

Constitution of Waikato Waters Limited

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1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, unless the context otherwise requires:

"Agreed Transfer Date" has the meaning given to it in the Shareholders' Agreement.

"Board" means Directors who number not less than the required quorum, acting together as a board of Directors.

"Board Skills Matrix" means the skills matrix set out in Schedule 11 to the Shareholders Agreement.

"Business Day" means a day (other than a Saturday, a Sunday or a public holiday) on which registered banks are open for business in the Waikato region, New Zealand.

"CCO" means a Council Controlled Organisation within the meaning of section 6 of the LGA.

"Chair" means the chair of the Board appointed in accordance with clause 12.10.

"Companies Act" means the Companies Act 1993.

"Company" means Waikato Waters Limited.

"Completion Date" has the meaning given to it in the Shareholders' Agreement.

"Constitution" means this constitution of the Company (including the Schedules) and all amendments to it from time to time.

"Director" means a person appointed as a director of the Company in accordance with this Constitution.

"Establishment Period" means the period between the date on which the Company is incorporated and the Operational Date.

"Financial Year" has the meaning set out in the LG(WS) Act.

"Independent Director" means a Director who is neither a current elected member nor a current employee of any Local Authority, in accordance with the prohibition in section 40 of the LG(WS) Act.

"LGA" means the Local Government Act 2002.

"LG(WS) Act" means the Local Government (Water Services) Act 2024 or such other name as the Act will be called once enacted and currently titled the Local Government (Water Services) Act 2024 under clause 1 of the Local Government (Water Services) Bill 10-9.

"Local Authority" has the meaning set out in the LGA.

"Operational Date" means the first Completion Date reached under a Transfer Agreement between the Company and a Shareholding Council in accordance with the terms of that Transfer Agreement.

"Ordinary Resolution" means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

"Reserved Matters" has the meaning given to it in the Shareholders' Agreement.

"Service Area" in respect of each Shareholder, has the meaning set out in the LG(WS) Act.

"Shares" means the shares in the Company on issue from time to time.

"Shareholder" means any person for the time being registered in the Company's share register as the holder of one or more Shares in the Company.

"Shareholders' Agreement" means the shareholders' agreement relating to the Company entered into between the Company and the Shareholders in and around the same time as this Constitution (as amended from time to time).

"Shareholder Representative Forum" has the meaning set out in the Shareholders' Agreement.

"Shareholding Councils" means the Councils collectively who are party to the Shareholders' Agreement.

"Special Majority Resolution" has the meaning set out in the Shareholders' Agreement.

"Special Resolution by Number" has the meaning set out in the Shareholders' Agreement

"Special Resolution by Vote" means a resolution that is approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question.

"SRF Representative" means a member of the Shareholder Representative Forum.

"Stage 1 Shares" has the meaning set out in the Shareholders' Agreement.

"Stage 2 Shares" has the meaning set out in the Shareholders' Agreement.

"Statement of Expectations" means the statement of expectations that is prepared by the Shareholders in accordance with the requirements of the LG(WS) Act and which sets the shareholders' expectations of the Water Organisation, sets the priorities and strategic direction of the Company and informs and guides decisions, actions of the Company and preparation of the Company's Water Services Strategy.

"Statutory Objectives" means the objectives for Water Services Providers set out in the LG(WS) Act.

"Strategic Outcomes" has the meaning set out in the Shareholders' Agreement.

"Subsidiary" has the meaning set out in the Companies Act.

"Transfer Agreement" means the agreement to be entered into between each Shareholding Council and the Company in accordance with the requirements of the LG(WS) Act and the Shareholders' Agreement.

"Water Organisation" has the meaning set out in the LG(WS) Act.

"Water Services" has the meaning set out in the LG(WS) Act, which shall be the water services transferred by the Shareholders to the Company in accordance with the Transfer Agreement between each Shareholder and the Company.

"Water Services Strategy" has the meaning set out in the LG(WS) Act.

"Water Services Provider" has the meaning set out in the LG(WS) Act.

