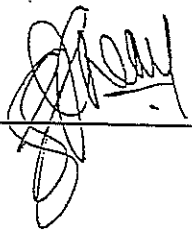

CONSTITUTION OF
NORTHSPOUT ACADEMY LIMITED

Certified to be the constitution of NORTHSPOUT ACADEMY LIMITED.

Signed:  _____

Date: 25 June 1997

HESKETH HENRY
Solicitors
Auckland

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CONSTITUTION OF NORTHSPOUT ACADEMY LIMITED
("the company")

1. INTRODUCTION

- 1.1 This constitution should be referred to in conjunction with the Companies Act 1993 ("the Act"). The Act should be referred to for matters not dealt with in this constitution.
- 1.2 Unless otherwise defined, all terms in this constitution have the same meanings as in the Act.

2. OBJECTS, CAPACITY AND POWERS

- 2.1 The company is established:
- a. to facilitate coaching and the promotion of athletic sports and recreation in the North Harbour and wider Auckland area;
 - b. to further education in the North Harbour and the wider Auckland area by promoting, developing, fostering and supporting sports training;
 - c. for any other purposes within New Zealand (whether relating to the relief of poverty, the advancement of education or religion or any other matter beneficial to the community) which are charitable according to New Zealand law.
- 2.2 The objects of the company are intended to be charitable in accordance with New Zealand law and shall be deemed not to include or extend to any matter or thing which is not charitable and the powers of the board shall be restricted accordingly.
- 2.3 In order to achieve the preceding charitable objects, the company has full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act or enter into any transaction.

3. CONSTITUTION

- 3.1 The shareholders of the company may by special resolution alter or revoke the constitution of the company provided that, no such alteration or revocation shall alter the exclusive charitable nature of the objects, capacity and powers of the company, provide a personal benefit to any director or shareholder or alter clause 33, relating to the company's winding up.

4. SHARE ISSUES

4.1 a. Classes of Shares

Different classes of shares may be issued in the company including without limitation shares may:

- i. be redeemable; or
- ii. confer preferential rights to distributions of capital or income; or
- iii. confer special, limited, or conditional voting rights; or
- iv. not confer voting rights.

b. Redeemable Shares

The board may issue shares that are redeemable:

- i. at the option of the company; or
- ii. at the option of the holder of the share;

for a consideration that is:

- iii. to be calculated by reference to a formula; or
- iv. required to be fixed by a suitably qualified person who is not associated with or interested in the company.

- c. This constitution does not modify the requirement of the Act that new shares be offered first to existing shareholders so as to maintain the existing voting or distribution rights, or both of those holders.

4.2 Issue of Shares

- a. Subject to a special resolution of shareholders, the board has the right to issue shares at any time, to any person, and in any number the board thinks fit.
- b. New shares issued by the company must first be offered to shareholders holding shares of the same class as nearly as possible in proportion to the number of shares held by them in that class.
- c. If the shareholders do not claim their proportions, the unclaimed shares must be used for satisfying the claims in excess (if any). If there are insufficient unclaimed shares to satisfy the claims in excess then the unclaimed shares are to be divided among the shareholders claiming excess shares in the same proportion as the original offer of shares under clause 4.2 b.

5. BONUS SHARES

- 5.1 Subject to compliance with the Act, the board may authorise the issue to shareholders of shares issued as fully or partly paid up from the assets of the company.

6. PURCHASE BY COMPANY OF ITS OWN SHARES

- 6.1 The company may, in accordance with and subject to sections 52, 59 to 66, 107 and 110 to 112 of the Act, purchase or otherwise acquire and hold its own shares and, subject to section 60 of the Act, offer to acquire its own shares. [Sections 58 and 59 of the Act]

7. TREASURY STOCK

- 7.1 Shares acquired by the company under sections 59 or 112 of the Act may be held by the company in accordance with section 67A - 67C of the Act.
- 7.2 Section 45 of the Act shall apply to the re-issue by the company of shares held in itself.

8. BOARD'S RIGHT TO REFUSE REGISTRATION OF TRANSFER

- 8.1 The board may, within 30 working days of the receipt of a transfer of shares by the company, refuse or delay the registration of the transfer if:
- a. The holder of the shares has failed to pay an amount due to the company in respect of those shares; or
 - b. The provisions of clauses 9.1 to 9.13 (inclusive) of this constitution dealing with pre-emptive rights have not been fully complied with; or
 - c. The board considers that to effect the transfer would result in a breach of the law or this constitution; or
 - d. The board considers that it is not in the best interests of the company to register the transfer; or
 - e. Sections 84 and 95(5) of the Act has not been complied with.

