

**CONSTITUTION**

*of*

**GAS INDUSTRY COMPANY LIMITED**

*(adopted on 4 November 2004 and amended on 1 May 2006  
and 30 September 2008)*

## TABLE OF CONTENTS

|    |  |
|----|--|
| 1  | Interpretation                           |
| 2  | Companies Act 1993                       |
| 3  | Name of Company                          |
| 4  | Purpose and objectives of Company        |
| 5  | Capacity of Company                      |
|    | <i>Shares</i>                            |
| 6  | Existing redeemable share                |
| 7  | Issue of further redeemable shares       |
| 8  | No pre-emptive rights on issue of shares |
| 9  | Transfers of shares not permitted        |
| 10 | Distributions                            |
| 11 | Dividends                                |
| 12 | Acquisition of Company's own shares      |
|    | <i>Shareholders</i>                      |
| 13 | Proceedings at meetings of shareholders  |
| 14 | Entitled persons                         |
| 15 | Special resolutions                      |
|    | <i>Directors</i>                         |
| 16 | Management of Company                    |
| 17 | Number of directors                      |
| 18 | Initial directors and chairperson        |
| 19 | Appointment and removal of directors     |
| 20 | Rotation of directors                    |
| 21 | Chairperson                              |
| 22 | Vacation of office of director           |
| 23 | Delegation                               |
| 24 | Alternate directors                      |
| 25 | Interested directors                     |
| 26 | Directors' indemnity and remuneration    |
| 27 | Proceedings of directors                 |
|    | <i>Miscellaneous</i>                     |
| 28 | Annual fees                              |
| 29 | Rebates                                  |
| 30 | Notices                                  |
| 31 | Liquidation                              |
| 32 | Removal from the New Zealand register    |
|    | Schedule 1                               |
|    | Schedule 2                               |
|    | Schedule 3                               |

# CONSTITUTION

*of*

## **GAS INDUSTRY COMPANY LIMITED**

*(adopted on 4 November 2004 and amended on 1 May 2006  
and 30 September 2008)*

### **1 Interpretation**

1.1 In this constitution, unless the context otherwise requires-

**Act** means the Companies Act 1993

**Board** means the board of directors of the Company

**Company** means Gas Industry Company Limited

**financial year**, in relation to the Company, means a period of 12 months ending with 31 March (or such other date as the Board may determine) in any year

**Gas Act** means the Gas Act 1992

**GST** means Goods and Services Tax

**independent**, in relation to a director or other person, means any person other than a person who is not independent within the meaning of *clause 17.2*

**industry participant** means any of the following persons:

- (a) a gas retailer, gas distributor, pipeline owner, or gas wholesaler (as each of those terms is defined in section 2(1) of the Gas Act; or
- (b) a gas producer as defined in section 43D(1) of the Gas Act; or
- (c) a person who purchases gas directly from a gas producer or gas wholesaler or on any wholesale gas market; or
- (d) a gas metering equipment owner; or
- (e) a data administrator that provides data administration services to the gas industry

**Minister** has the same meaning as in section 2(1) of the Gas Act

**share** means a share in the Company

**shareholder** means the holder of a share in the Company

**subsidiary** has the same meaning as in sections 5 to 8 of the Act, except that, despite section 5(3) of the Act, Her Majesty the Queen in right of New Zealand is not to be regarded as a company for the purposes of those sections;

**working day** means a day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- (c) if 1 January falls on a Friday, the following Monday; and
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

1.2 Unless otherwise defined in this constitution or the context otherwise requires, expressions which are defined in the Act or the Gas Act or in section 29 of the Interpretation Act 1999 have the same meanings in this constitution.

1.3 In this constitution, unless the context otherwise requires-

- (a) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (b) a reference to an enactment, or regulations, or to a provision in such enactment or regulations, is a reference to that enactment or those regulations or that provision as amended from time to time, or to any enactment or regulations or provision substituted therefor; and
- (c) references to clauses and Schedules are references to clauses and Schedules of this constitution.

1.4 In this constitution, headings appear as a matter of convenience and do not affect the interpretation of this constitution.

1.5 The schedules form part of this constitution.

## 2 **Companies Act 1993**

The provisions of the Act are negated, modified, adopted and extended by this constitution as provided in this constitution.

