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BR1

CHFP025

This form should be completed in black.

**Return delivered for registration of a branch of  
an overseas company**

(Pursuant to Schedule 21A, paragraph 1 of the Companies Act 1985)

For office  
use only

CN

FC 25235

BN

BQ 7597

Corporate name  
(See note 5) (name in parent state)

Intellectual Capital Partners Limited

Business name  
(if different to corporate name)

Country of incorporation

New Zealand

Identity of register  
(if applicable)

Companies Office, Auckland, New Zealand

and registration no. AK/10/1878

Legal form  
(See note 3)

Private Limited Company

1 See note 2

**PART A - COMPANY DETAILS**

1

\* State whether the company is  
a credit or financial institution

\* Is the company subject to Section 699A of the Companies Act 1985?

YES

☐

NO

☒

(1) These boxes need not be completed by companies formed in EC member states

Governing law

(See note 4)

Companies Act of New Zealand 1993



A28

\*A0ISEU70\*

0555

COMPANIES HOUSE

18/05/04

A25

\*ACQWUC9\*

0468

COMPANIES HOUSE

17/04/04

A29

\*A51IAU13\*

0325

COMPANIES HOUSE

06/04/04

A32

\*A1FUISOI\*

0320

COMPANIES HOUSE

17/02/04

Period for which the company is required to prepare accounts by  
parent law. from 1 July to 30 June

Period allowed for the preparation and public disclosure of accounts  
for the above period 5 months

(2) This box need NOT be completed by companies from EC member states,  
OR where the constitutional documents of the company already show  
this information.

Address of principal place of  
business in home country

Level 3, 12 Viaduct Harbour Avenue, Maritime Square,  
Auckland, New Zealand

Objects of company

Private equity investment

Issued share capital

NZ\$ 5,412,503.20

Currency New Zealand Dollar

Company Secretary(ies)

(See note 10)

Name

\* Style/Title Not required by New Zealand Law.

Forenames

Surname

\* Honours etc.

Previous Forenames

Previous surname

Post town

County / Region

Postcode

Country

\* Voluntary details

†† Tick this box if the  
address shown is a  
service address for  
the beneficiary of a  
Confidentiality Order  
granted under section  
723B of the  
Companies Act 1985  
otherwise, give your  
usual residential  
address. In the case  
of a corporation, give  
the registered or  
principal office  
address.

☐

Address ††

Company Secretary(ies)

(See note 10)

Name

\* Style/Title

Forenames

Surname

\* Honours etc.

Previous Forenames

Previous surname

Post town

County / Region

Postcode

Country

\* Voluntary details

†† Tick this box if the  
address shown is a  
service address for  
the beneficiary of a  
Confidentiality Order  
granted under section  
723B of the  
Companies Act 1985  
otherwise, give your  
usual residential  
address. In the case  
of a corporation, give  
the registered or  
principal office  
address.

☐

Address ††

(You may photocopy this page  
if required)

## Directors

(See note 10)

### Name

#### \* Voluntary details

†† Tick this box if the address shown is a service address for the beneficiary of a Confidentiality Order granted under section 723B of the Companies Act 1985 otherwise, give your usual residential address. In the case of a corporation, give the registered or principal office address

☐

Address ††

\* Style/Title Mr

Forenames Nicholas David

Surname Lodge

\* Honours etc. \_\_\_\_\_

Previous Forenames \_\_\_\_\_

Previous surname \_\_\_\_\_

10 Rue du Marechal Foch

Post town Luxembourg

County / Region \_\_\_\_\_

Postcode L-1525

Country Luxembourg

Date of Birth

Day	Month	Year
1	4	0
/	/	/
1	6	8

Nationality British

Business Occupation Private Equity

Other Directorships See attached

### SCOPE OF AUTHORITY

Give brief particulars of the extent of the powers exercised. (e.g. whether they are limited to powers expressly conferred by the instrument of appointment; or whether they are subject to express limitations.) Where the powers are exercised jointly give the name(s) of the person(s) concerned. You may cross refer to the details of person(s) disclosed elsewhere on the form.

# Mark box(es) as appropriate

These powers :-

# ☒ May be exercised alone

OR

# ☐ Must be exercised with :-

(Give name(s) of co-authorised person(s))

(You may photocopy this page as required)

## Directors

(See note 10)

### Name

#### \* Voluntary details

†† Tick this box if the address shown is a service address for the beneficiary of a Confidentiality Order granted under section 723B of the Companies Act 1985 otherwise, give your usual residential address. In the case of a corporation, give the registered or principal office address.

☐

### Address ††

\* Style/Title Mr

Forenames Anthony Charles Russell

Surname Hannon

\* Honours etc. \_\_\_\_\_

Previous Forenames \_\_\_\_\_

Previous surname \_\_\_\_\_

41 Rock Isle Road, Wai Aki

Post town Auckland

County / Region \_\_\_\_\_

Postcode \_\_\_\_\_

Country New Zealand

Date of Birth

Day		Month		Year			
0	7	/	0	5	/	6	0

Nationality New Zealand

Business Occupation Private Equity

Other Directorships See attached

### SCOPE OF AUTHORITY

Give brief particulars of the extent of the powers exercised. (e.g. whether they are limited to powers expressly conferred by the instrument of appointment; or whether they are subject to express limitations.) Where the powers are exercised jointly give the name(s) of the person(s) concerned. You may cross refer to the details of person(s) disclosed elsewhere on the form.

# Mark box(es) as appropriate

These powers :-

# ☒ May be exercised alone

OR

# ☐ Must be exercised with :-

(Give name(s) of co-authorised person(s))

(You may photocopy this page as required)

## Constitution of company

(See notes 6 to 9)

# Mark box(es)  
as applicable

(See note 9)

#	<input checked="" type="checkbox"/>	A certified copy of the instrument constituting or defining the constitution of the company
		AND
	<input type="checkbox"/>	* A certified translation
		* is/are delivered for registration

\* Delete as applicable

AND/OR

A certified copy of the constitutional documents and latest accounts of the company, together with a certified translation of them if they are not in the English language, must accompany this form.

#	<input checked="" type="checkbox"/>	A copy of the latest accounts of the company
		AND
	<input type="checkbox"/>	* A certified translation
		* is/are delivered for registration

AND/OR

The company may rely on constitutional and accounting documents previously filed in respect of another branch registered in the United Kingdom.

#	<input type="checkbox"/>	The Constitutional documents (*and certified translations)
		AND/OR
	<input type="checkbox"/>	The latest accounts (* and certified translations)
		of the company were previously delivered on the registration of the branch of the company at :-
	Cardiff	<input type="checkbox"/>
	Edinburgh	<input type="checkbox"/>
	Belfast	<input type="checkbox"/>
	Registration no.	<input type="text"/>

AND/OR

The company may also rely on particulars about the company previously filed in respect of another branch in that part of Great Britain, provided that any alterations have been notified to the Registrar.

<input type="checkbox"/>	the particulars about the company were previously delivered in respect of a branch of the company registered at THIS registry.
Registration no.	<input type="text"/>

AND/OR

The company may also rely on constitutional documents and particulars about the company officers previously filed in respect of a former Place of Business of that company, provided that any alterations have been notified to the Registrar.

<input type="checkbox"/>	The Constitutional documents (*and certified translation)
	AND/OR
<input type="checkbox"/>	Particulars of the current directors and secretary(ies)
	were previously delivered in respect of a place of business of the company registered at THIS registry.
Registration no.	<input type="text"/>

NOTE :- In all cases, the registration number of the branch or place of business relied upon must be given.

## PART B - BRANCH DETAILS

### Persons authorised to represent the company or accept service of process

Give details of all persons who are authorised to represent the company as permanent representatives of the company in respect of the business of the branch.

Give details also of all persons resident in Great Britain, who are authorised to accept service or process on the company's behalf.

\* Delete as appropriate

### SCOPE OF AUTHORITY

(This part does not apply to a person only authorised to accept service on behalf of the company)

Give brief particulars of the extent of the powers exercised. (e.g. whether they are limited to powers expressly conferred by the instrument of appointment; or whether they are subject to express limitations.) Where the powers are exercised jointly give the name(s) of the person(s) concerned. You may cross refer to the details of person(s) disclosed elsewhere on the form.

# Mark box(es) as appropriate

\* Style/Title Ms

Forenames Kate Joanna

Surname Robinson

Address ~~76 Brook Street~~ Flat 5, 15 Portman Square

Post town London

County / Region \_\_\_\_\_ Postcode W1H 6LJ

Is # ☒ Authorised to accept service of process on the company's behalf

\*AND/OR

Is # ☒ Authorised to represent the company in relation to that business

The extent of the authority to represent the company is :- (give details)

Not restricted

These powers :-

# ☒ May be exercised alone

OR

# ☐ Must be exercised with :-

(Give name(s) of co-authorised person(s))

**Persons authorised to represent the company or accept service of process**

Give details of all persons who are authorised to represent the company as permanent representatives of the company in respect of the business of the branch.

Give details also of all persons resident in Great Britain, who are authorised to accept service or process on the company's behalf.

\* Delete as appropriate

**SCOPE OF AUTHORITY**

(This part does not apply to a person only authorised to accept service on behalf of the company)

Give brief particulars of the extent of the powers exercised. (e.g. whether they are limited to powers expressly conferred by the instrument of appointment; or whether they are subject to express limitations.) Where the powers are exercised jointly give the name(s) of the person(s) concerned. You may cross refer to the details of person(s) disclosed elsewhere on the form.

# Mark box(es) as appropriate

(You may photocopy this page as required)

\* Style/Title \_\_\_\_\_

Forenames \_\_\_\_\_

Surname \_\_\_\_\_

Address \_\_\_\_\_

Post town \_\_\_\_\_

County / Region \_\_\_\_\_ Postcode \_\_\_\_\_

Is # ☐ Authorised to accept service of process on the company's behalf

\*AND/OR

Is # ☐ Authorised to represent the company in relation to that business

The extent of the authority to represent the company is :- (give details)

These powers :-

# ☐ May be exercised alone

OR

# ☐ Must be exercised with :-

(Give name(s) of co-authorised person(s))

**Address of branch**

(See note 11)

Address 76 Brook Street2nd FloorPost town LondonCounty / Region \_\_\_\_\_ Postcode W1K 5EF**Branch Details**

(See note 12)

Date branch opened  
Day Month Year  

0	3	1	1	2	0	0	3
---	---	---	---	---	---	---	---

Business carried on at branch \_\_\_\_\_

Provision of investment management services.  
\_\_\_\_\_  
\_\_\_\_\_**SIGNATURE**

Signed

N.D. Lodge(\* Director / ~~XXXXX XXXXXXXXXXXXXXXX~~)

Date

10th DECEMBER 2003NICHOLAS DAVID LODGEThis form contains 3 continuation sheets.

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record.