9. PRE-EMPTIVE RIGHTS ON TRANSFERS

- 9.1 Except as provided in clause 9.9 (transfer approved by all shareholders) or clause 9.12 (transfer to trusts) of this constitution 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.

9.2 Transfer Notice

- a. Except as provided in this constitution, the person proposing to sell or transfer any shares ("proposing transferor") must give notice in writing ("a transfer notice") to the company that the proposing transferor wishes to transfer the shares. The transfer notice must specify the sum which the proposing transferor considers to be the value of the shares and must (subject to this clause) make the company the proposing transferor's agent for the sale of the shares to any shareholder at the price specified or, at the option of a shareholder willing to purchase the shares ("purchasing shareholder"), at a fair value to be fixed in accordance with clause 9.4 (determination of fair value) of this constitution.
- b. If a transfer notice includes several shares it will not operate as if it were a separate transfer notice in respect of each of the shares, and the proposing transferor will be under no obligation to sell or transfer part only of the shares specified in the transfer notice. The transfer notice is not revocable without the sanction of the board in writing. If no price is specified by a proposing transferor then the proposing transferor will be deemed to want to sell or transfer the shares at their fair value determined under clause 9.4 (determination of fair value) of this constitution.

9.3 Company Finding Buyer

If the company, within 3 months after being served with a transfer notice, finds a shareholder willing to purchase the shares ("the purchasing shareholder") and gives notice of that to the proposing transferor, the proposing transferor will be bound to transfer the shares to the purchasing shareholder upon payment to her, him or it of the sum specified in the transfer notice, or, as the case may be, of the fair value determined under clause 9.4 (determination of fair value) of this constitution less any sum paid to the company by the purchasing shareholder necessary to discharge any lien the company holds over the shares.

9.4 Determination of Fair Value

- a. Independent Valuer - If there is a dispute between the Proposing Transferor and any one or more transferees as to the Fair Value of the shares the Fair Value is to be determined by an independent chartered accountant ("the Valuer") to be agreed upon by the board and the Proposing Transferor. If they fail to agree the Valuer is to be nominated by the chief presiding officer for the time being of the Auckland Branch of The Institute of Chartered Accountants of New Zealand.
- b. Certificate - The Valuer must certify in writing the sum which in the Valuer's opinion is the Fair Value of the shares and must give notice in writing to the parties of the sum so certified.
- c. Fair Value - Fair Value means the price that would be paid for the shares by a willing purchaser under no compulsion to purchase from a willing seller under no compulsion to sell where the seller and the purchaser have comparable knowledge and bargaining power and having due regard to:

- i. all the assets and liabilities (including contingent liabilities) of the company;
 - ii. the provisions of this constitution and any relevant agreement made between the shareholders;
 - iii. the amount of any bona fide offer for the purchase of the shares received by the Proposing Transferor.
- d. Valuer to Act as Expert - In certifying as to the Fair Value of the shares the Valuer is deemed to be acting as an expert and not as an arbitrator and accordingly the Arbitration Act 1908 and its amendments do not apply. The costs of the Valuer are to be borne by the company.
- e. Information and Representations to be Provided - The board must provide to the Valuer such information and give such representations as the Valuer may require in order for the Valuer to determine the Fair Value of the shares.
- f. Opportunity for Submissions - The Valuer must before certifying the Fair Value of the shares give the Proposing Transferor and the Transferees a reasonable opportunity to make submissions in relation to that determination.
- g. Procedure and Timetable - The Valuer may set a procedure and timetable for determining the Fair Value of the shares. Such procedure and timetable must be strictly adhered to by the parties.

9.5

Right to Revoke

If the fair value fixed in accordance with clause 9.4 of this constitution is less than the sum specified by the proposing transferor in the transfer notice as the sum the proposing transferor considers to be the value of the shares, the proposing transferor will be entitled, at any time before the expiration of 7 days after the date of receiving notice of the award fixing the fair value, to revoke the transfer notice.

9.6

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 share 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 trust for the proposing transferor. The receipt of the company for the purchase money will be a good discharge to the purchasing shareholder.

9.7 Company not Finding Buyer

- a. If the company does not, within 3 months after being served with a transfer notice, find shareholders willing to purchase all the shares and gives notice to the proposing transferor to that effect, then the proposing transferor may, at any time within 3 months afterwards, sell and transfer the shares, or those not placed, to any person.
- b. The proposing transferor may not transfer all or any of the shares at a price lower than the value specified in the transfer notice.

9.8 Offer to Shareholders

The shares specified in a transfer notice received by the company must be first offered to the holders of the same class of shares. If more than one shareholder of that class wishes to accept the offer they will be entitled to accept the shares offered in the same proportion as between themselves as their existing holding in that class. Any shares not so accepted must then be offered to all other shareholders and if more than one shareholder wishes to accept they will be entitled to accept the shares offered in the same proportion as the shares held by them.

9.9 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 9.1 to 9.12 of this constitution do not apply to any transfer authorised by this clause.

9.10 Corporate Shareholders

- a. Where a corporation is a shareholder then in the event any one or more of the following events occurs, whether by one or by a series of transactions completed after the date at which the corporate shareholder was first entered in the register, the corporate shareholder must give the company a transfer notice pursuant to clause 9.2 of this constitution:
 - i. The transfer of the legal or beneficial ownership-of, -or of any interest in, any shares in the corporate shareholder which, in relation to the corporate shareholder or any holding company of the corporate shareholder:
 - A. Alters the legal or beneficial ownership in the nominal value of the shares in the capital of either corporation; or
 - B. Alters the legal or beneficial ownership of the shares in either corporation; or
 - C. Alters the legal or beneficial ownership of shares carrying voting rights at any general meeting of either corporation; or
 - D. Alters the legal or beneficial ownership of shares in either corporation allowing the holder of the shares to appoint a

director or directors having 50% or more of the voting rights at any directors' meeting; or

- E. Alters the legal or beneficial ownership of shares carrying an entitlement to receive 50% or more of any dividend or distribution declared by either corporation.
- ii. The happening of any event by which the control of the corporate shareholder, or any holding company of the corporate shareholder, is altered.

If the corporate shareholder fails to give a transfer notice any director of the company may give a transfer notice on its behalf, and the provisions of clauses 9.1 to 9.12 of this constitution will apply with any necessary amendments to such transfer notice.

- b. The obligations imposed on corporate shareholders by this clause are not capable of being waived by lapse of time or by acquiescence or knowledge, whether actual or constructive, of any other shareholder.

9.11 Bankruptcy or Death of a Shareholder

- a. Where a shareholder becomes bankrupt or dies, the assignee or personal representative of the shareholder's estate, not later than 6 months after the adjudication of that shareholder as a bankrupt or the shareholder's death must give a Transfer Notice in respect of all the shares held by the assignee or personal representative and the provisions of this clause 9. relating to pre-emptive rights on transfer will then apply.
- b. If the Transfer Notice is not given within the required 6 month period then the Transfer Notice is deemed to have been given with the exception that the Specified Price is the Fair Value determined in accordance with this clause 9.
- c. Where 2 or more persons are jointly entitled to any share in consequence of bankruptcy or death of the registered holder they are deemed to be the joint holders of the share.

9.12 Family Trusts

Notwithstanding the foregoing provisions of clause 9:

- a. Any shares held by the trustees may be transferred on any change of trustee to the new or other trustees of such trust.
- b. Any shares may be transferred by a shareholder to the trustee of any trust created by a shareholder for any child or spouse of such a shareholder or to trustee(s) of any trust which, in the reasonable opinion of the board, is exclusively or principally for the benefit of those parties.
- c. Any shares of a deceased shareholder may be transferred by that shareholder's executors, administrators or trustees to any child or surviving

spouse of such deceased shareholder or to any trustee(s) of any trust which is in the reasonable opinion of the board exclusively or principally for the benefit of those parties.