### 3 **Name of Company**

3.1 The name of the Company is “Gas Industry Company Limited”.

3.2 An application to change the name of the Company may be made by a director of the Company only if the application has been approved by an ordinary resolution of the shareholders.

### 4 **Purpose and objectives of Company**

4.1 The principal purpose of the Company is to perform the functions and duties, and

exercise the powers, of the industry body under Part 4A of the Gas Act, including (to the extent permitted or required by the Gas Act or regulations or rules made under that Act) -

- (a) to recommend gas governance regulations and gas governance rules under Part 4A of the Gas Act; and
- (b) to administer, monitor compliance with, investigate, enforce, and apply penalties or other remedies for contraventions of, any or all of the gas governance regulations and gas governance rules; and
- (c) to establish, operate, and facilitate the operation of, markets for industry participants; and
- (d) to establish or implement one or more complaints resolution systems required by gas governance regulations or gas governance rules; and
- (e) to recommend regulations under section 43ZZB of the Gas Act that require industry participants to pay a levy to the Company, and collect any such levy; and
- (f) to advise and report to the Minister in relation to the New Zealand gas industry.

4.2 The objectives of the Company, in recommending gas governance regulations and gas governance rules under section 43F of the Gas Act or in carrying out any other activity, are as follows:

- (a) the principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner; and
- (b) the other objectives are:
  - (i) the facilitation and promotion of the ongoing supply of gas to meet New Zealand's energy needs, by providing access to essential infrastructure and competitive market arrangements;
  - (ii) barriers to competition in the gas industry are minimised;
  - (iii) incentives for investment in gas processing facilities, transmission, and distribution are maintained or enhanced;
  - (iv) delivered gas costs and prices are subject to sustained downward pressure;
  - (v) risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties;
  - (vi) consistency with the New Zealand Government's gas safety regime is maintained.

- 4.3 When recommending gas governance regulations or gas governance rules under Part 4A of the Gas Act, the Company must have regard to any objectives and outcomes set by the Minister under section 43ZO of the Gas Act.
- 4.4 The Company shall report regularly to the Minister on-
- (a) the performance and present state of the New Zealand gas industry; and
  - (b) the Company's performance and achievement of its objectives; and
  - (c) any other matters the Company thinks fit or the Minister requests in writing.
- 4.5 In addition to performing or exercising the functions, duties, and powers referred to in clauses 4.1 and 4.4, the Company may undertake any one or more of the following:
- (a) any role that the Government requests it to, or indicates that it should, undertake in a statement of government policy under section 43ZO of the Gas Act;
  - (b) any role in relation to the recommendation, establishment and operation of arrangements made for any purpose for which gas governance regulations or rules may be made;
  - (c) any role in relation to existing arrangements (or any replacement thereof) for:
    - (i) upstream or downstream reconciliation of gas quantities;
    - (ii) gas outages or security of supply contingencies;
    - (iii) open access to distribution gas pipelines or transmission gas pipelines downstream of gas processing facilities.

## 5 **Capacity of Company**

- 5.1 Subject to the Act and any other enactment and the general law the Company shall have the full capacity to carry on or undertake any business or activity, do any act or enter into any transaction both within and outside New Zealand.
- 5.2 For the purposes of *clause 5.1* and subject to the Act and any other enactment and the general law the Company shall have full rights, powers and privileges.

### *Shares*

## 6 **Existing redeemable share**

- 6.1 At the time of adoption of this constitution, the Company has on issue one redeemable share having the rights referred to in *clauses 6.2* and *6.3*. The consideration of \$1 payable for that share having been received by the Company,

no money is payable for calls or otherwise on or in relation to that share and, in particular, no annual fee under *clause 28* may be set or is payable in relation to that share.

- 6.2 The share in *clause 6.1* is redeemable at any time for the consideration of \$1 payable by the Company on redemption by the shareholder giving written notice of redemption to the Company at its address for service.
- 6.3 The share in *clause 6.1* confers on the shareholder the rights set out in section 36(1) of the Act.