Name Kate Robinson76 Brook Street,  
Address 1st Floor, 40-43 Chancery Lane, LondonPostcode W1K 5EF  
WC2A 1JATelephone 020 7269 4739

Extension \_\_\_\_\_

When completed, this form together with any enclosures should be delivered to the Registrar of Companies at

For branches established in England and Wales

For branches established in Scotland

Companies House  
Crown Way  
Cardiff  
CF14 3UZ

Companies House  
37 Castle Terrace  
Edinburgh  
EH1 2EB



**FORM BR1**

**INTELLECTUAL CAPITAL PARTNERS LIMITED**

**LIST OF OTHER DIRECTORSHIPS**

**Anthony Charles Russell Hannon**

Auckland Bridge Adventures Limited & subsidiaries  
Cantbe Limited  
Eastman Properties Limited  
Endeavour i-cap limited  
IEP nominees limited  
IMP nominees limited  
i-cap equity partners (no. 1) limited  
i-cap mezzanine partners (no. 2) limited  
Kava investments limited  
Northplan Financial Services Group Limited  
Pitchbeam Partners Limited  
QED Software Limited (in receivership & liquidation)  
Rock Isle Finance Limited  
Rodney Wayne Limited & subsidiaries  
Upstart Capital Limited  
4WD Experience NW Limited  
Basin Properties Limited  
Canterbury Limited & certain subsidiaries  
Endeavour Foundation Limited  
ICPbio Limited  
i-cap equity partners limited  
i-cap mezzanine partners (no. 1) limited  
i-cap nominees limited  
Jade Software Corporation Limited  
Next Holdings Limited & subsidiaries  
Oceanic Insurance Limited  
Pitchbeam Properties Limited  
Radius Health Group Limited  
Rock Isle Forestry Limited  
Treble Cone Investments Limited  
Whakatane Theatres Limited

**FORM BR1**

**INTELLECTUAL CAPITAL PARTNERS LIMITED**

**LIST OF OTHER DIRECTORSHIPS**

**Nicholas David Lodge**

Orchid Partners Limited

i-cap mezzanine partners limited

i-cap mezzanine partners (No. 1) limited

i-cap equity partners (No. 1) limited

i-cap equity partners limited

Whakatane Theatres Limited

QED Software Limited (In receivership & liquidation)

Next Holdings Limited

Nextwindow Limited

Canterbury Limited

IMP Nominees Limited

*(All the above are New Zealand Companies)*

Intellectual Capital Partners Limited

*(This is a UK Company)*

**Form BR1 – INTELLECTUAL CAPITAL PARTNERS LIMITED**

**Details of Issued Share Capital:**

**Ordinary shares**

400,000 issued and paid for \$1.00 each

444,445 issued and paid for \$308,008.21 (\$0.6930 each, \$150,000 US\$  
paid for these and was then converted to NZ\$)

3,600,000 issued but unpaid \$1.00 each

**Preference shares**

1,104,495 issued and paid for \$1.00 each

The currency for all shares is New Zealand Dollars.

CONSTITUTION  
OF  
i-cap partners limited  
UNDER THE COMPANIES ACT 1993

I, Anthony Charles Russell Hanna,  
certify that this is a true  
copy of the Constitution of  
i-cap partners limited.

*Attest*

Anthony Charles Russell Hanna.

sworn on oath before me, LUCY  
MARGARET MARY RIDDIFORD, being  
a barrister and solicitor of the  
High Court of New Zealand and  
duly authorised to administer  
oaths in New Zealand.  
L. Riddiford

RuddWatts&Stone

Lucy MM Riddiford  
Solicitor  
Auckland

L A W

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**Constitution of i-cap partners limited  
under the Companies Act 1993**

**PART 1: PRELIMINARY**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 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 Director appointed pursuant to clause 12.8(a).

**"Amalgamation"** means the completed act of the Company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company.

**"Annual Meeting"** means a meeting of Shareholders held pursuant to clause 10.1.

**"A Shareholder"** means David John Teece or any person to whom he transfers all of its Shares pursuant to clause 4.

**"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 as the board of directors of the Company.

**"B Shareholder"** means Nicholas David Lodge or any person to whom he transfers all of his Shares pursuant to clause 4.

**"Chairperson"** means the chairperson of the Board, elected under clause 15.2(a) or appointed under clause 15.2(c).

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

**"Company"** means i-cap partners limited.

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

**"C Shareholder"** means Anthony Charles Russell Hannon or any person to whom he transfers all of his Shares pursuant to clause 4.

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

**"Distribution"** in relation to Shares held by a Shareholder, means:

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

whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means.

**"Dividend"** means a Distribution by the Company other than a Distribution to which section 59 or section 76 of the Act applies.

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

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more Classes of Shares.

For the purposes of this definition:

- (a) one or more Interest Groups may exist in relation to any action or proposal; and
- (b) if :
  - (i) action is taken in relation to some holders of Shares in a Class and not others; or
  - (ii) a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares of that Class,

holders of Shares in the same Class may fall into two or more Interest Groups.

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

**"Major Transaction"** in relation to the Company, means:

- (a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the Company's assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of (whether contingent or not), assets of the Company, the value of which is more than half the value of the Company's assets before the disposition; or
- (c) a transaction which has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half the value of the Company's assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of the Company.

*Handwritten signature and initials*

Nothing in paragraph (c) of this definition applies by reason only of the Company giving, or entering into an agreement to give, a charge secured over assets of the Company the value of which is more than half the value of the Company's assets for the purpose of securing the repayment of money or the performance of an obligation.

**"Managing Director"** means a Director who is appointed under clause 17 as an employee of the Company, with the responsibility for the management of the Company (together with any other employee).

**"month"** means calendar month.

**"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 and other Distributions made by the Company; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company on its liquidation.

**"Redeemable Preference Shares"** means the 500,000 redeemable preference shares issued by the Company having the rights, privileges, limitations and conditions set out in Schedule One in accordance with clause 8.4.

**"Register"** means the register of Shares required by clause 5 of this Constitution and section 87 of the Act to be kept.

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

**"Share"** means a share in the Company and includes Redeemable Preference Shares.

**"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.

**"Shareholders Agreement"** means an agreement entered into between the A Shareholder, the B Shareholder, and the C Shareholder dated on, or proposed to be dated on, or about, the date of this Agreement.

**"Solvency Test"** means an examination to be applied to the financial state of the Company, which will be satisfied if:



- (a) the Company is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the Company's assets is greater than the value of its liabilities, including contingent liabilities and in respect of which regard has been had to the matters referred to in section 4(2) of the Act.

For the purpose of this definition "debts" and "liabilities" have the meanings given to those terms in sections 52(4) or 108(5) of the Act, as applicable.

**"Special Meeting"** means any meeting (other than an Annual Meeting) of Shareholders entitled to vote on an issue, called at any time by the Board or by any other person who is authorised by the Board to call meetings of Shareholders.

**"Special Resolution"** means a resolution of Shareholders approved by (i) the A Shareholder, and (ii) either the B Shareholder or the C Shareholder.

**"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 In this Constitution unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
- (e) **"written"** and **"in writing"** includes any means of reproducing words, figures or symbols in a tangible and visible form; and
- (f) a reference to a clause is to that clause in this Constitution unless stated otherwise.

1.3 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.

1.4 If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same

*Star*  
*Line*

manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.

## 2. **CAPACITY AND POWERS**

2.1 **Rights, powers and duties:** 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, in accordance with the Act, by this Constitution.

### 2.2 **Full capacity and effect of Shareholders Agreement:**

- (a) Subject to this Constitution, the Act, any other enactment and the general law, the Company has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.
- (b) For so long as the parties to the Shareholders Agreement (including any permitted assigns) are Shareholders, and to the extent permitted by law, the Constitution is subject to the provisions of the Shareholders Agreement and in the event of a conflict between the Constitution and the Shareholders Agreement the provisions of the Shareholders Agreement will prevail over those of the Constitution.

## **PART II: SHARES AND DIVIDENDS**

## 3. **ISSUE OF SHARES**

### 3.1 **Initial Shares:**

- (a) As at the date of this Constitution the number of initial Shares and their class, to be issued pursuant to section 41(a) of the Act, are those specified in the application for registration of the Company.
- (b) The consideration for the issue of the initial Shares is \$1.00 for each Share issued. Such consideration is payable in cash forthwith after the initial Shares are issued by the Board.

3.2 **Board may issue Shares:** In addition to any Shares issued pursuant to clause 8.5, the Board may, after first obtaining the approval of the Shareholders by a Special Resolution to do so, issue additional Shares (and rights or options to acquire Shares) of any Class (including redeemable preference Shares) to the existing Shareholders, in a manner and on terms that would, if accepted, maintain the existing voting or distribution rights, or both, of those Shareholders.

### 3.3 **Consideration for issue of Shares:**

- (a) Subject to clause 3.3(b), before the Board issues Shares pursuant to clause 3.2, it must:
  - (i) decide the consideration for which the Shares will be issued and the terms on which they will be issued;
  - (ii) if the Shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue;



- (iii) resolve that, in its opinion, the consideration for the Shares and their terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
  - (iv) if the Shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of that consideration is not less than the amount by which the Shares would be credited as paid up.
- (b) Clauses 3.3(a) and 3.4 do not apply to:
- (i) the issue of Shares that are fully paid up from the reserves of the Company to all Shareholders of the same Class in proportion to the number of Shares held by each such Shareholder; or
  - (ii) the consolidation or subdivision of Shares.
- (c) The consideration for which Shares are issued, or for the payment of Shares already issued, may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the Company.

**3.4 Directors' certificate on consideration for issue:**

- (a) The Directors who vote in favour of a resolution under clause 3.3(a) must sign a certificate:
- (i) stating the consideration for, and the terms of, the issue;
  - (ii) describing the consideration in sufficient detail to identify it;
  - (iii) where a present cash value has been determined in accordance with clause 3.3(a)(ii), stating that value and the basis for assessing it;
  - (iv) stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
  - (v) if the Shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value is not less than the amount to be credited as paid up for the issue of the Shares.
- (b) A copy of the Directors' certificate given under clause 3.4(a) must be filed with the Registrar within 10 Working Days after it is given.

**3.5 Deemed payment other than for cash:** For the purpose of clause 3.3, Shares that are (or are to be) credited as paid up (whether wholly or partly) as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments (whether simultaneously or not), must be treated as paid up other than in cash to the value of the property or services.

**3.6 Amount owing on issue of Shares:** Where money or other consideration is due at a fixed time to the Company on Shares in accordance with their terms of issue, that amount does not comprise a call and no notice is required to be given to the Shareholder (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.

3.7 **Bonus Shares:** The Board may authorise the allotment of Shares, to all Shareholders of the same Class, issued as fully paid up (from the assets of the Company) in proportion to the number of Shares held by each such Shareholder.

3.8 **Consolidation and Subdivision of Shares:** 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. **TRANSFER OF SHARES**

4.1 **Entry in Register:** Subject to clause 4.2, Shares may be transferred by entry of the name of the transferee on the Register.

4.2 **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.

4.3 **Form of transfer**

- (a) The form of transfer may be in the form set out in Schedule One 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.

