

Constitution of Northland Waters Limited

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SCHEDULES

SCHEDULE 1 RULES FOR SHAREHOLDER MEETINGS

SCHEDULE 2 RULES FOR BOARD PROCEEDINGS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, unless the context otherwise requires:

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

Board Skills Matrix has the meaning given to it in 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 Far North, Whangarei or Kaipara districts.

Chair means the chair of the Board appointed in accordance with clause 12.8.

Class A Shares means Shares in the Company with the rights attaching to those Shares as set out in clause 4.3.

Class B Shares means Shares in the Company with the rights attaching to those Shares as set out in clause 4.4.

Companies Act means the Companies Act 1993.

Company means Northland Waters Limited.

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.

Distribution means the payment of a dividend and any other "distribution" as that term is defined in section 2 of the Companies Act.

Financial Year has the meaning given to it in section 4 of the LG(WS) Act.

Independent Director means a Director who is neither a current elected member of any Local Authority that is a Shareholder nor a current employee of any Shareholder or the Company.

LGA means the Local Government Act 2002.

LG(WS) Act means the Local Government (Water Services) Act 2025.

Local Authority has the meaning given to it in section 5 of the LGA.

Ordinary Resolution has the meaning given to it in the Companies Act.

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

Service Area means:

- (a) in the context of the Company, as set out in the LG (WS) Act; and
- (b) in respect of each Shareholder, the 'district' of that Shareholder as a 'territorial authority' (as those terms are defined in the LGA).

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

Shareholders' Agreement means the current shareholders' agreement relating to the Company entered into between the Company and the Shareholders (as amended or replaced from time to time).

Shareholders Representative Group has the meaning given to it in the Shareholders' Agreement.

Shares means the shares in the Company on issue from time to time, and includes the Class A Shares and the Class B Shares.

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

Statement of Expectations has the meaning given to it in section 220 of LG(WS) Act.

Subsidiary has the meaning given to it in the Companies Act.

Water Organisation has the meaning given to it in section 4 of the LG(WS) Act.

Water Services has the meaning given to it in section 4 of the LG(WS) Act, which will 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 Annual Budget has the meaning given to it in section 220 of the LG(WS) Act.

Water Services Annual Report has the meaning given to it in section 220 of the LG(WS) Act.

Water Services Half-yearly Report means the document referred to in section 248 of the LG(WS) Act.

Water Services Strategy has the meaning given to it in section 220 of the LG(WS) Act.

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 are 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 will 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 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(WS) Act or the LGA, then the mandatory provision in the Companies Act, the LG(WS) 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. CAPACITY

2.1 **Water Organisation:** As at the date of its incorporation, the Company is a Water Organisation in terms of section 44 of the LG(WS) Act.

2.2 **Business:** The Company must not carry on any business other than the provision of, or preparation for the provision of, Water Services and activities that are related to, or necessary for, the provision of, or preparation for the provision of, Water Services, in order to:

- (a) meet the objectives set out in section 17 of the LG(WS) Act for the Service Area; and
- (b) maximise the cost efficiency of providing Water Services.

2.3 **Purpose:** In carrying out its business, the Company will:

- (a) deliver safe, reliable and financially sustainable Water Services across the Service Areas;
- (b) support the collective resilience and wellbeing of the Northland region; and
- (c) operate in a manner that is responsive to the differing needs and contexts of its communities, and taking into account environmental and cultural stewardship.

2.4 **Capacity:** Subject to this Constitution, the Companies Act, the LG(WS) Act, the LGA and any current 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.

2.5 **Compliance:** The Company must give effect to the contents of the Statement of Expectations when conducting its business and setting its Water Services Strategy.

2.6 **Public Ownership:** All water services infrastructure and related assets owned by the Company shall remain in public ownership. This does not preclude the Company from accessing or benefiting from private funding or financing arrangements, provided such arrangements do not result in any transfer of ownership of those assets. No Shareholder will take any steps to approve or otherwise give effect to any action which is inconsistent with this clause.

2.7 **Ringfencing:** The Company will ensure that it:

- (a) operates its business in a way that enables:
 - (i) the total cost of its provision of Water Services;
 - (ii) the revenue derived; and
 - (iii) assets (including reserves) and liabilities held or incurred,to be separably identified in respect of each Shareholder's Service Area; and
- (b) sets its water charges in respect of each Shareholder's Service Area taking into account the total costs referred to in clause 2.7(a) in that Service Area, acknowledging that this may result in differential water charges as between the Shareholders' Service Areas.