## 7 **Issue of further redeemable shares**

- 7.1 The Board must in accordance with section 43ZL(2)(e) of the Gas Act, on application by an industry participant that is not already a shareholder of the Company in accordance with *clause 7.2*, issue to the industry participant one redeemable share for a consideration of \$1 payable to the Company on application.
- 7.2 An application for the purposes of *clause 7.1* must be duly completed by the applicant in the form set out in *Schedule 1* and, if so required by the Board in any case, any or all of the details in the application form must be confirmed by a solicitor of the High Court of New Zealand in a form determined by the Board.
- 7.3 Every share issued under *clause 7.1* is redeemable for a consideration of \$1 payable by the Company on redemption at any time at the option of the shareholder, by the shareholder giving written notice of redemption to the Company at its address for service.
- 7.4 A shareholder may not vote on any resolution at any time when –
- (a) subject to *clauses 7.5 and 7.6*, the shareholder is a subsidiary of another shareholder; or
  - (b) the shareholder is prohibited from voting by *clause 7.5*; or
  - (c) the shareholder is not an industry participant; or
  - (d) any annual fee or other amount payable by the shareholder to the Company has not been paid by the due date -
- and any vote cast by a shareholder in contravention of this clause shall be disregarded.
- 7.4A A shareholder holding more than one share is only entitled to one vote on a resolution and any attempt to vote more than one share shall be disregarded.
- 7.5 Subject to *clause 7.6*, if two or more shareholders are subsidiaries of the same person who is not a shareholder, then-

- (a) only one of those shareholders may vote on any resolution; and
- (b) all those shareholders must give unanimous written notice to the Board which specifies the shareholder who is to have the right to vote; and
- (c) until such a notice is given, none of those shareholders may vote on any resolution; and
- (d) after such a notice is given, only the shareholder who is specified in the notice may vote on any resolution.

7.6 The Board may, by written notice to the shareholder,-

- (a) exempt a shareholder from *clause 7.4(a)* or *7.5* if it considers that the management of the business and affairs of the shareholder is conducted independently from that of any other shareholder;
- (b) impose in respect of any such exemption such terms and conditions as it thinks fit; and
- (c) revoke any such exemption if it considers that the management of the business and affairs of the shareholder has ceased to be conducted independently from that of any other shareholder.

7.7 For the purposes of *clause 7.6(a)*, neither a right nor the exercise of a right of a shareholder or other person to control the appointment of a majority of directors of a shareholder means of itself that the management of the business and affairs of the last mentioned shareholder is not conducted independently from that of any other shareholder.

7.8 Every share issued under *clause 7.1* confers on the shareholder:

- (a) except as provided in *clauses 7.4 or 7.4A or 7.5*, the right to one vote on a poll at a meeting of shareholders on any resolution, including any resolution to-
  - (i) appoint or remove a director or auditor;
  - (ii) alter this constitution;
  - (iii) approve a major transaction;
  - (iv) approve an amalgamation of the Company under section 221 of the Act;
  - (v) put the Company into liquidation;
- (b) the right to an equal share in dividends authorised by the Board;
- (c) the right to an equal share in the distribution of the surplus assets of the Company.

7.9 Except as provided in *clause 7.1*, the Board may not issue any shares.

## 8 **No pre-emptive rights on issue of shares**

8.1 The pre-emptive rights on the issue of shares contained in section 45 of the Act are hereby negated.

8.2 The Board is expressly permitted to issue further shares at any time ranking as to voting or distribution rights or both equally with shares already issued, but only to the extent provided in *clause 7*.

## 9 **Transfers of shares not permitted**

No share in the Company may be transferred.

## 10 **Distributions**

10.1 Subject to the requirements of the Act, the Board may authorise a distribution by the Company to all shareholders at a time, and of an amount, it thinks fit.

10.2 The Board may deduct from any distribution payable to any shareholder any annual fee or other amount then payable by the shareholder to the Company.

## 11 **Dividends**

11.1 Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder, or, in the case of joint holders, to the registered address of that one of the joint holders who is first named in the share register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any dividends, bonuses or other money payable in respect of the shares held by them as joint holders.