"Water Services Annual Budget" has the meaning set out in the LG(WS) Act and refers to the annual budget that must be prepared by the Company for each financial year that is not the first financial year of the Water Services Strategy. It must be adopted before the start of the financial year to which it relates.

"Water Services Annual Report" has the meaning set out in the LG(WS) Act and refers to the annual report the Company must adopt no later than 3 months after the end of the financial year to which it relates.

1.2 **Interpretation:** In this Constitution, the following rules of interpretation apply, unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) words in this Constitution have the same meaning as in the Companies Act unless inconsistent with the context;
- (e) a reference to a party, person or entity includes:
 - (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;
- (f) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause or schedule is to a clause or schedule of this Constitution;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) references to the word 'include' or 'including' are to be construed without limitation;

- (j) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (l) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (m) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
- (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

1.3 Conflict: If there is any conflict:

- (a) between a provision of this Constitution and the provisions of the Shareholders' Agreement, the terms of the Shareholders' Agreement will prevail (other than to the extent prohibited by the Companies Act) and the Shareholders must pass such resolutions as may be necessary to amend the provisions of this Constitution to make it consistent with the Shareholders' Agreement;
- (b) between a provision in this Constitution and a mandatory provision in the Companies Act, the LG(W.S) Act or the LGA, then the mandatory provision in the Companies Act, the LG(W.S) Act or the LGA will prevail; and
- (c) between:
 - (i) a provision in this Constitution and a provision in the Companies Act which is expressly permitted to be altered by this Constitution; or
 - (ii) a word or expression defined or explained in the Companies Act and a word or expression defined or explained in this Constitution,

then the provision, word or expression in this Constitution will prevail.

2. PURPOSE AND VISION OF COMPANY

- 2.1 The overarching purpose of the Company is to achieve the Strategic Outcomes and provide consistent and improving service levels and resilience across the whole of the area serviced by the Company.
- 2.2 The vision for establishing the Company is Te Mana o Te Wai Te Mana o Te Tangata | Healthy Water Healthy People.

3. CAPACITY AND OBJECTIVES

- 3.1 The Company is established as a CCO. Following the Transition Period, the Shareholding Councils will transfer responsibility for providing Water Services in their respective Service Areas to the Company in the manner set out in the Shareholders' Agreement.

- 3.2 From the Operational Date, the Company will be a Water Organisation and operate as a Water Services Provider in the Service Areas that it is responsible for in accordance with the requirements of the LG(WS) Act.
- 3.3 The Company must not carry on any business other than the provision of Water Services and activities that are related to, or necessary for, the provision of Water Services, in order to meet its Statutory Objectives and the Statement of Expectations.
- 3.4 Subject to this Constitution, the Shareholders' Agreement, the Companies Act, the LG(WS) Act, the LGA and the Statement of Expectations, 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.

4. WATER ORGANISATION REQUIREMENTS

- 4.1 The Company must comply with:
- (a) its obligations under the LGA and LG(WS) Act, including preparing, adopting and publishing its Water Services Strategy, Water Services Annual Budget and Water Services Annual Report;
 - (b) all applicable statutory and regulatory obligations relating to Māori and Te Tiriti o Waitangi (Treaty of Waitangi), including those set out in the LGA and the Treaty settlement obligations identified in the LG(WS) Act; and
 - (c) the applicable part of the Local Government Official Information and Meetings Act 1987.
- 4.2 The Company must consider the opportunity for the Company (and its Shareholding Councils) to benefit from strategic relationships with Iwi partners to deliver on its purpose (as further set out in the Shareholders' Agreement) and build positive relationships with co-governance entities of the region which arise from treaty-based settlement legislation enabling environmental and catchment-based outcomes including, but not limited to, Waikato River Authority, Hauraki Gulf Forum and the Waihou, Piako, Coromandel Catchment Authority.
- 4.3 In preparing the Company's Water Services Strategy and Water Services Annual Budget, the Shareholders will be able to provide comments and recommend changes on each of the draft strategy and draft budget but will not have the power to require changes or approve the final strategy or final budget.
- 4.4 In accordance with the LGA, the auditor for the Company shall be the Auditor-General.