4.4 **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 holder of the Shares has failed to pay an amount due to the Company in respect of those Shares; or
  - (ii) the provisions of clauses 4.6 to 4.9 and 4.13 dealing with pre-emptive rights have not been fully complied with; or
  - (iii) the Board considers that to effect the transfer would result in a breach of the law; or
  - (iv) clause 6.3 has not been complied with or the form of transfer has not been properly executed or does not comply with clause 4.3.
- (b) A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason 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.

4.5 **Registration of transfer:** Subject to clauses 4.2 and 4.3, 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 4.4 to refuse or delay the registration of the transfer of the Shares.

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4.6 **Pre-emptive rights on transfers:** Except as provided in clauses 4.9 and 4.12, no Shares may be sold or transferred by any Shareholder, liquidator, official assignee or personal representative of any Shareholder, unless and until the rights of pre-emption conferred in this Constitution have been exhausted.

4.7 **Transfer notice**

- (a) Except where the transfer is made pursuant to clauses 4.11 or 4.12, the Shareholder proposing to sell or transfer all its Shares ("Proposing Transferor") must give notice in writing (a "Transfer Notice") to the other Shareholders ("Potential Transferee") stating that the Proposing Transferor desires to transfer the Shares. The Transfer Notice must specify:
  - (i) the Shares proposed to be sold, assigned or transferred;
  - (ii) the Potential Transferee's pro rata portion of such Shares;
  - (iii) the terms of the proposed sale, assignment or transfer; and
  - (iv) the sum which the Proposing Transferor considers to be the value of the Shares.
- (b) A Transfer Notice may only be given for all of the Shares held by the Proposing Transferor, and the Proposing Transferor may not sell or transfer only some of the Shares specified in the Transfer Notice. The Transfer Notice is not revocable without the sanction of the Board in writing. If no value is specified by a Proposing Transferor, the Proposing Transferor will be deemed to want to sell or transfer the Shares at their fair value (determined in accordance with clause 4.8).
- (c) If within one month after being served with a Transfer Notice ("Exercise Period"), the Potential Transferees are willing to purchase all the Shares ("Purchasing Shareholder") and give notice of that fact to the Proposing Transferor, the Proposing Transferor will, be bound upon payment of the sum specified in the Transfer Notice or, as the case may be, at the fair value determined under clause 4.8 (subject to any right which the Company may have under the Constitution or the terms of issue to make a deduction in respect of any lien), to transfer the Shares to the Purchasing Shareholder.
- (d) Each Potential Transferee shall have a right of over allotment with respect to each offer made by a Proposing Transferor. If on the date of the expiration of the Exercise Period, any Shareholder has failed to exercise in full its rights under clause 4.7(c), the Proposing Transferor shall within five days thereafter give written notice to each Purchasing Shareholder who has elected to exercise in full its rights under clause 4.7(c), setting forth the number of Shares remaining available for purchase. Each Shareholder who receives such notice may elect to purchase its pro rata share of each non-purchasing Shareholder's portion, by giving written notice of such election to the Proposing Transferor within 10 Working Days from the date such Shareholder is given notice that such Potential Transferee has rejected or failed to accept its right to purchase its pro rata share of the Shares proposed to be sold by the Proposing Transferor.

4.8 **Determination of fair value by Valuers or Expert**

- (a) If the Proposing Transferor and the Purchasing Shareholders cannot agree on the fair value of the Shares within 10 Working Days of the Transfer Notice or agree that the fair value of the Shares shall be determined pursuant to this

clause, then the Proposing Transferor and the Purchasing Shareholders shall each select an accounting firm ("Valuer") to agree on the fair value of the Shares. If the Valuers cannot agree on the fair value of the Shares within 25 Working Days of the Transfer Notice then they shall agree on a further independent, appropriately qualified person ("Expert") to determine the fair value of the Shares. The Expert shall:

- (i) act as an expert and not as an arbitrator; and
  - (ii) be directed by the Valuers to provide a determination in writing to the parties within 10 Working Days after his or her appointment.
- (b) The agreement of the Valuers or a determination by the Expert as to the fair value of the Shares in accordance with this clause shall be final and binding on the parties and the value specified in the Transfer Notice will be deemed to have been the fair value determined by this clause 4.8. The parties shall make readily available to the Valuers or Expert all relevant information, books and records, financial statements and any work papers relating to the Company.

#### 4.9 Default by Transferor

- (a) If a Proposing Transferor, after becoming bound to transfer the Shares described in the Transfer Notice, defaults in transferring the Shares, any Director may execute a transfer of the Shares on behalf of the Proposing Transferor and the Company may receive the purchase money and cause the name of the Purchasing Shareholder to be entered in the Register as the holder of the Shares.
- (b) The Company will hold the purchase money (subject to any lien in favour of the Company in respect of the Shares) in trust for the Proposing Transferor. The receipt of the purchase money by the Company will be a good discharge to the Purchasing Shareholder.

#### 4.10 Transfer to third party

- (a) Subject to clause 4.7(d) if the Potential Transferee does not, within two months after being served with a Transfer Notice, wish to purchase all the Shares and gives notice to the Proposing Transferor to that effect, the Proposing Transferor may then, at any time within three months thereafter, sell or transfer all the Shares to any person, provided that such person has first signed a binding deed of covenant to the effect that such person, upon registration of the Share transfer, accedes to and becomes bound by the terms and conditions of the Shareholders Agreement and gives the applicable representations and warranties in the Shareholders Agreement.
- (b) The Proposing Transferor may not transfer the Shares at a price lower than the value specified in the Transfer Notice or on terms that are more advantageous to those specified in the Transfer Notice.

#### 4.11 Permitted Transfers

- (a) Shares may be transferred to a wholly owned subsidiary company, or by a wholly owned subsidiary company to a holding company, and the restrictions in clauses 4.6 to 4.9 do not apply to any transfer authorised by this clause.
- (b) Shares may be transferred to a trust in respect of which such Shareholder serves as trustee, provided that the trust instrument governing such trust shall provide that such Shareholder, as trustee, shall retain sole and exclusive

control over the voting and disposition of such Shares until the termination of the Shareholders' Agreement.

(c) Shares may be transferred to the Company.

**4.12 Transfer approved by all Shareholders:** Any Share may be transferred by a Shareholder to any person if the transfer is approved in writing, by all Shareholders. The restrictions in clauses 4.6 to 4.9 do not apply to any transfer authorised by this clause.

**4.13 Change of control**

(a) If any one or more of the following events occur (whether by any one or by a series of transactions completed after the date at which the Shareholder was first entered in the Register):

(i) The transfer of the legal or beneficial ownership of, or of any interest in any shares in the Shareholder which in relation to the Shareholder or any holding company (as the term is defined in section 5 of the Act) of the Shareholder:

(aa) alters the beneficial ownership of 50% or more in nominal value of the shares in the capital of the Shareholder; or

(bb) alters the beneficial ownership of 50% or more of the number of shares in the Shareholder; or

(cc) alters the beneficial ownership of shares in the Shareholder carrying 50% or more of the voting rights at any general meeting of the Shareholder; or

(dd) alters the beneficial ownership of shares in the Shareholder allowing the holder to appoint a director or directors having 50% or more of the voting rights at any directors' meeting; or

(ee) alters the beneficial ownership of shares carrying an entitlement to receive 50% or more of any dividend or distribution declared by the Shareholder; or

(ii) The happening of any event whereby the control of the Shareholder or any holding company (as defined in section 5 of the Act) of the Shareholder is altered,

the Shareholder shall immediately give the Potential Transferee a Transfer Notice pursuant to clause 4.7 in respect of all the Shares held by the Shareholder. If the Shareholder fails to give such notice, any Director may give a notice on its behalf and the provisions of clauses 4.6 to 4.9 shall apply mutatis mutandis to such Transfer Notice.

(b) The obligations imposed on the Shareholders by this clause shall not be capable of being waived by lapse of time, by acquiescence, or by knowledge (whether actual or constructive) of the other Shareholder.

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## 5. SHARE REGISTER

### 5.1 Maintain Register

- (a) The Company must maintain a Register which records all Shares issued by the Company and which states:
  - (i) whether, under this Constitution or the terms of issue of any Shares, there are any restrictions or limitations on their transfer; and
  - (ii) where any document that contains the restrictions or limitations may be inspected.
- (b) The Company may appoint an agent to maintain the Register.

### 5.2 Contents of Register

- (a) The Register must state, with respect to each Class of Shares:
  - (i) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last 10 years, a Shareholder;
  - (ii) the number of Shares held by each Shareholder within the last 10 years; and
  - (iii) the date of any:
    - (aa) issue of Shares to; or
    - (bb) repurchase or redemption of Shares from; or
    - (cc) transfer of Shares by or to,

each Shareholder within the last 10 years; and in relation to the transfer, the name of the person to or from whom the Shares were transferred.

**5.3 Directors' duty to supervise Register:** It is the duty of each Director to take reasonable steps to ensure that the Register is properly kept and that the transferees' names are promptly entered on it in accordance with clause 4.5.

**5.4 Register prima facie evidence:** Subject to section 91 of the Act, the entry of the name of a person in the Register as holder of a Share is prima facie evidence that the legal title to the Share is vested in that person.

**5.5 Register evidence of rights:** The Company may treat the registered holder of a Share as the only person entitled to:

- (a) exercise the right to vote attaching to the Share;
- (b) receive notices in respect of the Share;
- (c) receive a Distribution in respect of the Share; and
- (d) exercise the other rights and powers attaching to the Share.

## 6. SHARE CERTIFICATES

6.1 **Application for Share certificate:** A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares.

### 6.2 Issue of Share certificate

- (a) The Company must, within 20 Working Days after receiving an application for a Share certificate under clause 6.1, 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.

6.3 **Transfer to be accompanied by Share certificate:** Notwithstanding clause 4 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).

6.4 **Surrendered Share certificate:** 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.

## 7. DISTRIBUTIONS

### 7.1 Solvency Test

- (a) Subject to clause 7.2, the Board may, if it is satisfied on reasonable grounds that the Company will satisfy the Solvency Test immediately after the Distribution, authorise a Distribution by the Company to Shareholders of any amount and to any Shareholders as it thinks fit.
- (b) The Directors who vote in favour of a Distribution must sign a certificate stating that, in their opinion, the Company will satisfy the Solvency Test immediately after the Distribution. The grounds for that opinion must also be stated in that certificate.

### 7.2 Dividends payable *pari passu*

- (a) Subject to clause 7.2(b), the Board may not authorise a Dividend:
  - (i) *in respect of some but not all the Shares in a Class; or*
  - (ii) *that is of a greater value per Share in respect of some Shares of a Class than in respect of other Shares of that Class,*

unless the amount of the Dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the Shareholder's liability under this Constitution or under the terms of issue of the Share.

- (b) A Shareholder may waive his or her entitlement to receive a Dividend by giving a notice in writing, signed by or on behalf of the Shareholder, to the Company.

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- (c) If all the Shareholders of the same Class concur in writing in respect of each proposed Dividend, the Company may pay a Dividend which is distributed other than in accordance with clause 7.2(a).