11.2 No dividend shall bear interest against the Company.

11.3 All dividends unclaimed for one year after having been authorised may be invested or otherwise made use of by the Board for the benefit of the Company until claimed, and all dividends unclaimed for five years after having been declared may be forfeited by the Board for the benefit of the Company. The Board, may, however, annul any such forfeiture and agree to pay a claimant who produces evidence of entitlement to the Board's satisfaction of the amount due to such claimant unless in the opinion of the Board such payment would embarrass the Company.

## 12 **Acquisition of Company's own shares**

Except as provided in section 107 or section 111 of the Act, the Company has no power to purchase or otherwise acquire shares issued by it.

*Shareholders*

**13 Proceedings at meetings of shareholders**

*Schedule 2* governs the proceedings at meetings of shareholders.

**14 Entitled persons**

No person apart from a shareholder shall be an entitled person in relation to the Company.

**15 Special resolutions**

15.1 Except as required by the Act all powers reserved to shareholders may be exercised by an ordinary resolution.

15.2 The majority required for a special resolution is 75 percent of the votes of those shareholders entitled to vote and voting on the question.

*Directors*

**16 Management of Company**

16.1 The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board.

16.2 The Board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the Company.

16.3 Resolutions of shareholders under section 109 of the Act relating to the management of the Company are not binding on the Board.

**17 Number of directors**

17.1 There shall (subject to any casual vacancy) be 7 directors of the Company, of whom 4 must be independent.

17.2 A person is not independent for the purposes of *clause 17.1* if that person –

- (a) has a material financial interest in an industry participant; or
- (b) is a director, officer, member, employee, or trustee of an industry participant; or
- (c) is otherwise directly or indirectly materially interested in an industry participant.

17.3 In *clause 17.2*, “industry participant” has the same meaning as in *clause 1.1* except that it also includes any service provider appointed under any regulations made under sections 43F to 43T of the Gas Act.

## 18 **Initial directors and chairperson**

The directors, and chairperson of directors, of the Company from the adoption of this constitution until they cease to hold office as such under *clause 22* are:

Rt Hon James Brendan Bolger (chairperson)

Mark John Verbiest

Mark Xavier Franklin

Robin Gilmer Hill

Phillip Melmoth James

Denis Kieran Clifford

Stephen Phillip Barrett

## 19 **Appointment and removal of directors**

19.1 Subject to *clause 17*, any person who is not disqualified under the Act may be appointed at any meeting of shareholders as a director by an ordinary resolution of the shareholders.

19.2 Any director may be removed from office under section 156 of the Act.

19.3 Subject to *clause 17*, the Board must, as soon as practicable, appoint a person to be a director to fill a casual vacancy and *clause 4.2 of Schedule 3* will not apply to that part of a meeting of the Board convened for that purpose.

19.4 A person appointed to fill a casual vacancy of an independent director must be an independent person.

## 20 **Rotation of directors**

20.1 At the annual meeting in every year at least 2 directors must retire from office.

20.2 The directors to retire at an annual meeting will be:

- (a) first, any directors who wish to retire and do not offer themselves for re-election; and
- (b) secondly, if those retiring pursuant to paragraph (a) do not constitute the number of directors required to retire from office under *clause 20.1*, those of the other directors who have been longest in office since their last election. Persons who became directors on the same day must retire in the same order as they were elected by the shareholders and persons appointed by *clause 18* must retire in the reverse of the order in which they are listed by that clause, unless the Board resolves otherwise.