5. SHARES

- 5.1 **Initial Shares:** On registration of the Company, there are 700 Stage 1 Shares in the Company. No money is payable for calls or otherwise on the Stage 1 Shares.
- 5.2 **Stage 1 Shares:** The Stage 1 Shares are issued on the terms and conditions set out in the Shareholders' Agreement.

5.3 **Stage 2 Shares:** As soon as practicable after registration of the Company, the Company will ratify its commitment to issue further Shares (referred to as Stage 2 Shares) to each Shareholding Council on the relevant Completion Date in accordance with the terms of the Shareholders' Agreement and the relevant Transfer Agreement.

5.4 **Further issue of Shares:** Without limiting the above, and subject to this Constitution, the Shareholders' Agreement and the LG(WS) Act, the Board may:

- (a) issue Shares at any time, to any person listed in clause 7.2(a) or any other person permitted to hold Shares in accordance with the LG(WS) Act and in such numbers as it thinks fit;
- (b) issue Shares in different classes which have different rights;
- (c) issue Shares which are redeemable (as defined in section 68 of the Companies Act); and
- (d) divide existing Shares into different classes which have different rights,

provided that no Shares may be issued unless the issue is first approved by the Shareholders by way of Special Majority Resolution.

6. CALLS ON SHARES

6.1 **Board may make calls:** Subject to the Shareholders' Agreement, the Board may make calls on any Shareholder in respect of any money unpaid on their Shares, and not previously made payable at a fixed time, by prior written notice to the relevant Shareholder specifying the time and date for payment (such time and date to be no earlier than 10 Business Days after the notice is given to the relevant Shareholder). The relevant Shareholder must comply with the terms of any call made by the Board. A call may be payable by instalments. The Board may revoke or postpone a call.

6.2 **Interest and expenses:** A person who fails to pay a call on the due date must pay:

- (a) interest on that money from the day payment was due to the day of actual payment at a rate fixed by the Board; and
- (b) all expenses which the Company has incurred or may incur because of non-payment,

on demand by the Board, provided that the Board may waive payment of all or part of that interest or those expenses.

7. TRANSFER OF SHARES

7.1 **No transfer of shares:** Subject to this clause 7 and the terms of the Shareholders' Agreement, a Shareholder may not sell, transfer or otherwise dispose of any Share to any person.

7.2 **Permitted transfers:** Subject to the LG(WS) Act, the restrictions in this clause 7 do not apply to the following transfers:

- (a) the transfer of Shares by a Local Authority to:
 - (i) another Local Authority; or
 - (ii) any successor Local Authority to that Local Authority.

7.3 **Board may refuse to register:** The Board may refuse or delay the registration of any transfer of a Share to any person if:

- (a) the transfer would result in a breach of law, this Constitution or the Shareholders' Agreement;
- (b) any money payable on that Share is due for payment and has not been paid;
- (c) the Company has an unsatisfied lien on that Share or the proceeds of sale of that Share;
- (d) the transferee is a person without legal capacity to contract or the transfer has not been properly executed;
- (e) the transfer is not accompanied by proof (reasonably required by the Directors) of the right of the transferor to make the transfer;
- (f) the Directors acting in good faith determine that registration of the transfer would not be in the best interests of the Company; or
- (g) the transfer document is not in the usual or common form or otherwise in the form prescribed by the Board from time to time (if any),

provided that the Board must at all times comply with section 84 of the Companies Act.

8. DISTRIBUTIONS

8.1 **Distributions:** The Company must not pay any dividend or distribute any surplus in any way, directly or indirectly, to any owner or Shareholder.

9. COMPANY ACQUIRING ITS OWN SHARES

9.1 **Company may acquire its own Shares:** The Company may purchase or otherwise acquire its own Shares where this is consistent with the terms of the Shareholders' Agreement or, if outside the scope of what is provided for in the Shareholders' Agreement, only if it has first been authorised to do so by Special Resolution by Vote. Shares purchased or otherwise acquired by the Company shall be deemed to be cancelled immediately on acquisition.

10. SHAREHOLDER MEETINGS

10.1 **Annual meeting:** The Board must hold an annual Shareholders' meeting in accordance with section 120 of the Companies Act unless in the case of any annual meeting, everything required to be done at that meeting (whether by way of resolution or otherwise) is done by written resolution in accordance with section 122 of the Companies Act.