- d. Any shares held by trustees of the will of the deceased shareholder and any shares held by trustees of any previously described trust may be transferred on any change of trustee to the new or other trustees of such will or trust.
- e. Any shares held by the trustees of any family trust may, subject to the terms of that trust, be transferred to any principal beneficiary of that trust, or with the approval of the Board of the company, to any other beneficiary of that trust

10. BOARD MAY MAKE CALLS

- 10.1 Subject to the terms of issue of any shares the board may resolve to require the holders of unpaid or partly paid shares to pay all or part of the amount unpaid on the shares. The terms of the resolution of the board will constitute the terms of the obligation to pay the call including payment by instalments. The call may be revoked or postponed at any time by the board.

11. NOTICE OF CALLS

- 11.1 Subject to the terms of issue of any class of shares and to clause 13 of this constitution, unless all the holders of a class of shares subject to a call unanimously agree, a call or the postponement or revocation of a call will apply to all the holders of shares of the class equally.
- 11.2 Notice of the call must be given to the shareholders at the time of the call, or to a subsequent holder. Failure to give notice to a shareholder will not invalidate a call but it will not be payable by that shareholder until the notice has been served on the shareholder.
- 11.3 Notice of a call sent by post to a shareholder to the address recorded in the register as the address of the shareholder will be deemed to have been received by the shareholder the day following the date of the posting of the notice.

12. LIABILITY FOR CALLS

- 12.1 The joint holders of shares are jointly and severally liable to pay all calls in respect of the shares.
- 12.2 If a call is not paid before or on the day appointed for payment the person from whom the sum is due will be liable to pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the board determines either at the time of the call or subsequently.
- 12.3 The liability for a call which has become due and payable attaches to the shareholder for the time being recorded in the register and not a prior shareholder,

notwithstanding that at the date of the call, or the date the call fell due for payment, another person was the shareholder or that the notice of the call was served on the previous and not the current shareholder.

- 12.4 Following the registration in the register of a change of ownership of shares in respect of which a call has been made, a notice of the call is not required to be served on the new shareholder.

13. AGREEMENT TO DIFFERENTIATE CALLS

- 13.1 The board may, on the issue of shares, by agreement with the shareholders concerned, differentiate between the shareholders of the same class as to the amount to be paid on the shares and the times of payment.

14. NOTICE OF SUSPENSION OF RIGHTS TO DIVIDEND

- 14.1 If a shareholder fails to pay any call or instalment of a call on the day appointed for payment, the board may, at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, serve a notice on the shareholder requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the company by reason of such non-payment.
- 14.2 The notice must state a further date (not earlier than the expiration of 5 days from the date of service of the notice) on or before which the payment required by the notice is to be made and state that, in the event of non-payment at or before the time appointed, the right to dividends in respect of the shares subject to the call will be suspended.

15. APPLICATION OF SUSPENDED DIVIDENDS

- 15.1 All dividends which would have been payable in respect of shares which are subject to a suspension of the right to dividends must be withheld and applied by the company to reduce the amount owing under the call.
- 15.2 The amount owing under the call, for the purposes of clauses 15 and 17 of this constitution may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder under the call.

16. LIABILITY NOT DISCHARGED BY SUSPENSION OF RIGHT TO DIVIDENDS OR TRANSFER OF SHARES

- 16.1 A shareholder whose shares are the subject of a suspension of the right to dividends remains liable to the company for all money owing under the call, and that liability is not extinguished by a transfer of the shares subject to the suspension to a third party.

17. LIFTING OF SUSPENSION OF RIGHT TO DIVIDENDS

- 17.1 When the total dividends withheld and applied under clause 15 of this constitution equal the total amount owing under the call, including amounts owing under clause 15.2 of this constitution, or when the shares are transferred to a third party, the suspension of the right to dividends will be lifted and all rights to be paid dividends on the shares will resume.

18. LIENS

- 18.1 The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares, for all money (whether presently payable or not) payable in respect of shares held by the shareholder, and for all other money presently payable by the shareholder to the company on any account whatever, and also for such amounts (if any) as the company may be called upon to pay under any statute or regulation in respect of shares of a deceased or other shareholder, whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.
- 18.2 The lien extends to all dividends from time to time declared in respect of the shares.