### **PART III: SHAREHOLDERS' RIGHTS AND OBLIGATIONS**

#### **8. SHAREHOLDERS' RIGHTS**

##### **8.1 Issue of statement of rights to Shareholder**

- (a) The Company must issue to any Shareholder, on request, a statement that sets out:
- (i) the Class of Shares held by the Shareholder, the total number of Shares of that Class issued by the Company, and the number of Shares of that Class held by the Shareholder;
  - (ii) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the Shares held by the Shareholder; and
  - (iii) *the relationship of the Shares held by the Shareholder to other Classes of Shares.*
- (b) The Company is not obliged to provide a Shareholder with a statement under clause 8.1(a), if:
- (i) a statement that complies with clauses 8.1(a)(i) to 8.1(a)(iii) has been provided within the previous six months;
  - (ii) the Shareholder has not acquired or disposed of Shares since the previous statement was provided;
  - (iii) the rights attached to the Shares have not been altered since the previous statement was provided; and
  - (iv) there are special circumstances that make it reasonable for the Company to refuse the request.
- (c) A statement issued pursuant to clause 8.1(a) must state in a prominent place that it is not evidence of title to the Shares or of the matters set out in it.

##### **8.2 Alteration of Shareholder's rights**

- (a) The Company must not take action that affects the rights attached to Shares unless that action has been approved by a Special Resolution of each Interest Group.
- (b) For the purposes of clause 8.2(a) the rights attached to a Share include:
- (i) the rights, privileges, limitations, and conditions attached to the Share by the Act or this Constitution, including voting rights and rights to Distributions;
  - (ii) the pre-emptive rights to acquire Shares in accordance with clause 3.2;
  - (iii) the pre-emptive rights existing under clauses 4.6 to 4.9 and 4.13;

- (iv) the right to have the procedure set out in this clause, and any further procedure required by this Constitution for the amendment or alteration of rights, observed by the Company; and
- (v) the right that a procedure required by this Constitution for the amendment or alteration of rights not be amended or altered.
- (c) The taking of action by the Company affecting the rights attached to Shares is not invalid by reason only that the action was not approved in accordance with this clause 8.2.

### **8.3 Shareholders entitled to exercise certain rights**

- (a) The Shareholders who are:
  - (i) entitled to receive Distributions; or
  - (ii) entitled to exercise the pre-emptive rights to acquire Shares in accordance with clause 3.2; or
  - (iii) entitled to exercise the pre-emptive rights existing under clauses 4.6 to 4.9 and 4.13; or
  - (iv) entitled to exercise any other right or receive any other benefit under the Act, this Constitution or pursuant to the terms of issue of Shares,

are those Shareholders of the relevant Class:

- (a) if the Board has fixed a date for the purpose, whose names are registered in the Register on that date; or
- (b) if the Board does not fix a date for the purpose, whose names are registered in the Register on the day on which the Board or the Shareholders, as the case may be, pass the resolution concerned.
- (c) a date must not be fixed under clause 8.3(a) that precedes by more than 20 Working Days the date on which the proposed action will be taken.

### **8.4 Terms of Redeemable Preference Shares**

- (a) The Redeemable Preference Shares have the rights, privileges, limitations and conditions specified in Schedule One and nothing in clause 8.2(b)(ii) shall apply to the Redeemable Preference Shares. Notwithstanding anything in this Constitution to the contrary, to the extent of any conflict between the rights, privileges, limitations and conditions specified in the Schedule One and this Constitution, Schedule One shall prevail.

### **8.5 Issue of Additional Redeemable Preference Shares**

- (a) The Board may issue up to 500,000 additional redeemable preference Shares in the Company ("Additional Redeemable Preference Shares") to A Shareholder at an issue price of \$1.00 per share, each Additional Redeemable Preference Share shall be issued having identical rights, privileges, limitations and conditions as are set out in Schedule One.

## 9. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

### 9.1 Powers reserved to Shareholders

- (a) Powers reserved to Shareholders by the Act or by this Constitution may be exercised:
  - (i) at an Annual Meeting or a Special Meeting; or
  - (ii) by a resolution in lieu of a meeting pursuant to clause 10.3.
- (b) Unless otherwise specified in the Act or this Constitution, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

### 9.2 **Special Resolutions:** When Shareholders exercise a power to approve any of the following, that power may only be exercised by a Special Resolution:

- (a) an alteration to or revocation of this Constitution or the adoption of a new Constitution;
- (b) a Major Transaction;
- (c) an Amalgamation;
- (d) the liquidation of the Company.

Any decision made by Special Resolution pursuant to this clause may be rescinded only by a Special Resolution, provided that a resolution to put the Company into liquidation cannot be rescinded.

### 9.3 **Special Resolution required for certain types of action:** Notwithstanding anything to the contrary in this Constitution, decisions on the following matters shall require the prior agreement of the Shareholders by Special Resolution:

- (a) the sale of the business or any material part of the business of the Company or any material change in the nature of the business of the Company;
- (b) entering into or amending a material contract, commitment, agreement or undertaking of the Company, including without limitation any licence or distribution agreement;
- (c) any contracts between the Company and any member of the Board of the Company or any company associated with any member of that Board;
- (d) any instigation, defence or settlement of litigation involving the Company;
- (e) the appointment of any directors to the board of any subsidiary of the Company;
- (f) the appointment of the auditors of the Company; and
- (g) the change of name of the Company.

#### 9.4 Management review by Shareholders

- (a) A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders.
- (b) A meeting of Shareholders may pass a resolution relating to the management of the Company.
- (c) Notwithstanding section 128 of the Act or any other clause of this Constitution, a resolution relating to the management of the Company passed at a meeting of Shareholders (in accordance with clause 9.4(b)) is not binding on the Board.

#### 9.5 Shareholder proposals

- (a) A Shareholder may give written notice to the Board of a matter the Shareholder *proposes to raise for discussion or resolution at the next meeting of Shareholders* at which the Shareholder is entitled to vote.
- (b) If the notice is received by the Board not less than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must (at the expense of the Company) give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- (c) If the notice is received by the Board not less than five Working Days and not more than 20 Working Days before the last day on which notice of the relevant *meeting of Shareholders is required to be given by the Board*, the Board must (at the expense of the Shareholder) give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- (d) If the notice is received by the Board less than five Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable and (at the expense of the Shareholder) give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- (e) If the Directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.
- (f) The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous, or vexatious.
- (g) Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must (on giving notice to the Board) deposit with the Company or tender to the Company a sum sufficient to meet those costs.

## 10. MEETINGS OF SHAREHOLDERS

### 10.1 Annual Meeting

- (a) The Board must, in accordance with section 120 of the Act, call an Annual Meeting of Shareholders to be held:
  - (i) not later than six months after the Balance Date of the Company; and
  - (ii) 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.

### 10.2 Special Meetings: A Special Meeting:

- (a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting; 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.

### 10.3 Resolution in lieu of meeting

- (a) Subject to clause 10.3(b), a resolution in writing signed by all the Shareholders is as valid as if it had been passed at a meeting of those Shareholders.
- (b) For the purposes of clause 10.3(a), any such resolution may consist of one or more documents in similar form (including letter, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Shareholders entitled to vote on the resolution.

### 10.4 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.

### 10.5 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 10.5(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.

#### **10.6 Notice of meeting**

- (a) 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.

#### **10.7 Contents of notice**

- (a) The notice referred to in clause 10.6 must state:
  - (i) 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;
  - (ii) the text of any special resolution to be submitted to the meeting.

#### **10.8 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 invalidates the proceedings at that meeting.

#### **10.9 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.

#### **10.10 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.



## 11. VOTING AT MEETINGS

### 11.1 Quorum

- (a) A quorum for a meeting of Shareholders is present if both the A Shareholder and either the B Shareholder or the C Shareholder, or their proxies, are present.
- (b) Subject to clause 11.1.(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 10.2(b), the meeting is dissolved; and
  - (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 decide 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 present will constitute a quorum. All Shareholders must be notified of the date, time and place of an adjourned meeting.

### 11.2 Voting

- (a) In the case of a meeting of Shareholders held under clause 10.9.(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 10.9(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 11.2(d).
- (d) At a meeting of Shareholders, a poll may be demanded by:
  - (i) a Shareholder having the right to vote at the meeting; or
  - (ii) the chairperson of the meeting.
- (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.

### 11.3 Proxies and representatives

- (a) A Shareholder may exercise the right to vote either by being present or by proxy.
- (b) 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.
- (c) 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.
- (d) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- (e) 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.

11.4 **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.

11.5 **Meetings of Interest Groups:** The provisions of clauses 10 and 11 shall, with such consequential amendments as may be necessary, govern the proceedings of any meeting of an Interest Group.

11.6 **Other proceedings:** Except as provided in this Constitution the Shareholders may regulate their own procedure.

## PART IV: THE BOARD

### 12. APPOINTMENT AND REMOVAL

12.1 **Number of Directors:** Subject to clause 15.10, the number of Directors shall be five.

#### 12.2 Directors

- (a) Upon registration of the Company under the Act the Directors are the persons named as the Directors in the application for registration of the Company.
- (b) For the purposes of clause 12.3 each Director named in the application for registration is deemed to have been appointed in accordance with clause 12.3 by the Shareholder determined as follows:
  - (i) David John Teece, by the A Shareholder;
  - (ii) Nicholas David Lodge, by the B Shareholder; and
  - (iii) Anthony Charles Russell Hannon, by the C Shareholder.

### 12.3 Entitlement to appoint and remove Directors

- (a) The A Shareholder shall be entitled to appoint up to three Directors and shall be exclusively entitled to remove any Directors so appointed.
- (b) The B Shareholder shall be entitled to appoint one Director and shall be exclusively entitled to remove any Director so appointed.
- (c) The C Shareholder shall be entitled to appoint one Director and shall be exclusively entitled to remove any Director so appointed.

### 12.4 Appointment and removal by notice

- (a) Subject to clause 12.2, a person may be appointed a Director by a notice in writing signed by the Shareholder entitled by clause 12.3 to appoint that person as a Director and who has not resigned or been removed or disqualified from office under this Constitution.
- (b) A Director may be removed from office at any time by a notice in writing signed by the Shareholder entitled by clause 12.3 to remove that person as a Director.
- (c) A notice given under clause 12.4(a) or 12.4(b) takes effect upon receipt of it at the registered office of the Company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect.
- (d) A Director holds office until his or her resignation, disqualification or removal in accordance with this Constitution.

### 12.5 Disqualification and removal

- (a) A person will be disqualified from holding the office of Director if he or she:
  - (i) is removed under clause 12.4; or
  - (ii) resigns in writing under clause 12.6 and is not reappointed in accordance with this Constitution; or
  - (iii) becomes disqualified from being a director pursuant to section 151 of the Act; or
  - (iv) is prohibited from being a director or promoter of or being concerned with or taking part in the management of a company under sections 382, 383 or 385 of the Act; or
  - (v) dies; or
  - (vi) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
  - (vii) is under 18 years of age; or
  - (viii) is an undischarged bankrupt; or
  - (ix) is prohibited by the Companies Act 1955 from being a director or would be so prohibited but for the repeal of that statute.