10.2 **Special meetings:** A special Shareholders' meeting:

- (a) may be called at any time by the Board with written notice to Shareholders issued through the Shareholder Representative Forum; and
- (b) must be called by the Board on the written request of the Shareholders acting through the Shareholder Representative Forum.

10.3 **Proceedings at meetings between the Board and the Shareholder Representative Forum:** The provisions of the First Schedule to the Companies Act as modified by this Constitution, including the rules set out in Schedule 1, govern proceedings at meetings the Board convenes with Shareholders.

11. REPORTING REQUIREMENTS

11.1 **Reporting:** Subject to clause 11.2:

- (a) the Board must prepare the reports required by the Shareholder Representative Forum by notice in writing to the Company (such notice must comply with the requirements in section 209(4) of the LG(WS) Act), in accordance with the requirements specified in that notice;
- (b) within eight months of the start of each Financial Year of the Company, the Board must prepare and adopt a water services half-yearly report in accordance with the LG(WS) Act, which must include information required to be included by the Statement of Expectations; and
- (c) within three months of the end of each Financial Year of the Company, the Board must prepare, adopt and deliver to the Shareholders, and publish in accordance with the LG(WS) Act, its Water Services Annual Report for that Financial Year, which must include the information required to be included by:
 - (i) the Statement of Expectations;
 - (ii) the Companies Act; and
 - (iii) sections 205 to 208 of the LG(WS) Act.

11.2 **Information to be withheld:** Nothing in this clause 11 requires the inclusion in any Statement of Expectations, annual report, financial statements or quarterly report required to be produced under this Constitution of any information that may be properly withheld if a request for that information was made under the Local Government Official Information and Meetings Act 1987.

12. DIRECTORS

12.1 **Initial Directors:** On registration of the Company, the first Directors are the persons named as Directors in the application for registration of the Company.

12.2 **Independent Directors:** As soon as practicable after the date of incorporation, and no later than the day immediately preceding the Operational Date, all Directors will be Independent Directors.

- 12.3 **Number of Directors:** The maximum number of Directors will be seven. From the Operational Date, the minimum number of Directors will be five.
- 12.4 **Appointment and removal by Shareholders:**
- (a) Subject to clause 12.2, the Shareholder Representative Forum will appoint up to the number of Directors set out in clause 12.3 in accordance with the Shareholders' Agreement. Directors may be removed and replaced in the same way.
 - (b) The Shareholders and the Company shall promptly take such steps as may be necessary to effect the appointment, replacement or removal of any individual (including if a Director fails to vacate office when required to do so) in accordance with this clause 12.4 if applicable, including, in the case of the Shareholders, by exercising their voting rights in the relevant Shareholders' meeting (or by way of written resolution).
- 12.5 **Appointment and removal by Board:** Where there is a vacancy on the Board, the Appointments and Accountability Committee established by the Board (or, where the Board so determines, the full Board), may, by majority vote, recommend an appointment to fill that vacancy to the Shareholder Representative Forum for its approval in accordance with the Shareholders' Agreement. A Director may be removed in a similar manner.
- 12.6 **Role of Iwi:** The Shareholder Representative Forum will engage with Iwi in relation to the appointment of Board members in the manner set out in the Shareholders' Agreement.
- 12.7 **Skills of Directors:**
- (a) Other than the Directors appointed on incorporation:
 - (i) a person may only be appointed to be a Director if the person has, in the opinion of the appointor, the skills, knowledge, or experience to:
 - (aa) guide the Company, given the nature and scope of its activities; and
 - (bb) contribute to the achievement of the objectives of the Company.
 - (ii) All Director appointments must be made in accordance with the Board Skills Matrix, with the aim of ensuring that the Board as a whole has the skills required by the Board Skills Matrix from the Operational Date.
- 12.8 **Term of Appointment:**
- (a) No person may be appointed as a Director for a term of more than four consecutive years ("**Term**").
 - (b) A Director may be reappointed at the expiry of his or her Term of appointment, provided that no Director may be appointed for more than three consecutive Terms.
- 12.9 **Vacation of office:** A Director vacates office if that Director:
- (a) resigns by written notice of resignation to the Company. The notice is to be effective when it is received at that address or at a later time specified in the notice;

- (b) is removed from office in accordance with clause 12.5;
- (c) becomes disqualified from being a Director pursuant to section 151 of the Companies Act; or
- (d) dies.