19. SALE ON EXERCISE OF LIEN

- 19.1 The company may sell, in such manner as the board thinks fit, any shares on which the company has a lien, but no sale may be made unless a sum in respect of which the lien exists is due and payable, nor until the expiration of 14 days after a notice in writing, which states and demands payment of the amount due and payable in respect of which the lien exists, has been given to the registered shareholder for the time being or the person entitled to that share by reason of the registered shareholder's death or bankruptcy.
- 19.2 The net proceeds of the sale of any shares sold for the purpose of enforcing a lien is to be applied in or towards satisfaction of any unpaid calls, instalments or any other money payable by the shareholder in respect of which the lien existed. The residue, if any, is to be paid to the former shareholder.
- 19.3 A certificate signed by a director stating that the power of sale provided in this clause 19 of this constitution has arisen and is exercisable by the company under this constitution will be conclusive evidence of the facts stated in the certificate.
- 19.4 In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under clause 19.1 of this constitution the board may authorise any person to execute a transfer of the shares to the purchaser. The purchaser will be registered as the shareholder of the shares which are transferred, and will not be bound to see to the application of the purchase money. The purchaser's title to the shares will not be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only and against the company exclusively. If the certificate for the shares

is not delivered up to the company the board may issue a new certificate distinguishing it as the board thinks fit from the certificate not delivered up.

20. ANNUAL MEETING OF SHAREHOLDERS

20.1 The board must, in accordance with Section 120 (Annual meeting of shareholders) of the Act, call an annual meeting of shareholders to be held:

- a. Once in each calendar year other than the year of its registration; and
- b. Not later than 6 months after the balance date of the company; and
- c. Not later than 15 months after the previous annual meeting, or in respect of its first annual meeting not later than 18 months after its date of registration.

21. RESOLUTION IN LIEU OF MEETING OF SHAREHOLDERS

21.1 Subject to sections 122(2) and (3) of the Act, a resolution in writing signed by not less than 75% of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution is as valid as if it had been passed at a meeting of those shareholders. A resolution passed under section 122 of the Act may consist of several documents in like form, each signed by one or more shareholders. A facsimile of such signed resolution is as valid and effectual as the original signed document.

22. PROCEDURE FOR MEETING OF SHAREHOLDERS

22.1 The provisions of this constitution relating to the procedure for meetings of shareholders are set out in the First Schedule to this constitution.

23. DIRECTORS' DUTIES

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

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

23.3 If the company is incorporated to carry out a joint venture between its shareholders the 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. [Section 131 of the Act]

24. PROCEDURE FOR MEETING OF DIRECTORS

- 24.1 The provisions of this constitution relating to the meetings of directors are set out in the Second Schedule to this constitution.

25. APPOINTMENT AND REMOVAL OF DIRECTORS BY NOTICE

- 25.1 Subject to clause 26 of this constitution the directors are the persons appointed from time to time as directors by a notice in writing signed by the holders of the majority of the ordinary shares, who have not been removed or been disqualified or resigned from office under this constitution.
- 25.2 A director may be removed from office at any time by a notice in writing signed by the holders of the majority of the ordinary shares.
[Section 156 of the Act]
- 25.3 A notice given under clauses 25.1 or 25.2 of this constitution 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. The notice may comprise one or more similar documents separately signed by shareholders giving the notice.

26. APPOINTMENT AND REMOVAL OF DIRECTORS BY RESOLUTION

- 26.1 In addition to the appointment or removal of directors under clause 25 of this constitution, a director may be appointed or removed from office by an ordinary resolution.
- 26.2 A resolution to appoint 2 or more directors may be voted on as one resolution without each appointment being voted individually.
- 26.3 A notice of a meeting at which the removal of a director will be considered must state that the purpose of the meeting is the removal of the director.

27. ALTERNATE DIRECTORS

- 27.1 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, provided the appointment is approved by the other directors, either generally or in respect of a specified meeting or meetings during the director's absence or inability to act as a director. Every director may, at the director's discretion, by notice in writing to the company, remove that director's alternate director.

- b. On any such appointment being made the alternate director may, while acting in the place of the director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson) of the director appointing the alternate director, and is subject in all respects to the same terms and provisions as that director (except as regards remuneration, and the power to appoint an alternate director under this constitution). For the purpose of establishing a quorum of the board an alternate director is deemed to be the director appointing him or her.

- 27.2 The notice of appointment of alternate director should include an address for service of notice of meetings of directors. 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.

28. INDEMNITY OF DIRECTORS AND EMPLOYEES

- 28.1 The board may cause the company to indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding:

- a. That relates to liability for any act or omission in his or her capacity as a director or employee; and
- b. In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

- 28.2 The board may cause the company to indemnify a director or an employee of the company or a related company in respect of:

- a. 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
- b. Costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under subparagraph a. above

not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the company or related company.