- 20.3 In addition, any director appointed to fill a casual vacancy since the last annual meeting must retire from office at the annual meeting.
- 20.4 A retiring director continues to hold office until:
- (a) he or she is re-elected; or
  - (b) if he or she is not re-elected, until the shareholders at any meeting at which he or she retires (or any adjournment of that meeting) elects someone in his or her place; or
  - (c) if the meeting does not elect someone in his or her place, until the end of the meeting at which he or she retires (or any adjournment of that meeting).
- 20.5 Subject to *clause 17*, at the annual meeting, the shareholders may, by ordinary resolution (and in accordance with a voting process set by the Board), elect directors to replace directors retiring under this clause 20.
- 20.6 Not less than 30 working days prior to an annual meeting, the Board will give notice in writing to all shareholders specifying which directors will be retiring at the annual meeting pursuant to this *clause 20* and the director vacancies that are to be voted upon at the annual meeting. If, subsequent to the issue of such notice (and whether due to a change in circumstances or any other reason) the Board considers the notice is inaccurate in any respect, the Board shall issue a further notice (“supplementary notice”) to shareholders correcting the original notice.
- 20.7 Any shareholder who is entitled to attend and vote at the annual meeting may nominate a person for election as a director at the annual meeting provided that:
- (a) the nomination must be given in a notice in writing from the shareholder to the Company;
  - (b) the notice must be received by the Company not less than 20 working days prior to the date of the annual meeting (unless the Board has issued a supplementary notice under *clause 20.6* in which case the notice must be received by the Company prior to the annual meeting and not more than 5 working days after the date of the supplementary notice);
  - (c) the notice must be accompanied by a notice in writing signed by the person being nominated consenting to be elected and stating whether or not the person is independent; and
  - (d) the form of the notices must comply with any form prescribed by the Board from time to time.
- 20.8 Any director who is retiring at an annual meeting pursuant to this *clause 20* may, by notice in writing to the Company, indicate that he or she wishes to stand for re-election. Such notice must be received by the Company not less than 10 working days prior to the annual meeting (unless a change in circumstances has

resulted in the requirement for that director to retire only becoming apparent after the date that is 10 working days prior to the date of the annual meeting, in which case the notice must be received by the Company prior to the annual meeting);

20.9 The Board may also nominate any person for election as a director at the annual meeting, provided the Board has (prior to the date of the annual meeting) obtained a notice in writing signed by the person it wishes to nominate consenting to be elected and stating whether or not the person is independent.

20.10 At an annual meeting, the persons eligible for election to the office of director are:

(a) persons nominated by shareholders in accordance with *clause 20.7*;

(b) any retiring director who has indicated an intention to stand for re-election in accordance with *clause 20.8*; and

(c) any person nominated by the Board in accordance with *clause 20.9*;

provided in each case that the relevant person is not disqualified from such office under the Act.

20.11 Not less than 5 working days prior to an annual meeting the Board will give notice in writing to all shareholders specifying the persons eligible for election to the office of director at that meeting. If, subsequent to the issue of such notice (and whether due to a change in circumstances or any other reason) the Board considers the notice is inaccurate in any respect, the Board shall issue a further notice to shareholders correcting the original notice. Every such notice must specify whether the relevant persons are independent. Any failure to give such notice will not invalidate the election of directors at the annual meeting.

## 21 **Chairperson**

21.1 The directors must elect one of their number as chairperson of the Board.

21.2 The chairperson of the Board must be “independent” within the meaning of *clause 17*.

21.3 The chairperson of the Board holds that office until he or she vacates office or the directors elect a chairperson in his or her place or the shareholders remove him or her from office.

## 22 **Vacation of office of director**

22.1 The office of director is vacated if:

(a) the person holding that office:

(i) dies; or

- (ii) becomes disqualified from being a director pursuant to section 151 of the Act; or
  - (iii) resigns that office in accordance with *clause 22.2*; or
  - (iv) is removed from office under *section 156* of the Act; or
  - (v) retires from office under *clause 20* and is not re-elected; or
- (b) the Board resolves that:
- (i) the person holding that office was appointed as an independent director and was not, or is no longer, independent for the purposes of *clause 17.1*; and
  - (ii) as at the time of resolution, there are no longer four independent directors on the Board.

22.2 A director or the chairperson may resign office by delivering a signed notice of resignation in writing to the address for service of the Company. The notice is effective when it is received at that address or at a later time specified in the notice.

### 23 **Delegation**

23.1 Without limiting section 130(2) of the Act, 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 its powers under any of the sections of the Act set out in the Second Schedule to the Act.

23.2 In exercising the Board's delegated powers, any committee of directors or director must comply with any rules that the Board may impose.

23.3 The provisions of this constitution relating to proceedings of the Board shall, insofar as they are not altered by rules made by the Board, also apply to proceedings of any committee of directors.

### 24 **Alternate directors**

24.1 Each director shall have the power from time to time to nominate, by notice in writing to the Company, any person not already a director and who is acceptable to the majority of the other directors to act as an alternate director in his or her place either for a specified period or generally during the absence from time to time of such director and in like manner to remove any such alternate director.