### 12.6 Resignation: A Director may resign office by signing a written notice of resignation and delivering it to the Company. The notice takes effect upon the later of the receipt

of it at the registered office of the Company (including receipt of a facsimile copy) and any later time specified in the notice.

**12.7 Shareholding qualification:** A Director is not required to hold Shares.

#### **12.8 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.
- (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 and signing Board resolutions) of the appointing Director. The Alternate Director is subject in all respects to the same terms and provisions as the appointing Director, except as regards remuneration and except as regards 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.
- (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.

### **13. INDEMNITY AND INSURANCE**

#### **13.1 Indemnity of Directors and employees**

- (a) The Board shall 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 shall 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.

### 13.2 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 that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.
- (b) The Directors who vote in favour of authorising the effecting of insurance under clause 13.2(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.

13.3 **Definitions:** For the purpose of this clause 13, "Director" includes a former Director and "employee" includes a former employee.

## 14. POWERS AND DUTIES OF THE BOARD

### 14.1 Powers of the Board

- (a) Subject to clause 14.1(b) and any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- (b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the Shareholders or any other person.

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## 14.2 Delegation by Board

- (a) The Board may delegate to a committee of Directors, a Director, an employee of the Company, or any other person any one or more of its powers, other than the powers referred to in the following sections of the Act:
- (i) section 23(1)(c) (change of company name);
  - (ii) section 42 (issue of other shares);
  - (iii) section 44 (shareholder approval for the issue of shares);
  - (iv) section 47 (consideration for the issue of shares);
  - (v) section 52 (distributions);
  - (vi) section 54 (shares in lieu of dividends);
  - (vii) section 55 (shareholder discounts);
  - (viii) section 60 (offers to acquire shares);
  - (ix) section 61 (special offers to acquire shares);
  - (x) section 63 (stock exchange acquisitions subject to prior notice to shareholders);
  - (xi) section 65 (stock exchange acquisitions not subject to prior notice to shareholders);
  - (xii) section 69 (redemption of shares at the option of the company);
  - (xiii) section 71 (special redemptions of shares);
  - (xiv) section 76 (provision of financial assistance);
  - (xv) section 78 (special financial assistance);
  - (xvi) section 80 (financial assistance not exceeding 5% of shareholders' funds);
  - (xvii) section 84(4) (transfer of shares);
  - (xviii) section 187 (change of registered office);
  - (xix) section 193 (change of address for service);
  - (xx) section 221 (manner of approving an amalgamation proposal); and
  - (xxi) section 222 (short form amalgamations).
- (b) The Board is responsible for the exercise of a power by any delegate (where that power is delegated under this clause 14.2) as if the power had been exercised by the Board, unless the Board:
- (i) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the Directors by the Act and this Constitution; and

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- (ii) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.
- (c) The proceedings of meetings of any committee formed pursuant to clause 14.2(a) shall be in accordance with the provisions of clause 15, with such consequential amendments as may be necessary and any other rules that may be imposed on it by the Board.

#### 14.3 Directors to act in good faith

- (a) Subject to this clause 14.3, a Director, when exercising powers or performing duties, must act in good faith and in what the Director believes to be the best interests of the Company.
- (b) For so long as the Company is carrying out a joint venture between its Shareholders, a Director may, when exercising powers or performing duties as a Director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a Shareholder or Shareholders, even though it may not be in the best interests of the Company.
- (c) Nothing in this clause 14.3 limits the power of a Director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.

#### 14.4 Major Transactions

- (a) The Board may not procure or permit the Company to enter into a Major Transaction unless the transaction is:
  - (i) approved by a Special Resolution; or
  - (ii) made contingent on approval by a Special Resolution.

### 15. PROCEEDINGS OF THE BOARD

15.1 **Third Schedule:** The provisions of the third schedule to the Act are deleted and replaced by this clause 15.

#### 15.2 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.

#### 15.3 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 15.3.

- (b) Not less than two 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 giving of a notice of a meeting or an irregularity in the notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- (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 12.8(g)) be given to the Alternate Director.

#### 15.4 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 15.4.(a)(ii), at the commencement of the meeting each Director participating must acknowledge his or her presence to all the Directors participating. 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.

#### 15.5 Quorum

- (a) A quorum for a meeting of the Board is two Directors, provided one Director appointed by the A Shareholder and either one Director appointed by the B Shareholder or one Director appointed by the C Shareholder is present.
- (b) No business may be transacted at a meeting of Directors if a quorum is not present.
- (c) In accordance with clause 12.8, an Alternate Director present at a meeting may be included for the purpose of establishing a quorum.
- (d) If a quorum is not present within 30 minutes after the time appointed for the 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 present may decide 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 Directors present will constitute a quorum. All Directors must be notified of the date, time and place of an adjourned meeting.



## 15.6 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 on it by the Directors are in favour of it.
- (d) *Notwithstanding anything to the contrary in this Constitution, decisions on the following matters shall require the vote of the majority of the Directors appointed by the A Shareholder:*
  - (i) any increase, reduction, consolidation, subdivision, acquisition or cancellation of, or variation of the rights attaching to, any of the shares in the Company;
  - (ii) the issue of any shares, convertible securities, or options in the Company;
  - (iii) any alteration to the Constitution of the Company;
  - (iv) the liquidation of the Company;
  - (v) any merger or amalgamation or court sanction arrangement or compromise in respect of the Company;
  - (vi) the entry by the Company into any Major Transaction (as defined in the Companies Act 1993);
  - (vii) increase the compensation of any executive officer of the Company;
  - (viii) grant or issue any shares, share options or other equity incentive to any officer or employee or director of, or consultant or other service provider to, the Company;
  - (ix) adopt any share option or other equity incentive plan;
  - (x) borrow or raise any money or enter into any arrangement for the provision of financial accommodation to the Company;
  - (xi) grant any guarantee or indemnity of any nature;
  - (xii) grant to any person a charge or other security over any of the assets or undertaking of the Company;
  - (xiii) make any loan or advance to, or own any shares or other securities of, any subsidiary or other company, partnership, or other entity unless it is wholly owned by the Company;
  - (xiv) make any loan or advance to any individual, including, without limitation, any employee or director of the Company, except advances and similar expenditures in the ordinary course of business; or
  - (xv) make any investment, through the direct or indirect holding of securities or otherwise;

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- (xvi) the payment of directors' fees;
  - (xvii) the dividend policy of the Company; annual financial statements and the annual operating plan and budget of the Company;
  - (xviii) any material changes to the approved operating plan or budget of the Company;
  - (xix) entering any share transfers in the share register of the Company; and
  - (xx) the terms of employment or engagement of, and fixing and increasing or decreasing of any remuneration payable to, and the termination of any contract of employment or contract for services of, the senior management of the Company (and any interested directors shall not be entitled to vote on a resolution pursuant to this clause 15.6(d)(xx));
- (e) 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.
  - (f) 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.
  - (g) An Alternate Director may attend and vote at meetings of the Board in accordance with and subject to clause 12.8 if the Director that has appointed the Alternate Director is absent from the meeting.

#### 15.7 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 of the Board which have been signed correct by the Chairperson are prima facie evidence of the proceedings.

#### 15.8 Unanimous resolution

- (a) A resolution in writing, signed or assented to by all Directors, 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.

#### 15.9 Other proceedings

- (a) Except as provided in this clause 15 the Board may regulate its own procedure.

**15.10 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 number of Directors,

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the continuing Directors will comprise the Board only for the purpose of summoning a Special Meeting.

## 16. INTERESTED DIRECTORS

### 16.1 Authority to remunerate Directors

(a) The Board may 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 clauses (i) to (iii) (inclusive) of this clause 16.1(a),

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

- (b) The payment of remuneration (or the giving of any other benefit) to a Director in accordance with a contract authorised pursuant to clause 16.1(a) need not be separately authorised by the Board.
- (c) The Board must ensure that forthwith after authorising any payment, loan, guarantee, or contract under clause 16.1(a), particulars are entered in the Interests Register.
- (d) The Directors who vote in favour of authorising a payment, loan, guarantee or contract under clause 16.1(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.

### 16.2 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 16.3, 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.

### 16.3 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 16.3(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 16.3(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. MANAGING DIRECTORS

### 17.1 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.

- 17.2 **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.

## PART V: ADMINISTRATION AND MISCELLANEOUS

### 18. AUTHORITY TO BIND

#### 18.1 Method of Contracting

- (a) A contract or other enforceable obligation may be entered into by the Company as follows:
  - (i) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
    - (aa) two or more Directors of the Company;
    - (bb) one or more attorneys appointed by the Company in accordance with clause 18.2;
  - (ii) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
  - (iii) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.
- (b) A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the Company shall be proof of such authority notwithstanding that the authority may have been subsequently revoked.

#### 18.2 Attorneys

- (a) The Company may, by an instrument in writing executed in accordance with clause 18.1(a)(i), appoint a person as its attorney either generally or in relation to a specified matter or matters.

An act of the attorney in accordance with the instrument binds the Company.

### 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).

### 19.3 Removal from New Zealand register

- (a) Subject to sections 318 and 320 of the Act, a Director, who has been authorised by the Board to do so, may request the Registrar to remove the Company from the New Zealand register on the grounds that:
- (i) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
  - (ii) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation.
- (b) For the purposes of clause 19.3(a)(i) the Company shall have distributed its surplus assets in accordance with this Constitution if the Company does so in accordance with clause 19.2(b) except that no liquidator needs to be appointed and references to the liquidator in that clause shall be construed as references to the Shareholders acting by an Ordinary Resolution.

This document comprising pages numbered from 1 to 34 is certified as the Constitution of i-cap partners limited.

Dated this 18th day of February 2000

  
C.M.K.

## SCHEDULE ONE

### RIGHTS ATTACHED TO REDEEMABLE PREFERENCE SHARES

1. The rights, privileges, limitations and conditions that are attached to the Redeemable Preference Shares are as follows:
  - 1.1 The holders of Redeemable Preference Shares are entitled to receive out of the profits of the Company in priority to the holders of any other class of shares in any financial year of the Company, a preferential dividend to be paid by the Company from time to time on the Redeemable Preference Shares, provided that the total amount of dividends paid on any Redeemable Preference Share for the financial year or years of the Company:
    - (a) ending December 31 2000 shall be a pro-rata preferential dividend which shall be calculated by multiplying 12.5 percent of the issue price of that share by the quotient of the number of days between the date hereof and December 31 2000 divided by 366;
    - (b) ending December 31 2001, and December 31 2002 shall be 12.5 percent of the issue price of that share; and
    - (c) ending December 31 2003 and thereafter shall be 15 percent of the issue price of that share

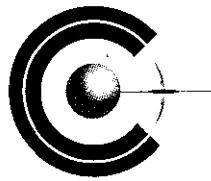
Any dividend payable to holders of Redeemable Preference Shares is payable on the last business day of December in each year. The entitlement of the holders of Redeemable Preference Shares to dividends shall cease on the redemption or repurchase of the Redeemable Preference Shares by the Company.