3. WATER ORGANISATION REQUIREMENTS

3.1 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, Water Services Half-yearly Report and Water Services Annual Report;

- (b) Parts 1 to 7 of the Local Government Official Information and Meetings Act 1987; and
- (c) all other laws applicable to the Company and its Business activities.

3.2 **Shareholder Input:** The Shareholders are entitled to comment on the Company's draft Water Services Strategy and draft Water Services Annual Budget, and the Company must consider those comments. However, the Shareholders will not have the power to require changes or approve the final Water Services Strategy or final Water Services Annual Budget.

3.3 **Auditor:** In accordance with the LGA, the auditor for the Company will be the Auditor-General.

4. SHARES

4.1 **Pari Passu:** Save as expressly provided in this Constitution, a board resolution specifying any specific terms attaching to Shares or as otherwise required by law, all Shares will rank pari passu in all respects.

4.2 Classes:

- (a) The Shares in the Company are divided into classes conferring entitlements that differ from the ordinary shareholder rights conferred by the Act.
- (b) As at the date of adoption of this Constitution, the Company has two classes of Shares, Class A Shares and Class B Shares, in each case having the rights set out in this Constitution.

4.3 **Class A Shares:** Class A Shares shall have the following rights attached to them:

- (a) the right to receive notice of and attend every meeting of Shareholders; and
- (b) the right to one vote on a poll at a meeting of the Company on any resolutions,

but do not have any right to any dividends authorised by the board or to any share in the distribution of the surplus assets of the Company.

4.4 **Class B Shares:** Class B Shares shall have the following rights attached to them:

- (a) the right to receive notice of and attend every meeting of Shareholders.
- (b) the right to an equal share in dividends authorised by the board; and
- (c) subject to clause 8.2, the right to an equal share in the distribution of the surplus assets of the Company,

but do not have any right to vote on a poll at a meeting of the Company on any resolutions.

4.5 **Redeemable Shares:** The Company may redeem a redeemable share:

- (a) at the option of the Company; or
- (b) at the option of the holder of the share; or
- (c) on a date specified in this Constitution,

for a consideration that is:

- (d) specified;
- (e) to be calculated by reference to a formula; or
- (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

4.6 **Issue of Shares:** Subject to this Constitution, the Shareholders' Agreement and the LG(W.S) Act, the Board may:

- (a) issue Shares at any time, to any Shareholder or any other person permitted to hold Shares in accordance with the LG(W.S) 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.

4.7 **Authority to Hold Own Shares:** The Company may hold its own shares uncanceled but only in accordance with section 67A, 67B and 67C of the Act.

4.8 **Reissue of Shares:** Any shares reissued by the Company must be treated as the issue of new shares.

4.9 **Compliance:** The Company must comply with the Act when it purchases or acquires shares issued by it.

5. CALLS ON SHARES

5.1 **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.

5.2 **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,

provided that the Board may waive payment of all or part of that interest or those expenses.

6. LIEN OVER SHARES

6.1 **Existence and subject matter of lien:** If a Shareholder fails to pay any call on the due date, the Board may at any time by written notice to the Shareholder require payment of the unpaid amount together with any amount payable under clause 5.2. Such notice must specify a further date (not earlier than 10 Business Days from the date of the notice) by which payment is required to be made, and must state that if such payment is not made on or before the specified date, clause 6.2 will apply.

6.2 **Company has first lien:**

- (a) The Company has a first lien over:
 - (i) each Share and the proceeds of sale of the Share; and
 - (ii) all distributions made in respect of the Share,for:
 - (iii) all unpaid calls owing in respect of the Shares and any amount payable under clause 5.2; and
 - (iv) sale expenses owing to the Company in respect of the Shares.
- (b) The registration of any transfer of a Share will not operate as a waiver of any lien the Company may have on that Share, unless notice to the contrary is given by the Company to the transferee.

7. **TRANSFER OF SHARES**

- 7.1 **Right to transfer:** Subject to any restrictions set out in this clause 7, the LGA, the LG(W.S) