 No vote if amounts unpaid

No Shareholder shall be entitled to vote at any meeting in respect of Shares on which any call or other moneys are due and unpaid.

20. Proxies and corporate Representatives

20.1 Proxies permitted

A Shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

20.2 Form of proxy

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.

20.3 Lodging proxy

No proxy is effective in relation to a meeting unless the proxy notice is produced to the Company before the start of the meeting.

20.4 Validity of proxy vote

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

20.5 Corporate Representatives

A body corporate which is a Shareholder may appoint a Representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. A corporate Representative shall have the same rights and powers as if the Representative were a proxy.

21. Minutes of Shareholder meetings

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

22. Directors

22.1 Maximum number

[Not used.]

22.2 Appointment and removal

[Not used.]

22.3 Vacation of office

A Director shall cease to hold office as a Director if the Director:

- (a) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally;
- (b) is convicted of an indictable offence, including a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961);
- (c) becomes disqualified from being a Director pursuant to section 151 of the Act;

- (d) resigns from office by notice in writing to the Company; or
- (e) is removed from office pursuant to this Constitution.

22.4 **Board composition**

No person who is an Associated Person of:

- (a) a person which provides Retail Services in New Zealand; or
- (b) Chorus Limited, Northpower Fibre Limited or Enable Networks Limited; and/or
- (c) any other local fibre company which has entered into any contractual arrangement with CFH in relation to the UFB2 Objective,

shall, at any time, be appointed or hold office as a Director.

23. **Alternate Directors**

23.1 **Appointment, removal and cessation of appointment**

Each Director shall be entitled, by notice in writing to the Company, to appoint any person who is not already a Director as an alternate director (an **Alternate Director**) for any one or more meetings of the Directors and may revoke any such appointment at any time in the same manner. An Alternate Director will also cease to be an Alternate Director on the occurrence of an event or circumstances relating to that Alternate Director which, if the Alternate Director were a Director, would under this Constitution require the Alternate Director to cease holding office as a Director. For the avoidance of doubt, no person may be appointed as an Alternate Director if clause 22.4 would prohibit the appointment of that person as a Director.

23.2 **Rights of Alternate Director**

Each Alternate Director will be entitled to:

- (a) receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be unavailable to attend a meeting or meetings;
- (b) attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
- (c) in the absence of the Director who the Alternate Director is the alternate of, perform all the functions, and exercise all the powers, of that Director.

23.3 **Remuneration and expenses**

Each Alternate Director's expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company. An Alternate Director will not be paid fees or otherwise remunerated for his or her services as an Alternate Director by the Company.

24. Powers of Directors

24.1 Management of Company

Subject to any restrictions and objectives expressly set out in this Constitution, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

24.2 Exercise of powers by Board

The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

24.3 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 Act.

24.4 Appointment of attorney

The Company may exercise the power conferred by section 181 of the 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.

24.5 Ratification by Shareholders

Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the 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 24.5 is deemed to be, and always to have been, a proper and valid exercise of that power.

25. Proceedings of the Board

25.1 Methods of holding meetings

A meeting of the Board may be held either:

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

25.2 Notice of meeting

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board. Notice of a meeting of Directors must be given to:

- (a) every Director (whether or not they are in New Zealand); and
- (b) any Alternate Director (whether or not they are in New Zealand and whether or not the Director of whom they are an alternate is in New Zealand).

25.3 **Waiver of irregularity**

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

25.4 **Quorum**

- (a) A quorum for any Board meeting is a majority of the Directors being present or represented by an Alternate Director.
- (b) If a quorum is not present at a meeting of the Board at the time when any business is considered, the meeting shall be reconvened for another date and time provided that at least two Business Days' notice of the reconvened meeting is given (unless all the Directors agree otherwise). At the reconvened meeting, the Director or Directors present or represented by an Alternate Director will constitute the quorum.

25.5 **Insufficient number of Directors**

The Directors may act notwithstanding any vacancy in their body.

25.6 **Chairperson**

- (a) The chairperson shall be appointed by the Board.
- (b) The chairperson shall preside at the Directors' meetings and Shareholder meetings at which he or she is present.

25.7 **Votes**

- (a) Each Director is entitled to one vote on a Board resolution.
- (b) The chairperson is not entitled to an additional or casting vote at any meeting of the Board.

25.8 **Board resolutions**

A resolution of the Board is passed if a majority of the votes cast are in favour of it.