- 1.2 Notwithstanding anything in paragraph 1.1, no dividend shall be paid on the Redeemable Preference Shares in respect of a financial year unless the solvency test set forth in Section 4 of the Act is satisfied. Further the Company may elect not to pay a dividend to the extent that the Company does not have sufficient imputation credits available to fully impute the dividend. For the purposes of this paragraph, to fully impute a dividend the Company must attach the maximum amount of imputation credits permitted by section ME8 of the Income Tax Act 1994.
- 1.3 To the extent that a dividend is not paid to holders of Redeemable Preference Shares in accordance with paragraph 1.1, the dividend shall continue to accrue until it is paid to the holder of Redeemable Preference Shares.
- 1.4 For the purposes of this Schedule other than paragraph 1.2, the amount of a dividend paid in respect of a Redeemable Preference Share includes any supplementary dividend (as defined in section OB 1 of the Income Tax Act) paid to the holder of that Redeemable Preference Share.
- 1.5 On redemption or repurchase of the Redeemable Preference Shares or on liquidation of the Company, the holders of those Redeemable Preference Shares shall each be entitled to repayment of \$1.00 per share (being the \$1.00 capital paid up) ("Preferential Amount") in priority to any payment being made to holders of the ordinary shares in the capital of the Company. Before redemption or repurchase of any Redeemable Preference Shares any accrued but unpaid dividend shall be paid. The Preferential Amount shall be subject to equitable adjustment whenever there shall occur a share dividend, share split, combination of shares or other similar event with

respect to the Redeemable Preference Shares. All the Redeemable Preference Shares rank equally amongst themselves.

- 1.6 Subject to the provisions of sections 69, 70 and 71 of the Act, any or all of the Redeemable Preference Shares shall be redeemed no later than seven days after the Company gives notice in writing to the holders that it requires the Redeemable Preference Shares to be redeemed.
- 1.7 On redemption each holder of Redeemable Preference Shares is bound to surrender the certificate for the shares to be redeemed to the Company and the Company will pay the holder the amount payable in respect of such redemption, and where any certificate comprises any Redeemable Preference Shares which have not been redeemed the Company shall issue a fresh certificate to the holder.
- 1.8 If a holder of Redeemable Preference Shares fails to surrender a certificate on redemption, this will not prejudice or affect the redemption but the amount payable to that holder upon redemption will immediately be paid by the Company into a bank account established for the purpose of holding such moneys and be held by the Company in trust for that holder and paid after the certificate (or, if it has been lost or misplaced, satisfactory evidence of that fact and an indemnity and release in favour of the Company in respect of the lost certificate) is delivered to the Company, and payment of such moneys into such bank account will constitute redemption.
- 1.9 Except for payment of dividends to holders of Redeemable Preference Shares pursuant to paragraph 1.1, if money owed by the Company to any holder of Redeemable Preference Shares is not paid on the due date, the money will bear interest at the rate which is 5 percent above the New Zealand 90 day bank bill rate prevailing on the date of default computed on a daily basis from and including the due date and up to and including the date of actual payment.
- 1.10 The Redeemable Preference Shares do not confer on holders any right to participate in the profits or assets of the Company other than as set out in the above paragraphs 1.1 to 1.9 or to participate with the holders of the ordinary Shares in any cash issues, debentures, convertible notes or other securities of the Company offered to holders of any other class of Shares.
- 1.11 The Redeemable Preference Shares shall confer on the holders the right to receive notice of or to attend annual or special meetings of Shareholders, but shall not confer on holders the right to vote at meetings of Shareholders of the Company except where dividends or other moneys owing in respect of the Redeemable Preference Shares are in arrears and only on any resolution for the purpose of liquidation of the Company or to sanction the sale of its undertaking or on any question directly affecting any rights, privileges, limitations and conditions attached to the Redeemable Preference Shares. Where holders are entitled to vote, each Redeemable Preference Share shall confer one vote on the holder.
- 1.12 No Shares ranking equally with or in priority to the Redeemable Preference Shares shall be issued unless the issue and the terms of that issue are approved in writing by the holders of not less than 75 percent in number of the Redeemable Preference Shares.
- 1.13 A holder of Redeemable Preference Shares may transfer in whole or in part those Redeemable Preference Shares at any time to whoever the holder chooses and the Board must not refuse to register a transfer of any of those Redeemable Preference Shares.





COMPANIES  
NEW ZEALAND  
OFFICE

# CERTIFICATE OF INCORPORATION

**INTELLECTUAL CAPITAL PARTNERS LIMITED**  
**(1011878)**

This is to certify that **I-CAP PARTNERS LIMITED** was incorporated under the Companies Act 1993 on the 18th day of February 2000 and changed its name to **INTELLECTUAL CAPITAL PARTNERS LIMITED** on the 16th day of October 2003.



*Neville Harris*

Neville Harris  
Registrar of Companies  
Dated this 3rd day of May 2004

I-CAP PARTNERS LIMITED

ANNUAL REPORT FOR THE  
YEAR ENDED 30 JUNE 2003

SEPTEMBER 2003

i CAP



I certify that the information contained  
in this extract is a true and correct  
copy of information taken from  
the Companies Office electronic  
database on 18 May 2004

Assistant Registrar of Companies



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COMPANIES HOUSE

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18/05/04

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- 3. Financial Statements
- 7. Statement of Accounting Policies
- 10. Notes to the Financial Statements
- 17. Auditors' Report
- 18. Directory



## DIRECTORS' REPORT

In accordance with the Companies Act 1993 the Directors present the consolidated annual report including the attached financial statements of the Group and Company for the year ended 30 June 2003.

### Activities

i-cap partners limited is a private equity firm.

### Results

	Group		Parent	
	2003 (12 mths)	2002 (15 mths)	2003 (12 mths)	2002 (15 mths)
\$000s				
Net tax paid surplus for the period	542	1,118	562	1,126
Total equity	3,074	2,532	3,083	2,521
Total assets	8,420	7,980	8,168	7,731

### Shareholder's resolution

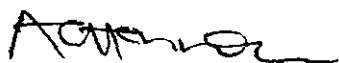
In accordance with section 211(3) of the Companies Act 1993, the shareholders have passed a unanimous resolution that the annual report of the Company include only the signed financial statements for the accounting period completed and an auditors' report.

### Auditors

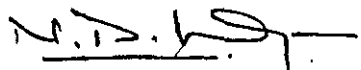
In accordance with section 196 (1) of the Companies Act 1993, the shareholders have passed a resolution to re-appoint PricewaterhouseCoopers as auditors of the Company.

The Board of Directors of i-cap partners limited authorised these financial statements for issue on 30 September 2003.

For an on behalf of the Board



ACR Hannon  
Director



N D Lodge  
Director

30 September 2003



# FINANCIAL STATEMENTS

## Statement of financial performance for the year ended 30 June 2003

	Note	Group		Parent	
		2003 (12 mths)	2002 (15 mths)	2003 (12 mths)	2002 (15 mths)
<b>\$000s</b>					
Operating revenue	1	2,665	3,439	2,634	3,397
Operating expenses	2	(2,159)	(2,285)	(2,108)	(2,235)
Operating surplus before income tax		506	1,154	526	1,162
Income tax	3	36	(36)	36	(36)
Net surplus attributable to parent shareholders		542	1,118	562	1,126

## Statement of movements in equity for the year ended 30 June 2003

	Group		Parent	
	2003 (12 mths)	2002 (15 mths)	2003 (12 mths)	2002 (15 mths)
<b>\$000s</b>				
Net surplus for the year	542	1,118	562	1,126
Total recognised revenues and expenses	542	1,118	562	1,126
Issue expenses	-	(2)	-	(2)
Increase in paid in capital	-	913	-	913
	-	911	-	911
Equity at 1 July 2002	2,532	503	2,521	484
Parent shareholders' interest at 30 June 2003	3,074	2,532	3,083	2,521



Statement of financial position as at 30 June 2003

\$000s	Note	Group		Parent	
		2003	2002	2003	2002
<b>Equity</b>					
Share capital	4	1,813	1,813	1,813	1,813
Reserves	5	200	200	200	200
Retained earnings	6	1,061	519	1,070	508
<b>Total equity</b>		<b>3,074</b>	<b>2,532</b>	<b>3,083</b>	<b>2,521</b>
<b>Represented by:</b>					
<b>Assets</b>					
Cash and bank balances		243	1,049	239	1,023
Accounts receivable	7	1,288	1,123	1,210	1,077
Receivable from related parties		713	226	741	234
Receivable from directors		125	3	125	3
Investments	8	3,831	4,136	3,312	3,636
Investments in subsidiaries	9	-	-	321	315
Property, plant and equipment	10	225	256	225	256
Intangible assets	11	1,995	1,187	1,995	1,187
<b>Total assets</b>		<b>8,420</b>	<b>7,980</b>	<b>8,168</b>	<b>7,731</b>
<b>Liabilities</b>					
Payables	12	799	468	732	430
Debenture stock	13	194	200	-	-
Borrowings	14	4,353	4,780	4,353	4,780
<b>Total liabilities</b>		<b>5,346</b>	<b>5,448</b>	<b>5,085</b>	<b>5,210</b>
<b>Net assets</b>		<b>3,074</b>	<b>2,532</b>	<b>3,083</b>	<b>2,521</b>

The Board of Directors of i-cap partners limited authorised these financial statements for issue on 30 September 2003.

*ACR Hannon*

ACR Hannon  
Director

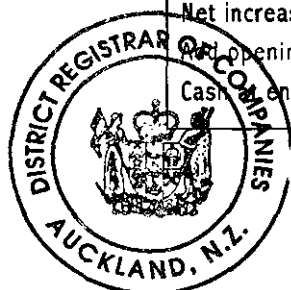
*N.D. Lodge*

N D Lodge  
Director



Statement of cash flows for the year ended 30 June 2003

	Group		Parent	
	2003 (12 mths)	2002 (15 mths)	2003 (12 mths)	2002 (15 mths)
<b>\$000s</b>				
<b>Cash from operating activities</b>				
Cash was provided from				
Receipts from customers	1,977	1,266	1,977	1,360
Interest received	100	165	100	115
Taxation refund	-	9	-	9
	2,077	1,440	2,077	1,484
Cash was applied to				
Payments to suppliers	(857)	(1,006)	(834)	(1,012)
Taxation paid	-	(4)	-	(4)
Interest paid	(163)	(451)	(163)	(414)
	(1,020)	(1,461)	(997)	(1,430)
<b>Net cash inflows from operating activities</b>	<b>1,057</b>	<b>(21)</b>	<b>1,080</b>	<b>54</b>
<b>Cash from investing activities</b>				
Cash was provided from				
Repayment of investments	75	45	81	45
Sale of plant and equipment	-	2	-	2
Advances from related parties	100	-	100	-
	175	47	181	47
Cash was applied to				
Purchase of investments	(130)	(1,625)	(117)	(1,625)
Advances to related parties and directors	(609)	(150)	(629)	(153)
Purchase of property, plant and equipment	(29)	(12)	(29)	(12)
Acquisition of management fee rights	(843)	(907)	(843)	(907)
	(1,611)	(2,694)	(1,618)	(2,697)
<b>Net cash inflows from investment activities</b>	<b>(1,436)</b>	<b>(2,647)</b>	<b>(1,437)</b>	<b>(2,650)</b>
<b>Cash from financing activities</b>				
Cash was provided from				
Issue of capital	-	913	-	913
Borrowings raised	-	1,702	-	1,702
	-	2,615	-	2,615
Cash was applied to				
Issue expenses	-	(2)	-	(2)
Repayment of borrowings	(427)	-	(427)	-
	(427)	(2)	(427)	(2)
<b>Net cash inflows from financing activities</b>	<b>(427)</b>	<b>2,613</b>	<b>(427)</b>	<b>2,613</b>
<b>Net increase/(decrease) in cash held</b>	<b>(806)</b>	<b>(55)</b>	<b>(784)</b>	<b>17</b>
At opening cash brought forward	1,049	1,104	1,023	1,006
Cash at end of year	243	1,049	239	1,023