24.2 An alternate director for an independent director must be an independent person.

24.3 Unless otherwise provided for by the terms of his or her appointment, an alternate director shall have the same rights, powers and privileges (including the right to receive notice of meetings of the Board but excluding the power to appoint an

alternate director) and shall discharge all the duties of and be subject to the same provisions as the director in whose place he or she acts.

- 24.4 An alternate director shall not be remunerated otherwise than out of the remuneration of the director in whose place he or she acts but may be indemnified and/or insured by the Company under clause 26.1 as a director. An alternate director shall vacate office if and when the director in whose place he or she acts vacates office.
- 24.5 Any notice appointing or removing an alternate director may be given by delivering the same or by sending the same through the post or by facsimile to the address for service of the Company and shall be effective as from the receipt thereof.

## 25 **Interested directors**

- 25.1 Subject to complying with section 140 of the Act (disclosure of interest) and as provided in section 144 of the Act (interested director may vote) there are no restrictions on a director of the Company who is interested in a transaction entered into or to be entered into by the Company voting on a matter relating to the transaction, attending a meeting of directors at which a matter relating to the transaction arises and being included among the directors present at the meeting for the purpose of a quorum, signing a document relating to the transaction on behalf of the Company and doing any other thing in his or her capacity as a director in relation to the transaction as if the director were not interested in the transaction.
- 25.2 A director of the Company may be or become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be interested as shareholder or otherwise, and no such director shall be accountable to the Company for any remuneration or other benefits received by him or her as a director or offer of, or from his or her interests in, any such other company unless the Company otherwise directs or the law requires.
- 25.3 Any director may act by himself or herself or his or her firm in a professional capacity for the Company, and a director or firm shall be entitled to remuneration for professional services as if he or she were not a director provided that nothing herein contained shall authorise a director or his or her firm to act as auditor to the Company.

## 26 **Directors' indemnity and remuneration**

- 26.1 The Company is hereby expressly authorised to indemnify and/or insure any director or employee against liability for acts or omissions and/or costs incurred in connection with claims relating thereto of the type specifically contemplated by subsections (3), (4) and (5) of section 162 of the Act to the maximum extent permitted by those subsections.

- 26.2 The Board may not authorise the payment of remuneration or the provision of other benefits by the Company to a director under section 161 of the Act, or enter into a contract to do any such thing, unless the payment or provision has been authorised by ordinary resolution of the shareholders.

27 **Proceedings of directors**

*Schedule 3* governs the proceedings at meetings of directors.

*Miscellaneous*

28 **Annual fees**

- 28.1 The Board may, at any time during a financial year of the Company, set an annual fee for that year in respect of each share in the Company issued before or during that year (other than the share referred to in *clause 6.1* and any share redeemed before the commencement of that year). An annual fee for a financial year must be the same amount for every share in respect of which it is set.
- 28.2 Each annual fee payable in respect of a share under *clause 28.1* and any GST thereon must be paid to the Company –
- (a) by the person who holds or held the share, whether or not the share has been redeemed; and
  - (b) by a date specified by the Board (and the Board may set different dates in respect of shares that are issued at different times).
- 28.3 The amount of any unpaid annual fee and GST, and interest on that amount at a rate set by the Board (not exceeding 15% per annum) for the period from the date payment was due to the actual date of payment, is recoverable in any court of competent jurisdiction as a debt due to the Company from the person who holds or held the share concerned, whether or not the share has been redeemed.
- 28.4 No annual fee, GST, or interest is repayable by the Company on redemption of a share or at any time.

29 **Rebates**

The shareholders may by ordinary resolution, in accordance with a recommendation of the Board, declare a rebate to shareholders out of any profits of the Company. Any such rebate shall be paid to shareholders in cash, but the Company may deduct from any such payment to a shareholder any amount that is payable by the shareholder to the Company whether for annual fees or otherwise.