29. INSURANCE OF DIRECTORS AND EMPLOYEES

- 29.1 The board may, subject to section 162 of the Act, cause the company to effect insurance for a director or for an employee of the company or a related company in respect of:

- a. Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or

- b. Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability under subclause a.
 - c. Costs incurred by that director or employee in defending any criminal proceedings in which he or she was acquitted.
- 29.2 The directors who vote in favour of authorising the effecting of insurance under clause 29.1 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.
- 29.3 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.
- 29.4 For the purpose of clauses 28 and 29 "director" includes a former director and "employee" includes a former employee.

30. OTHER OFFICES WITH COMPANY HELD BY DIRECTOR

- 30.1 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 to the company.
- 30.2 A director may hold any other office or place in 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.

31. NO PRIVATE PROFIT

- 31.1 The board has no power to permit the company's activities to be carried on for the private profit of any person (including directors and shareholders). This does not prevent the company from:
- a. paying shareholders and directors for their services to the company, so long as the payments are reasonable and are not more than would be paid for such services in a normal commercial transaction;
 - b. authorising dividends and distributions to shareholders in accordance with the Act to be used for charitable purposes recognised by New Zealand law.

32. NOTICES

32.1 Service

Notice may be served by the company upon any director or shareholder, either personally or by post or by fastpost in a pre-paid envelope or package addressed to such director or shareholder at such person's last known address or by delivery

to a document exchange or by facsimile to the facsimile number of such director or shareholder.

32.2 Time of Service by Facsimile

A notice served by facsimile is deemed to have been served on the day following completion of its transmission.

32.3 Time of Service by Post

A notice sent by post or delivered to a document exchange is deemed to have been served:

- a. In the case of a person whose last known address is in New Zealand, at the end of 48 hours after the envelope or package containing the same was posted or delivered in New Zealand; and
- b. In the case of a person whose last known address is outside New Zealand, at the expiration of 7 days after the envelope or package containing the same was posted by fastpost in New Zealand.

32.4 Proof of Service

In proving service by post or delivery to a document exchange, it is sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it is sufficient to prove that the document was properly addressed and sent by facsimile.

32.5 Service on Joint Holders

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

32.6 Service of Representatives

A notice may be given by the company to a person or persons entitled to a share in consequence of the death or bankruptcy of a shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address (if any) within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such time an address has been supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

33. DISTRIBUTIONS ON WINDING UP

- 33.1 In the event of the company being wound up, the surplus assets, after payment of the company's debts and liabilities and the costs of winding up ("the surplus assets"), must be distributed to The Avery Foundation or any other similar organisation carrying on the same or other recognised charitable purpose.

34. REMOVAL FROM THE NEW ZEALAND REGISTER

34.1 In the event that:

- a. The company has ceased to carry on business, has discharged in full its liabilities to all known creditors and has distributed its surplus assets in accordance with this constitution and the Act; or
- b. 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;

the board of directors may, in the prescribed form, request the Registrar of Companies to remove the company from the New Zealand register.

FIRST SCHEDULE

PROCEDURE FOR MEETING OF SHAREHOLDERS

1. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 1.1 The chairperson of the board, if one has been elected and is present at a meeting of shareholders, must chair the meeting.
- 1.2 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 the number to chair the meeting.

2. SHAREHOLDERS ENTITLED TO NOTICE OF MEETINGS

- 2.1 The shareholders entitled to receive notice of a meeting of shareholders are the shareholders of the relevant class recorded in the register as registered shareholders:
 - a. Where the board has fixed a date for the purpose of establishing an entitlement to receive notice - on the date so fixed; or
 - b. If no date has been fixed by the board for that purpose - at the close of business on the day immediately preceding the day on which the notice is given.
- 2.2 A date fixed by the board under clause 2.1 a. of this Schedule 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.

3. NOTICE OF MEETING

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

4. CONTENTS OF NOTICE

- 4.1 The notice referred to in clause 3 of this Schedule must state:
 - a. The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
 - b. The text of any resolution to be submitted to the meeting; and

- c. The postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
- d. That the postal vote must be received by the person referred to in paragraph c. at least 48 hours prior to the time of the meeting.