Statement of cash flows for the year ended 30 June 2003 (continued)

\$000s	Group		Parent	
	2003 (12 mths)	2002 (15 mths)	2003 (12 mths)	2002 (15 mths)
Reconciliation with operating surplus				
Net surplus after tax	542	1,118	562	1,126
Items not involving cash flows				
Plus depreciation	60	63	60	63
Plus intangible asset amortised	35	44	35	44
Plus provision for loss on investments	145	100	145	100
Plus investments written off as irrecoverable	237	-	237	-
Less interest capitalised	(50)	-	(50)	-
Less realised gain on sale of investment	-	(651)	-	(651)
	427	(444)	427	(444)
Impact of changes in working capital items				
(Increase) in interest receivable	(184)	(1)	(54)	(8)
Decrease/(increase) in accounts receivable	24	(950)	(74)	(857)
Increase/(decrease) in interest payable	208	(37)	180	(54)
(Increase)/decrease in GST	112	121	112	121
Increase/(decrease) in operating accounts payable	(39)	130	(40)	129
Increase/(decrease) in tax payable	(33)	42	(33)	41
	88	(695)	91	(628)
Net cash flow from operating activities	1,057	(21)	1,080	(54)





# STATEMENT OF ACCOUNTING POLICIES

## *Accounting policies*

The financial statements are prepared in accordance with New Zealand generally accepted accounting practice. The accounting policies that materially affect the measurement of financial performance, financial position and cash flows are set out below.

## *Group financial statements*

The group financial statements consolidate the financial statements of subsidiaries, using the purchase method. Subsidiaries are entities that are controlled, either directly or indirectly, by the Parent.

All material transactions between subsidiaries or between the Parent and subsidiary are eliminated on consolidation.

## *General accounting policies*

The general accounting policies recognised as appropriate for the measurement and reporting of results, cash flows and financial position, under the historical cost method, have been followed in the preparation of these financial statements.

## *Differential reporting*

The entity qualifies for differential reporting because it is not publicly accountable and is not considered large according to the Differential Reporting Framework.

The entity has taken advantage of all differential reporting exemptions, except for including a Statement of Cash Flows, reporting exclusive of GST and disclosing imputation credits.

## *Particular accounting policies*

The following particular accounting policies, which materially affect the measurement of results, cash flows and financial position, have been applied.

## *Revenue*

Revenue shown in the Statement of Financial Performance comprises the amounts received and receivable by the Company arising from interest earned on advances made to investee companies and for services provided to customers in the ordinary course of business.

## *Taxation*

The taxation charge against the surplus for the year is the estimated liability in respect of that surplus after adjusting for permanent differences between accounting and tax rules.

## *Accounts receivable*

Accounts receivable are stated at estimated realisable value, after due allowance for amounts which are not considered recoverable.



### *Investments*

Investments are carried at the lower of cost and estimated net recoverable value.

### *Impaired assets*

Impaired assets consist of non-accrual assets and restructured assets. Non-accrual assets are any assets where there is a significant doubt about the collectability of the amounts owing and that income is no longer accruing. Restructured assets are any assets where the original terms have been changed due to the counterparty's difficulty in complying with the original terms of the contract and the amended terms are not comparable with similar new lending.

Provision is made against impaired assets where the full recovery of principal and interest is not considered probable. Specific provisions are identified by reviewing each counterparty exposure and associated risk of loss. Interest on these assets is accounted for on a cash basis.

### *Financial instruments*

The Company does not enter into any derivatives or other off balance sheet financial instruments.

### *Foreign currencies*

Foreign currency transactions are translated at the exchange rates ruling at the dates of the transactions. Amounts receivables and payable in foreign currencies at balance date are translated at the exchange rate at that date. Exchange differences arising on the transaction are recognised in the Statement of Financial Performance.

### *Depreciation*

Depreciation is calculated at the maximum rates approved for taxation purposes. The rates approximate writing off plant, property and equipment over their useful lives.

### *Intangible assets*

Intangible assets are amortised over the period during which benefits are expected to be received, being the shorter of their estimated useful life or ten years.

### *Statement of cash flows*

The following are the definitions of the terms used in the statement of cash flows:

- a Cash means cash on deposit with banks and bank overdraft.
- b Investing activities are those which relate to the acquisition, holding and disposal of investments.
- c Financing activities are those which result in changes in the equity and debt capital structure of the Company and the payments of dividends.

Operating activities include all transactions and other events that are not investing or financing activities and includes all interest received and paid.



### Changes in accounting policies

There have been no significant changes in accounting policies during the current year. Accounting policies have been applied on a basis consistent with the prior year.

### Comparative figures

During the 2002 year the Company changed balance dates to align with the balance date for investment funds that they manage. Consequently, the 2003 accounting period covers 12 months from 1 July 2002 to 30 June 2003 for the parent Company and for the subsidiary Company that is consolidated. The comparative figures cover the 15 month period 1 April 2001 to 30 June 2002.



## NOTES TO THE FINANCIAL STATEMENTS

### 1. Operating revenue

	Group		Parent	
	2003 (12 mths)	2002 (15 mths)	2003 (12 mths)	2002 (15 mths)
<b>\$000s</b>				
<b>Continuing activities</b>				
<b>Investment revenue</b>				
Interest	185	165	154	123
Realised gain on sale of investment	-	651	-	651
<b>Professional income</b>				
Merchant banking and advisory fees	2,101	2,330	2,101	2,330
<b>Other revenue</b>				
Unrealised foreign exchange gain	379	293	379	293
<b>Total operating revenue</b>	<b>2,665</b>	<b>3,439</b>	<b>2,634</b>	<b>3,397</b>

### 2. Operating expenses

	Group		Parent	
	2003 (12 mths)	2002 (15 mths)	2003 (12 mths)	2002 (15 mths)
<b>\$000s</b>				
<b>Continuing activities</b>				
<b>Operating expenses</b>				
Depreciation - leasehold improvement	18	20	18	20
Depreciation - office equipment	5	8	5	8
Depreciation - fixtures and fittings	6	7	6	7
Depreciation - computer hardware and software	31	28	31	28
<b>Total depreciation</b>	<b>60</b>	<b>63</b>	<b>60</b>	<b>63</b>
Amortisation of management rights, patents and licenses	35	44	35	44
Interest expense	371	452	343	415
Investments written off as irrecoverable	237	-	237	-
Provision for loss on loans and advances	145	100	145	100
Rent	141	180	141	180
Other expenses	1,132	1,403	1,113	1,393
Auditors' remuneration - audit fees	9	9	9	9
Auditors' remuneration - accounting and taxation	29	34	25	31
<b>Total operating expenses</b>	<b>2,159</b>	<b>2,285</b>	<b>2,108</b>	<b>2,235</b>



### 3. Income tax

\$000s	Group		Parent	
	2003 (12 mths)	2002 (15 mths)	2003 (12 mths)	2002 (15 mths)
Operating surplus before tax	506	1,154	526	1,162
Prima facie taxation at 33%	167	380	173	384
Non-deductible entertainment	1	3	1	3
Non-deductible expenses	14	11	14	7
Deductible payments for capitalised expenses	(279)	-	(279)	-
Provision for loss on investment	48	33	48	33
Investments written off as irrecoverable	78	-	78	-
Taxation overprovided in prior years	(293)	-	(125)	-
Non-taxable profit	-	(204)	-	(204)
Losses brought forward	-	(20)	-	(20)
Tax benefit of losses not recognised	228	-	54	-
Losses transferred to/(from) subsidiary	-	(167)	-	(167)
<b>Income tax recognised in the statement of financial performance</b>	<b>(36)</b>	<b>36</b>	<b>(36)</b>	<b>36</b>

### 4. Share capital

\$000s	Group		Parent	
	2003	2002	2003	2002
Balance at beginning of year	1,813	900	1,813	900
Ordinary shares issued	-	308	-	308
Redeemable preference shares issued	-	605	-	605
<b>Total issued capital</b>	<b>1,813</b>	<b>1,813</b>	<b>1,813</b>	<b>1,813</b>

As at 30 June 2003 there were 844,445 ordinary shares issued and fully paid (2002: 844,445). There are a further 3,600,000 ordinary shares issued (2002: 3,600,000) which are unpaid at 30 June 2003. All ordinary shares have equal voting rights.

At 30 June 2003 there were 1,104,495 preference shares issued and fully paid (2002: 1,104,495). The redeemable preference shareholders are entitled to receive a 12.5% p.a. dividend from profits of the Company in priority to other classes of shareholders. Unpaid dividends accumulate. The shares are redeemable or can be repurchased at the discretion of the Company. The shares ordinarily have no voting rights at meetings of shareholders.

### 5. Reserves

\$000s	Group		Parent	
	2003	2002	2003	2002
Capital reserves				
Share inducement sum received	200	200	200	200



6. Retained earnings

\$000s	Group		Parent	
	2003	2002	2003	2002
Opening balance	519	(397)	508	(416)
Net surplus for the year	542	1,118	562	1,126
Issue expenses	-	(2)	-	(2)
Transfer to capital reserve	-	(200)	-	(200)
Closing retained earnings	1,061	519	1,070	508

7. Accounts receivable

\$000s	Group		Parent	
	2003	2002	2003	2002
Current				
Fees receivable	1,091	1,115	1,091	1,017
Interest receivable	190	6	112	58
Prepayments	3	2	3	2
Income tax refund due	4	-	4	-
	1,288	1,123	1,210	1,077

8. Investments

\$000s	Group		Parent	
	2003	2002	2003	2002
Investments at cost				
Loans and advances	125	109	106	109
Convertible Notes	1,079	1,029	1,079	1,029
Advance to directors	230	270	230	270
Equity - Unlisted	1,897	2,228	1,897	2,228
Debentures	500	500	-	-
	3,831	4,136	3,312	3,636

Within investments are the following concentrations of risk:

- one investment with a value between 30% and 40% on the net equity of this Group;
- one investment with a value between 20% and 30% of the net equity of this Group;
- two investments each with a value between 10% and 20% of the net equity of this Group;
- six investments each with a value between 0% and 10% of the net equity of this Group;
- (2002: 40% - 50% one, 30% - 40% one, 20% - 30% one, 10% - 20% one and 0% - 10% ten);



## 9. Investment in subsidiaries

The Parent's investment in subsidiaries comprises 100% of the issued ordinary share capital for each subsidiary and \$821,000 (2002: \$815,000) debentures in i-cap mezzanine partners (no.1) limited, a private investment fund. The debentures have been written down by \$500,000 (2002: \$500,000).