12.10 Appointment of Chair:

- (a) The Shareholder Representative Forum will appoint a Chair of the Board in accordance with the Shareholders' Agreement.
- (b) The Chair will hold office until:
 - (i) they cease to be a Director of the Company; or
 - (ii) a new Chair is appointed by the Shareholder Representative Forum.

12.11 Powers of the Board:

- (a) Subject to clause 12.11(b) and any restrictions in the Companies Act, the LG(WS) Act, the Shareholders' Agreement or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- (b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company except to the extent that this Constitution, the Shareholders' Agreement, the Companies Act or the LG(WS) Act expressly requires those powers to be exercised by the Shareholders or any other person.
- (c) The Board may delegate to a committee of Directors, a Director, an employee of the Company or to any other person, any one of more of its powers, other than a power set out in the second schedule to the Companies Act. The Board remains responsible at all times for any delegated powers.

12.12 Prohibited Matters: Notwithstanding clause 12.11(b), the Board must not, and must not cause the Company to:

- (a) incur indebtedness to any person other than the New Zealand Local Government Funding Agency Limited and a New Zealand registered banking institution; or
- (b) grant a security interest over any of the assets of the Company,

except to the extent permitted by the LG(WS) Act and the Shareholders' Agreement.

12.13 Shareholder Reserved Matters: Notwithstanding clause 12.11(b), but subject to any restrictions in the LG(WS) Act, the Board must not, and must not cause the Company to enter into any transaction or matter that is a Reserved Matter, unless first approved in writing by the Shareholders in accordance with the Shareholders' Agreement.

12.14 Solvency test: Notwithstanding any approval attained pursuant to clause 12.12, the Board must not cause the Company to borrow or raise any money, or enter into or incur any

guarantee or other liability of any nature, if the effect of doing so would be that the Company will not satisfy the solvency test (as that term is defined in the Companies Act).

- 12.15 **Proceedings of the Board:** The provisions of the Third Schedule to the Companies Act, as modified by this Constitution, including the rules set out in Schedule 2, govern proceedings at meetings of Directors.
- 12.16 **Directors duties:** In addition to the duties set out in the Companies Act, the Directors must assist the Company to meet the objective set out in clause 3.3 and any other requirements set out in the Statement of Expectations or the LG(WS) Act.
- 12.17 **Directors to act in good faith:** A Director, when exercising powers or performing duties, must act in a manner which that Director believes to be in the best interests of the Company (notwithstanding that it may not be in the best interests of any particular Shareholder) and consistent with section 59 of the LGA.
- 12.18 **Indemnity and insurance of Directors and employees:** The Company may indemnify and effect insurance in accordance with any part or all of section 162 of the Companies Act provided that:
- (a) the Board must ensure that particulars of any indemnity given to, or insurance taken out for, any director, or employee of the Company are immediately entered in the interests register; and
 - (b) the Board may impose any conditions in relation to any indemnity or insurance if the conditions do not contravene the Companies Act.

For the purposes of this clause 12.18 "director" includes any former director, "employee" includes any former employee and "Company" includes any related company.

- 12.19 **Disqualification of Directors:** A person will be disqualified from holding the office of Director if he or she:
- (a) is or becomes disqualified from being a Director under any provision of the Companies Act or the LG(WS) Act; or
 - (b) dies; or
 - (c) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
 - (d) is an undischarged bankrupt.
- 12.20 **Remuneration of Directors:**
- (a) The Shareholders shall determine, by Special Resolution by Vote, the total sum available to the Board each year to make remuneration payments in accordance with clause 12.20(a).
 - (b) The Board may not authorise any form of remuneration to be paid to a Director without Board approval and unless such payment is made and authorised in accordance with the provisions of the Companies Act and that payment does not

cause the total remuneration paid in any year to exceed the total sum approved in accordance with clause 12.20.