30 **Notices**

- 30.1 A notice may be served by the Company to any director or shareholder or former shareholder:

- (a) by hand to the nominated office of the addressee; or
  - (b) by post to the nominated postal address of the addressee; or
  - (c) by facsimile to the nominated facsimile number of the addressee; or
  - (d) by electronic transmission or any other similar method of electronic communication to the nominated electronic address of the addressee.
- 30.2 A notice served by facsimile shall be deemed to have been served on the day following completion of transmission thereof.
- 30.3 A notice served by electronic transmission or any other similar method of electronic communication shall be deemed to have been served at the earlier of the time when:
- (a) the computer system used to transmit the notice has received an acknowledgement or receipt to the electronic mail address of the person transmitting the notice; or
  - (b) the person who transmitted the notice proves the notice was transmitted by computer system to the electronic address provided by the addressee.
- 30.4 A notice sent by post or delivered to a document exchange shall be deemed to have been served:
- (a) in New Zealand in the case of a person whose last known address is in New Zealand, at the expiration of 48 hours after the envelope or package containing the same was duly posted or delivered in New Zealand; and
  - (b) outside New Zealand in the case of a person whose last known address is outside New Zealand, at the expiration of 7 days after the envelope or wrapper containing the same was duly posted in New Zealand.
- 30.5 In proving service by post or delivery to a document exchange it shall be 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 shall be sufficient to prove that the document was properly addressed and sent by facsimile. In proving service by electronic transmission or any other similar method of electronic communication it shall be sufficient to prove the notice was properly addressed and sent by electronic transmission or any other similar method of electronic communication and that the computer system used to transmit the notice did not generate a record that the notice failed to be transmitted.
- 30.6 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 share register in respect of the share.
- 30.7 A notice may be given by the Company to the person or persons entitled to a

share in consequence of the death or insolvency 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 an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

### 31 **Liquidation**

31.1 Subject to the terms of issue of any shares in the Company and to *clause 31.2*, upon the liquidation of the Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding up (“the surplus assets”) shall be distributed among the shareholders in proportion to their shareholding.

31.2 Upon a liquidation of the Company, the liquidator, with the sanction of an ordinary resolution of shareholders and any other sanction required by law, may 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) and may for that purpose set such value as the liquidator deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the shareholders or different classes of shareholder. 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 shareholder shall be compelled to accept any shares or other securities whereon there is any liability.

### 32 **Removal from the New Zealand register**

32.1 In the event that:

- (a) 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 its 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 may in the prescribed form request the Registrar to remove the Company from the New Zealand register.

**SCHEDULE 1**

**FORM OF APPLICATION FOR A SHARE IN  
GAS INDUSTRY COMPANY LIMITED**

[*Full name of applicant*] of [*full address*] hereby –

- (a) applies for one \$1 redeemable share in Gas Industry Company Limited (“the Company”) to be issued under *clause 7* of the Company’s constitution, and consents to becoming the holder of that share; and
- (b) confirms that it is an industry participant as defined in section 43D of the Gas Act 1992 and that it is not already a shareholder of the Company; and
- (c) tenders with this application the consideration payable for the share of \$1; and
- (d) agrees to pay in accordance with *clause 28* of the Company’s constitution, each annual fee set by the Board in respect of its share (plus GST), and any interest payable under that clause; and
- (e) confirms that, to the best of its knowledge, [it is not a subsidiary of any shareholder of the Company]\* [it is a subsidiary of a shareholder of the Company, namely [*full name of shareholder*]\*]; and
- (f) confirms that, to the best of its knowledge, [no shareholder of the Company is a subsidiary of a person (not being a shareholder) of which the applicant is also a subsidiary]\* [a shareholder of the Company, namely [*full name of shareholder*], is a subsidiary of a person (not being a shareholder) of which the applicant is also a subsidiary]\*; and
- (g) agrees that, if at any time it ceases to be an industry participant, it will immediately give to the Company under *clause 7.3* of the Company’s constitution notice of redemption of its share; and appoints the Company as its agent and attorney to give notice of redemption in accordance with this paragraph (g) with full authority to-
  - act on its behalf in relation to the giving of that notice; and
  - sign all documents for that purpose; and
  - receive the consideration paid on redemption by the Company (which shall be held on trust by the Company and paid to it on request); and
- (h) agrees that if at any time –
  - it becomes a subsidiary of another shareholder of the Company; or
  - both another shareholder of the Company and it become subsidiaries of the same

person (not being a shareholder) -

it will immediately give written notice of that fact to the Company at its address for service; and

- (i) confirms that it has the capacity and power to hold the share in the Company, and pay each annual fee and other amounts, referred to above.