Name of entity	Principal activities	Interest held by the Group	
		2003	2002
i-cap mezzanine partners (no. 1) limited	Private investment fund	100%	100%
i-cap mezzanine partners (no. 2) limited	Not trading	100%	100%
IMP nominees limited	Not trading	100%	-
i-cap equity partners (no. 1) limited	Not trading	100%	100%
IEP nominees limited	Not trading	100%	-
i-cap nominees limited	Not trading	100%	-
intellectual capital partners limited	Not trading	100%	-

All subsidiary entities have a balance date of 30 June.

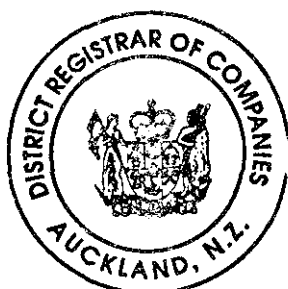
## 10. Property, plant and equipment

\$000s	2003			2002		
	Cost	Acc Depn	Book Value	Cost	Acc Depn	Book Value
Office equipment	30	(20)	10	27	(14)	13
Fixtures & fittings	51	(19)	32	51	(13)	38
Computer hardware and software	127	(83)	44	101	(52)	49
Leasehold improvements	194	(55)	139	194	(38)	156
	402	(177)	225	373	(117)	256

## 11. Intangible assets

Intangible assets represent an investment by i-cap partners limited in the management contracts of i-cap equity partners limited and i-cap private equity fund plc.

\$000s	Group		Parent	
	2003	2002	2003	2002
Opening balance – at cost	1,257	350	1,257	350
Additions during the year	843	907	843	907
Accumulated amortisation	(105)	(70)	(105)	(70)
	1,995	1,187	1,995	1,187



## 12. Accounts payable

\$000s	Group		Parent	
	2003	2002	2003	2002
Trade creditors	127	183	123	180
Payable to related party	100	-	100	-
Interest payable	360	152	297	117
Income tax payable	-	33	-	33
Goods and services tax payable	212	100	212	100
	799	468	732	430

## 13. Debenture stock

Interest is payable on the debenture stock at 14% p.a. Security is a charge over the assets and undertakings of the Company. The debentures are on demand but are expected to provide continuing finance beyond 30 June 2004. The \$6,000 reduction in the group debentures during the period was satisfied by acquisition by the parent Company.

## 14. Borrowings

\$000s	Group		Parent	
	2003	2002	2003	2002
Lloyds Investments Limited	1,000	1,000	1,000	1,000
Advance from Director	1,290	1,290	1,290	1,290
Other advances	2,063	2,490	2,063	2,490
	4,353	4,780	4,353	4,780

The advances from Lloyds Investments Limited is secured by a debenture over the assets and undertakings of the Company. The loan is repayable at the discretion of the Company, however it is intended to provide continuing finance beyond one year. Interest is 12.5% per annum. The advance from the Director is unsecured, interest free and repayable on demand.

The other advances of US\$1,200,000 have been received from individuals in the United States of America. The loans are repayable within 5 years and unsecured. Interest is payable at 10% p.a. The advances have been translated to New Zealand dollars at the exchange rate as at 30 June 2003 of 0.5813 (2002: 0.4870).

## 15. Contingent gains and losses

There were no contingent liabilities at 30 June 2003 (2002: nil).

## 16. Capital commitments

There were no capital commitments at 30 June 2003 (2002: nil).

## 17. Lease commitments

The Company has a lease of premises with a commitment of \$147,296 per annum to 30 June 2005 and a lease of a telephone system for \$2,100 per annum to 6 March 2005 (2002: \$147,296 and \$2,100).

Imputation credit account





The balance of the Company's imputation credit account as at 30 June 2003 is \$10,182 (2002: \$10,182).

#### 19. Fair values

The carrying value of investments are estimated after making allowance for any impairment in the recoverable amount of each investment. As a consequence carrying value is considered by the directors to represent fair value. The fair value of all other financial assets and liabilities is also considered to be the carrying value.

#### 20. Risk management policies

The Company requires collateral in respect of all its non equity investments. Management has a credit policy in place and the exposure to credit risk is monitored on an ongoing basis. Credit evaluations are performed on all investments. Reputable financial institutions are used for investing and cash handling purposes. The Company makes specific provision where considered necessary against investments on a counterparty by counterparty basis. Liquidity is managed by investing only where sufficient funds are available.

#### 21. Currency risk

Currency risk is the risk of gain or loss to i-cap partners limited arising from changes in exchange rates. Foreign currency exposure and risk arises as i-cap partners limited invests and obtains funding offshore. Foreign currency investments amount to 0% (2002: 0%) of total investments. Foreign currency borrowings amount to 77% (2002: 79%) of total borrowings. The market value of these investments and borrowings is therefore affected by movements in the New Zealand dollar relative to the currency in which the investment and borrowings are denominated.

#### 22. Interest rate risk

Interest rate risk is the risk of gain or loss to i-cap partners limited arising from changes in interest rates. Interest rate risk arises on fixed interest and other investments. The effective interest rate on loans and advances totalling \$336,000 is 9% per annum (2002: 0%) and 15% for impaired assets totalling \$500,000 (after allowance for provisions).

#### 23. Credit risk

The maximum credit risk associated with each class of recognised financial asset held by the Company is the carrying value. i-cap partners limited actively pursues a policy of diversification in its investment portfolio, however, the nature of its business is such that there will always be exposure to the non-performance of any particular investment. Collateral or other security is required for loans and advances, in the form of securities over company assets.

Credit exposure:

- maximum amount is \$3,831,000 (2002: \$5,151,000);
  - \$2,989,000 (2002: \$3,062,000) is lent within New Zealand;
  - \$598,000 (2002: \$834,000) is lent within the United States of America and;
  - \$244,000 (2002: \$240,000) is lent within the United Kingdom.
- there are no collateral securities.



- \$1,194,000 (2002: \$1,200,000) is borrowed within New Zealand; and
- \$3,353,000 (2002: \$3,780,000) is borrowed from individuals in the United States of America.

All financial assets and liabilities are recorded at fair values.

#### 24. Liquidity risk

Liquidity risk is the risk that the company may encounter difficulty in raising funds at short notice to meet its commitments. The company manages this risk by only committing to an investment if sufficient funds are available. All investments are made on a short term, reviewable basis.

#### 25. Impaired assets

There were no impaired assets at 30 June 2003 (2002: \$1,000,000 restructured asset) other than the \$1,000,000 short term advance which is a restructured asset, as the terms of this loan have been changed as a consequence of the failure to comply with the original terms by the counterparty. A further provision for doubtful debts of \$145,000 was created in 2003 financial year (2002: \$100,000).

#### 26. Related party information

During the year, the Parent received interest, from its subsidiary, i-cap mezzanine partners (no. 1) limited, on the debentures the Parent holds in the subsidiary Company.

Management fees have been paid to companies which are controlled by the Directors of the Group.

Interest is paid to a Company which is controlled by a Director of the Group.

The following related party transactions arose during the year:

Company	Type of Transaction	Relationship
Canterbury Limited	Advisory fees	Director
Endeavour i-cap limited	Advisory fees	Director
i-cap equity partners limited	Management fees	Director
i-cap mezzanine partners limited	Management fees	Director
i-cap mezzanine partners (no.1) limited	Investment in bonds	Director
i-cap private equity fund plc	Advisory fees	Director
ICPbio Limited	Advisory fees	Director
Jade Software Corporation Limited	Capitalisation of interest	Director
Radius Health Group Limited	Advisory fees	Director
Rodney Wayne Limited	Advisory fees	Director



# AUDITORS' REPORT

PRICEWATERHOUSECOOPERS 

## Auditors' Report

To the shareholders of i-cap partners limited

PricewaterhouseCoopers  
Forsyth Barr House, The Octagon  
PO Box 5848  
Dunedin, New Zealand  
Telephone +64 3 477 8784  
Facsimile +64 3 477 1186

We have audited the financial statements on pages 3 to 16. The financial statements provide information about the past financial performance and cash flows of the Company and Group for the year ended 30 June 2003 and its financial position as at that date. This information is stated in accordance with the accounting policies set out on pages 7 to 9.

### Directors' Responsibilities

The Company's Directors are responsible for the preparation and presentation of the financial statements which give a true and fair view of the financial position of the Company and Group as at 30 June 2003 and their financial performance and cash flows for the year ended on that date.

### Auditors' Responsibilities

We are responsible for expressing an independent opinion on the financial statements presented by the Directors and reporting our opinion to you.

### Basis of Opinion

An audit includes examining, on a test basis, evidence relevant to the amounts and disclosures in the financial statements. It also includes assessing:

- (a) the significant estimates and judgements made by the Directors in the preparation of the financial statements; and
- (b) whether the accounting policies are appropriate to the circumstances of the Company, consistently applied and adequately disclosed.

We conducted our audit in accordance with generally accepted auditing standards in New Zealand. We planned and performed our audit so as to obtain all the information and explanations which we considered necessary to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatements, whether caused by fraud or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

We have no relationship with or interests in the Company and any of its subsidiaries other than in our capacities as auditors, financial and tax advisors.

### Unqualified Opinion

We have obtained all the information and explanations we have required.

In our opinion:

- (a) proper accounting records have been kept by the Company as far as appears from our examination of those records; and
- (b) the financial statements on pages 3 to 16:
  - (i) comply with generally accepted accounting practice in New Zealand; and
  - (ii) give a true and fair view of the financial position of the Company and Group as at 30 June 2003 and their financial performance for the year ended on that date.

Our audit was completed on 10 October 2003 and our unqualified opinion is expressed as at that date.



Dunedin

## DIRECTORY

Date of incorporation:	18 February 2000
Nature of business:	Private equity firm
Registered office:	Level 3 12 Viaduct Harbour Avenue Maritime Square Auckland
Ordinary shareholders:	FWU A.G. Lloyd Investments Limited N D Lodge ACR Hannon
Directors:	ACR Hannon N D Lodge L W Lloyd
Bankers:	ASB Bank Auckland
Auditors:	PricewaterhouseCoopers Dunedin
Solicitors:	Duthie Whyte Auckland



**FILE COPY**



**CERTIFICATE OF REGISTRATION  
OF AN OVERSEA COMPANY**

(Establishment of a branch)

Company No. FC025235

Branch No. BR007597

The Registrar of Companies for England and Wales hereby certifies that

**INTELLECTUAL CAPITAL PARTNERS LIMITED**

has this day been registered under Schedule 21A to the Companies Act 1985 as having established a branch in England and Wales

Given at Companies House, Cardiff, the 24th May 2004



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



*Companies House*

— for the record —