- (c) The Board may authorise the reimbursement by the Company of reasonable travelling, hotel and other expenses incurred by Directors in attending Board meetings, Shareholder meetings or in relation to any other affairs of the Company.

12.21 **Other offices with company held by Director:**

- (a) Any Director may act by himself or herself or by the Director's firm in a professional capacity for the Company, and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor of the company.
- (b) A Director may hold any other office or place of profit 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, subject to the necessary reporting disclosures and avoidance of conflicts of interest.

12.22 **Alternate Directors:**

- (a) Each Director will have the power from time to time by written notice to the Company to appoint any person who is already a Director to act as an alternate Director in his or her place. An alternate Director can be appointed as alternate, for more than one Director, but cannot act as alternate for more than one Director, at any given time. The following provisions will apply to an alternate Director:
 - (i) the alternate Director will not be entitled to any remuneration in his or her capacity as alternate Director in addition to that of the Director in whose place he or she acts, but will have the same rights as a Director to be reimbursed under clause 12.20(c);
 - (ii) unless otherwise provided by the terms of the appointment, the alternate Director:
 - (aa) has the same rights, powers and privileges (including the power to sign resolutions of Directors and the power to sign documents on behalf of the Company, but excluding the power to appoint an alternate Director under this clause 12.22); and
 - (bb) must discharge all of the duties and obligations of the Director in whose place he or she acts.
- (b) An alternate Director will cease to be an alternate Director:
 - (i) if the Director who appointed the alternate Director ceases to be a Director or revokes the appointment;
 - (ii) on the occurrence of any event relating to the alternate Director which, if the alternate Director were a Director, would disqualify the alternate Director from being a Director; or

- (iii) if a majority of the other Directors resolve to revoke the alternate Director's appointment.

13. INTERESTS OF DIRECTORS

13.1 **Disclosure of interests:** A Director must disclose particulars of any interest in a transaction or proposed transaction of the Company in accordance with section 140 of the Companies Act.

13.2 **Interested Directors:** As set out in section 139 of the Companies Act, a Director is "interested" in a transaction to which the Company is a party if:

- (a) the transaction relates to a dispute between the Company and the Shareholder that appointed the Director ("**Director's Shareholder**"), or the enforcement of remedies available to the Company against the Director's Shareholder, including under any agreement or arrangement between the Company (whether by itself or with one or more other parties) and the Director's Shareholder;
- (b) they are a party to the transaction or may derive a material financial benefit from it;
- (c) they have a material interest in another party to the transaction;
- (d) they are a director, officer or trustee of another party to the transaction;
- (e) they are a director, officer or trustee of a person who may derive a material financial benefit from the transaction;
- (f) they are a parent, child or spouse, civil union partner, or de facto partner of a person described in clause 13.2(a); or
- (g) they are otherwise directly or indirectly materially interested in the transaction.

13.3 **Interested Directors may act:** A Director who is interested in a transaction entered into, or to be entered into, by the Company must not do any of the following:

- (a) sign a document relating to that transaction on behalf of the Company; or
- (b) do any other thing in their capacity as a Director in relation to that transaction,

provided that a Director may vote, sign documents and otherwise do any other thing in their capacity as a Director with regard to any matter relating to the following:

- (c) any payment or other benefit of the kind referred to in section 161 of the Companies Act in respect of that Director in accordance with clause 12.20;
- (d) the entry into an indemnity or insurance arrangement in respect of that Director in their capacity as a director of the Company in accordance with clause 12.18; or
- (e) transactions in which a Director is interested solely in their capacity as a director of a Subsidiary of the Company.

13.4 **Interests register review:** The Board shall review the interests register at the beginning of every Board meeting.

- 13.5 **No prohibition re quorum:** No prohibition under this clause 13 will prevent the attendance of a Director at a Board meeting from counting for quorum purposes.

14. NOTICES

- 14.1 **Service:** Notices may be served by the Company upon any Director or Shareholder, either by personal delivery, by electronic means or by posting it in a prepaid envelope or package addressed to the recipient at his or her last known address (or, in the case of a company, its registered office). A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share, or to such other person as or the joint Shareholders may in writing direct.