*Note: In this application form “subsidiary” has the meaning set out in clause 1.1 of the Company’s constitution.*

Dated:

SIGNED by [*full name of applicant*] by

\_\_\_\_\_ Director

\_\_\_\_\_ Director

\* Delete if inapplicable

**SCHEDULE 2****PROCEEDINGS AT MEETINGS OF SHAREHOLDERS****1 Chairperson**

- 1.1 If the directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of shareholders, he or she must chair the meeting.
- 1.2 The shareholders present at a meeting of shareholders may choose one of their number to be chairperson of the meeting if:
- (a) no chairperson of the Board has been elected; or
  - (b) the chairperson of the Board:
    - (i) has advised the Company that he or she will not be attending the meeting; or
    - (ii) is not present within 15 minutes of the time appointed for the meeting to commence.

**2 Notice of meetings**

- 2.1 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 an auditor of the Company not less than 10 working days before the meeting.
- 2.2 The notice must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
  - (b) the text of any special resolution to be submitted to the meeting.
- 2.3 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.
- 2.4 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 proceedings at that meeting.
- 2.5 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.

### 3 **Methods of holding meetings**

3.1 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.

### 4 **Quorum**

4.1 Subject to *subclause 4.3* of this clause, no business may be transacted at a meeting of shareholders if a quorum is not present.

4.2 A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

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

- (a) in the case of a meeting called 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 or their proxies present are a quorum.

### 5 **Voting**

5.1 In the case of a meeting of shareholders held under *clause 3.1(a)* of this schedule, 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:

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

5.2 In the case of a meeting of shareholders held under *clause 3.1(b)* of this schedule, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.

- 5.3 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 *subclause 5.4* of this clause.
- 5.4 At a meeting of shareholders a poll may be demanded by—
- (a) not less than 5 shareholders having the right to vote at the meeting; or
  - (b) a shareholder or shareholders representing not less than 10 percent of the total voting rights of all shareholders having the right to vote at the meeting; or
  - (c) a shareholder or shareholders holding shares in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all shares that confer that right; or
  - (d) the chairperson of the meeting.
- 5.5 A poll may be demanded either before or after the vote is taken on a resolution.
- 5.6 If a poll is taken, votes must be counted according to the vote attached to the share of each shareholder present in person or by proxy having the right to vote and voting.
- 5.7 The chairperson of a shareholders' meeting is not entitled to a casting vote.
- 5.8 For the purposes of this *clause 5*, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

## 6 Proxies

- 6.1 A shareholder may exercise the right to vote either by being present in person or by proxy.
- 6.2 A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
- 6.3 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.
- 6.4 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.

## 7 No postal voting

- 7.1 A shareholder may not exercise the right to vote at a shareholders' meeting by

casting a postal vote.

## 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 **Shareholder proposals**

- 9.1 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.
- 9.2 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.
- 9.3 If the notice is received by the Board not less than 5 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.
- 9.4 If the notice is received by the Board less than 5 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, 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.
- 9.5 The directors 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.
- 9.6 The Board is not required to include in or with the notice given by the Board—
  - (a) any part of a statement prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
  - (b) any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).

9.7 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 **Corporations may act by representatives**

10.1 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 **Votes of joint holders**

11.1 Where 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

12 **Other proceedings**

12.1 Except as provided in this schedule, a meeting of shareholders may regulate its own procedure.

### SCHEDULE 3

#### PROCEEDINGS OF DIRECTORS

##### 1 Chairperson

If no chairperson is elected under *clause 21*, or if at a meeting of the Board the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the directors present may choose an independent director 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 Not less than 2 working days' notice of a meeting of the Board must be sent 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.

##### 3 Methods of holding meetings

A meeting of the Board may be held either:

- (a) by a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all directors participating 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 that includes at least 2 directors who are independent, and 2 directors who are not independent.

4.2 No business may be transacted at a meeting of directors if a quorum is not present.

##### 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 vote on a resolution may not be taken at any time when the number of independent directors present is equal to or less than the number of directors present who are not independent.

## 6 **Minutes**

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 then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 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 **Other proceedings**

Except as provided in this schedule, the Board may regulate its own procedure.