5. IRREGULARITIES IN NOTICE

- 5.1 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceeding of that meeting.
- 5.2 Notwithstanding clause 5.1 of this Schedule, an irregularity in a notice of a meeting required by clause 3 of this Schedule is waived if all the shareholders entitled to attend and vote at the meeting, do attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

6. METHOD OF HOLDING MEETING

- 6.1 A meeting of shareholders, where notice of the meeting has been given, 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.

7. ADJOURNMENTS

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

8. MINUTES

- 8.1 The board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- 8.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

9. QUORUM

- 9.1 A quorum for a meeting of shareholders is present if those shareholders or their proxies who are present or who have cast postal votes are between them able to

exercise a majority of the votes to be cast on the business to be transacted by the meeting.

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

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

a. In the case of a meeting called pursuant to a requisition of shareholders under section 121(b) of the Act the meeting is dissolved;

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

10. VOTING

10.1 In the case of a meeting of shareholders held under clause 6.1 a. of this Schedule, unless a poll is demanded, voting at the meeting must be by whichever of the following methods is determined by the chairperson of the meeting:

a. Voting by voice; or

b. Voting by show of hands.

10.2 In the case of a meeting of shareholders held under clause 6.1 b. of this Schedule, unless a poll is demanded, voting at the meeting must be by the shareholders signifying individually their assent or dissent by voice.

10.3 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 10.4 of this Schedule.

10.4 At a meeting of shareholders a poll may be demanded by:

a. Not less than five shareholders having the right to vote at the meeting; or

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

c. By a shareholder or shareholders holding the shares that confer a right to vote at a meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all shares that confer that right.

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

10.6 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.

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

11. PROXIES AND REPRESENTATIVES

- 11.1 A shareholder may exercise the right to vote either by being present in person or by proxy.
- 11.2 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.
- 11.3 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- 11.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the person referred to in clause 4.1 c. of this Schedule at least 48 hours before the start of the meeting. The chairperson may generally or in respect of any particular shareholder waive the requirements of this clause 11.
- 11.5 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.

12. VOTES OF JOINT HOLDERS

- 12.1 Where 2 or more persons are recorded in the register as the holder of a share, the vote of the person named first in the register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.

13. UNPAID SHARES

- 13.1 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.

SECOND SCHEDULE

PROCEEDINGS OF THE BOARD

1. CHAIRPERSON

- 1.1 The directors may elect one of their number as chairperson of the board and determine the period for which the chairperson is to hold office.
- 1.2 The director elected as chairperson holds that office until he or she dies or resigns or the directors elect a chairperson in his or her place.
- 1.3 If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 5 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.

2. NOTICE OF MEETING

- 2.1 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 2.
- 2.2 Not less than 1 days notice of a meeting of the board must be given to every director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
- 2.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.
- 2.4 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 received by the director the day following the date the letter is posted.

3. MEETINGS OF BOARD

- 3.1 A meeting of the board may be held either:
 - a. By a number of directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
 - b. By means of audio, or audio and visual communication by which all the directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.

4. QUORUM

- 4.1 A quorum for a meeting of the board is a majority of the directors and if there is only one director that director.
- 4.2 No business may be transacted at a meeting of directors if a quorum is not present.
- 4.3 An alternate director present at a meeting may be included for the purpose of establishing a quorum.
- 4.4 If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same time on the following day or to such other date, time and place as the directors may appoint, and, if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, those directors that are present are the quorum.

5. VOTING

- 5.1 Every director has one vote.
- 5.2 The chairperson does not have a casting vote.
- 5.3 A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 5.4 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.
- 5.5 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.

6. MINUTES

- 6.1 The board must ensure that minutes are kept of all proceedings at meetings of the board.

7. UNANIMOUS RESOLUTION

- 7.1 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.
- 7.2 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.

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

8. NOTICE TO ALTERNATE DIRECTORS

- 8.1 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 be given to the alternate director.

9. OTHER PROCEEDINGS

- 9.1 Except as provided in this Schedule, the board may regulate its own procedure.