25.9 **Resolutions in writing**

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

25.10 **Minutes**

The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

25.11 Validity of acts

All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:

- (a) any defect in the appointment of any Director or person acting as a Director; or
- (b) that they or any of them were disqualified; or
- (c) any irregularity in a notice of meeting.

25.12 Other procedures

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

26. Directors' Interests

26.1 Disclosure of Interests

A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of Interest of directors) but failure to comply with that section does not affect the operation of clause 26.2.

26.2 Personal involvement of Directors

Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a director is Interested) and section 36(4)(a) of the Financial Reporting Act 2013 (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 company promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise;
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing; and
- (f) be involved in a transaction (or another entity in which the Director has an interest or involvement may be involved in a transaction) which the Company may have otherwise been interested in and a Director shall have no obligation to refer any corporate opportunity to the Company or to enable the Company to pursue any corporate opportunity which the Director or any person in any way associated with the Director intends to pursue,

and no contract or arrangement of any kind referred to in this clause 26.2 may be avoided by reason of a Director's Interest.

26.3 Interested Directors may vote

A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

- (a) vote on any matter relating to the transaction;
- (b) attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- (c) sign a document relating to the transaction on behalf of the Company; and
- (d) 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.

27. Directors' remuneration and other benefits

27.1 Remuneration to be approved by Ordinary Resolution

No remuneration shall be paid to a Director in his or her capacity as a Director unless that remuneration has been authorised by an Ordinary Resolution.

28. Indemnity and insurance for Directors and employees

28.1 Indemnity for Directors and senior executives

Directors and senior executives shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

28.2 Indemnities and insurance

In addition to the indemnity referred to in clause 28.1, the Company may:

- (a) indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act;
- (b) indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; and
- (c) effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.

28.3 Interpretation

Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 28.

29. Dividends

29.1 Board authority

Subject to any restrictions imposed under any other provision of this Constitution and to compliance with all applicable requirements under the Act, the Board may authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit.

29.2 Method of payment

Any dividend or other money payable to a Shareholder may be paid by cheque sent through the post to the registered address of the holder or in any other manner determined by the Board and directed by the person entitled to the payment. In the case of joint holders, cheques may be sent to the registered address of the person first named on the register.

29.3 Currency of payment

The Board may, in its discretion, differentiate between Shareholders as to the currency in which dividends are to be paid. In exercising that discretion the Board may have regard to the registered address of a Shareholder, the register on which a Shareholder's Shares are registered or any other matter the Board considers appropriate. In any case where a dividend is to be paid in a currency other than New Zealand currency, the amount payable will be converted from New Zealand currency in a manner, at a time and at an exchange rate determined by the Board.

29.4 Deductions

The Board may deduct from dividends payable to any Shareholder in respect of any Shares any:

- (a) unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, relating to the specific Shares; and
- (b) amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.

29.5 Entitlement date

Dividends and other distributions or payments to Shareholders will be payable to the persons who are registered as Shareholders on an entitlement date fixed by the Board.

29.6 Unclaimed dividends

Dividends or other monetary distributions unclaimed for 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 five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.

30. Notices

30.1 Method of service

All notices, reports, accounts or documents required to be sent to a Shareholder shall be sent in the manner set out in section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a Shareholder.

30.2 Joint holders

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

31. Liquidation

31.1 Distribution of surplus

Subject to the rights of any Shareholders and to clauses 31.2 and 31.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Shareholders who in accordance with the rights attaching to their Shares are entitled to participate in the distribution of the surplus assets of the Company (which shall exclude the Government Shareholder) in proportion to their Shareholding. If any Shareholder's Shares are not fully paid up the liquidator of the Company may require those Shares to be fully paid up before the Shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.

31.2 Distribution in kind

With the approval of the Shareholders by Special Resolution, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

- (a) attribute values to assets as the liquidator considers appropriate; and
- (b) determine how the division will be carried out as between the Shareholders or different classes of Shareholders.

31.3 Trusts

With the approval of the Shareholders by Special Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of Shareholders. The liquidator may determine the terms of the trust.

32. Method of contracting

32.1 Deeds

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

- (a) **Two Directors**
any two Directors;

(b) **Authorised person**

any Director, or any other person authorised by the Board, whose signature must be witnessed; or

(c) **Attorney**

one or more attorneys appointed by the Company.

32.2 **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.

32.3 **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.

33. **Audit**

[Not Used.]

34. **Regulatory reporting**

The Company must comply with all reporting obligations under applicable law.