- 14.2 **Time of service:** Notices are deemed served at the following times:

- (a) when given personally, on delivery;
- (b) when sent by post or document exchange, five Business Days after (but exclusive of) posting; and
- (c) when sent by email, at the time of transmission, if (in the event receipt is disputed) the sender produces a printed copy of the email which evidences that the email was sent to the email address of the recipient.

Any notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first Business Day after that day.

15. LIQUIDATION

- 15.1 If the Company is liquidated, the liquidator may, with the approval of the Shareholders by Special Majority Resolution and any other approval required by the Companies Act or the LG(WS) Act, but subject to the requirements of the Shareholders' Agreement (as notified by any Shareholder to the liquidator) and, if applicable, the rights or restrictions attached to the different classes of shares issued by the Company:

- (a) distribute to the Shareholders in kind the whole or any part of the assets of the Company; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that the Shareholders are not compelled to accept any Shares or other securities on which there is any liability.

16. METHODS OF CONTRACTING

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

- (a) two or more Directors;
- (b) a Director, and any person authorised by the Board, whose signatures must be witnessed; or

(c) one or more attorneys appointed by the Company.

- 16.2 Subject to clause 16.1, an obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by two people acting under the express or implied authority of the Company.
- 16.3 Subject to clause 16.1, any other obligation or contract may be entered into on behalf of the Company in writing or orally by two people acting under the express or implied authority of the Company.

SCHEDULE 1

Rules for Shareholder Meetings convened by the Board

1. CHAIR

- 1.1 If the Chair is present at the meeting, he or she must chair the meeting.
- 1.2 If there is no Chair or if the Chair is not present at the meeting within 15 minutes of the start time, the Directors present may elect a chair for that meeting, failing which, the SRF Representatives present may elect a chair for that meeting.

2. NOTICE OF MEETINGS

- 2.1 Each SRF Representative and every Director of the Company must be sent written notice of the time and place of the meeting at least 15 Business Days before the meeting.
- 2.2 The notice must state:
 - (a) the nature of the business to be discussed at the meeting in sufficient detail to enable each SRF Representative to form a reasoned judgment in relation to it and, where appropriate, engage with its council in relation to the relevant matter; and
 - (b) the text of any Special Resolution by Vote, Special Resolution by Number or Special Majority Resolution to be put to the meeting.
- 2.3 An irregularity in a notice of a meeting is waived if:
 - (a) the Shareholders (through their SRF Representative or otherwise) attend the meeting without protest as to the irregularity; or
 - (b) if each Shareholder agrees to the waiver.
- 2.4 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. It is not otherwise necessary to give any new notice for an adjourned meeting.
- 2.5 The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings at that meeting.

3. METHODS OF HOLDING MEETINGS

- 3.1 A Shareholders' meeting may be held either:
 - (a) at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual, communication. The SRF Representatives participating must constitute a quorum and must all be able to simultaneously hear all participants throughout the meeting.

4. QUORUM

4.1 No business may be transacted at a Shareholder meeting if a quorum is not present.

4.2 A quorum for a Shareholder meeting is present if:

- (a) the nature of the business does not require a Special Resolution by Vote, Special Resolution by Number or a Special Majority Resolution, a majority of Shareholders (based on the number of Shares held) or their proxies is present; or
- (b) the nature of the business requires a Special Resolution by Vote, Special Resolution by Number or a Special Majority Resolution, such Shareholders required to pass such a resolution (based on the number of Shares held and/or the number of Shareholders, as applicable) or their proxies is present.

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

- (a) if the meeting is called under section 121(b) of the Companies Act, the meeting is dissolved;
- (b) for any other meeting, the meeting is adjourned to:
 - (i) the same day in the following week at the same time and place, or
 - (ii) to another date, time and place to be fixed by the Directors.

5. ADJOURNMENTS

5.1 The chair:

- (a) may adjourn the meeting from time to time and from place to place, but no business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place; and
- (b) must adjourn the meeting as above if directed to do so by the meeting.