NORTHSPORT ACADEMY LIMITED

EXPLANATORY NOTES TO CONSTITUTION

1. INTRODUCTION

- 1.1 The following provides a guide to the company's constitution.
- 1.2 We have drafted a short form constitution for the company. This means that the Companies Act 1993 ("**the Act**") provisions have not been repeated word for word, the constitution only includes those provisions of the Act, which will not apply unless included in the constitution or which are presumed to apply unless modified or negated by the constitution.
- 1.3 You will still need to refer to the Act for matters not dealt with in the constitution. For example: If the company wants to enter into a major transaction (section 129) or give financial assistance to a person seeking to purchase shares issued or to be issued by the company or its holding company (section 76) you will need to refer to the relevant sections in the Act.

2. GUIDE TO CONSTITUTION

- 2.1 We have included the clauses necessary to apply to the Inland Revenue Department ("**IRD**") for charitable status. You will need to apply to the IRD to obtain charitable status.
- 2.2 The main provisions of the constitution are as follows:
 - a. **Clause 2:** This clause sets out the charitable objects of the company. This clause is necessary to meet the IRD requirement that the company be carried on exclusively for charitable purposes.
 - b. **Clause 3:** This clause is necessary to meet the IRD requirement that the company must not have the power to amend its rules in such a way to alter the exclusively charitable nature of the company, or provide personal benefit to its directors, or alter the winding up clause.
 - c. **Clause 4:** Subject to a shareholders' special resolution, the board may issue further shares of different classes.
 - d. **Clause 6:** The company may purchase or otherwise acquire and hold its own shares. The Act now allows the company to repurchase its own shares in certain circumstances. The company can only acquire its own shares where the directors have certified that the solvency test can be satisfied immediately after the purchase (see section 52 and section 108 of the Act).

- e. Clause 9: If a shareholder wishes to transfer shares they must first be offered to the other shareholder(s), except in the case of a transfer approved by unanimous consent of the shareholders (clause 9.9), or a transfer to a family trust or to relatives (clause 9.12). Please consider these pre-emptive rights provisions carefully and advise us if you would like us to limit or widen them further.

Please note that the waiver of pre-emptive rights provisions in clause 9.12 includes the situation where a shareholder dies. In that case, that shareholder's shares will be transferred to his or her spouse or child. Please consider if the shareholders remaining on the death of a shareholder will wish for this to occur. Alternatively, we can amend this to provide for transfer of a deceased shareholder's shares either to the existing shareholders or to some other person who the directors will register as a shareholder.

We have added a provision relating to the transmission of shares on the death or bankruptcy of a shareholder. Subject to clause 9.12, the personal representative of the deceased shareholder or the assignee in bankruptcy must deliver a transfer notice to the company within 6 months of the death or bankruptcy of a shareholder. Failure to do so will result in a transfer notice being deemed to have been given.

- f. Clause 21: Shareholders may pass a written resolution instead of holding a meeting. This must be signed by not less than 75% of the shareholders who together hold not less than 75% of the votes. Such a resolution may consist of several documents in the same form, each signed by one or more shareholders, and a facsimile copy of such a resolution is as valid as the original signed document.
- g. Clause 25 & 26: Directors may be appointed or removed by written notice signed by the holders of the majority of ordinary shares or by ordinary resolution.
- h. Clause 27: Subject to the approval of the directors, every director may by notice in writing to the company appoint any person to act as an alternate director in that director's place during the director's absence or inability to act as a director.
- i. Clause 28 & 29: The board can authorise the company to indemnify and/or effect insurance for a director or employee of the company in respect of acts and/or omissions in their capacity as director or employee and costs arising from such liability.
- j. Clause 31: This clause is necessary to meet the IRD requirement that the company must not be carried on for the private pecuniary profit of any individual. Any exemption for income tax will be lost where a person related to the company has the capacity to arrange a private benefit. It is

not necessary for that person to actually receive a benefit. However, this does not prevent the company from paying for services provided by a person related to the company, provided payments are reasonable and made on an arms length commercial basis.

- k. **Clause 33:** This clause is necessary to meet the IRD requirement that the company's constitution must include a clause requiring the company's assets to be held for charitable purposes if the organisation ceases to exist.
- l. **First Schedule:** This sets out the procedure for meetings of shareholders. A quorum for a meeting of shareholders is those shareholders or their proxies who are between them able to exercise a majority of votes.
- m. **Second Schedule:** This sets out proceedings for meetings of the directors. A quorum for a meeting of the board is a majority of the directors.