6. VOTING

6.1 If a Shareholder meeting is held under rule 3.1(b), unless a poll is demanded, voting at the meeting will be by:

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

and the chair of the meeting will decide which method is used.

6.2 A declaration by the chair of the meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact unless a poll is demanded.

6.3 Subject to the Shareholders' Agreement and to any rights or restrictions attached to any Share:

- (a) where voting is by voice or a show of hands, every Shareholder present in person or by representative has one vote; and
- (b) on a poll every Shareholder present in person or by representative has one vote in respect of every Share held by that Shareholder which entitles a Shareholder to vote; and
- (c) in the case of an equality of votes, the chair of the meeting does not have a casting vote.

7. PROXIES

- 7.1 Subject to the terms of reference of the Shareholder Representative Forum, each SRF Representative has the right to appoint an alternative representative as its proxy to attend and vote at Shareholder meetings on its behalf. Any such representative so appointed is entitled to attend and be heard at Shareholder meetings and to demand or join in demanding a poll, as if that representative was the relevant SRF Representative.

8. MINUTES

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

9. SHAREHOLDER PROPOSALS

- 9.1 The Shareholders, via the Shareholder Representative Forum, may give written notice to the Board of a matter the Shareholders propose to raise for discussion or resolution at the next Shareholder meeting. The provisions of clause 9 of the First Schedule of the Companies Act apply to any notice given under this paragraph 9.1.
- 9.2 The Chair of a Shareholder meeting will allow a reasonable opportunity for the Shareholders to question, discuss or comment on the management of the Company.

10. OTHER PROCEEDINGS

- 10.1 Except as provided in this Schedule 1, and subject to this Constitution, the Shareholder Representative Forum may regulate its own procedure.

SCHEDULE 2

Rules for Board Proceedings

1. NOTICE OF MEETING

- 1.1 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.
- 1.2 At least five Business Days' notice of a meeting of the Board must be given to every Director. The notice must include the date, time and place of the meeting and the matters to be discussed.
- 1.3 An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 1.4 Notice of a meeting may be given by any means, including by telephone.

2. METHOD OF HOLDING MEETINGS

- 2.1 The Board may meet in person or by any technological means that allow participating Directors to be in communication with other participating Directors in a manner that is relatively contemporaneous. Where Directors are not all in attendance in one place but are holding a meeting through such a system of communication:
 - (a) the participating Directors will be taken to be assembled together at a meeting and present at that meeting (including for the purposes of quorum requirements);
 - (b) the meeting will be taken to be held at the place agreed to by the participating Directors so long as at least one participating Director is physically present at that place; and
 - (c) all proceedings at meetings conducted in such a manner will be valid and effective as if conducted at a meeting at which all of them were physically present.

3. QUORUM

- 3.1 At any meeting of Directors:
 - (a) a quorum will only be present if at least a majority of Directors are present; and
 - (b) any resolution, unless otherwise specified in this Constitution or the Shareholders' Agreement, will be passed if a majority of the votes cast on it are in favour of it.
- 3.2 If a quorum is not present within 30 minutes of the time appointed for the commencement of the Board meeting, the Board meeting must be 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 chairperson may appoint, and if at the adjourned meeting a quorum is not present within one hour after the time appointed for the commencement of the meeting, the Directors present (regardless

of the person who appointed them) will constitute a quorum. No business may be transacted at a meeting of Directors if a quorum is not present.

4. VOTING

- 4.1 Every Director has one vote.
- 4.2 The Chair does not have a casting vote.
- 4.3 Subject to clause 12.12, 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.
- 4.4 A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.

5. MINUTES

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

6. RESOLUTIONS

- 6.1 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.
- 6.2 A 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.
- 6.3 A copy of all resolutions must be entered in the minute book of Board proceedings.

7. NO NOTICE TO DIRECTORS OUTSIDE NEW ZEALAND

- 7.1 It is not necessary to give notice of a meeting of the Board to any Director temporarily absent from New Zealand.

8. OTHER PROCEEDINGS

- 8.1 Except as provided in this Schedule 2 and this Constitution, the Board may regulate its own procedure.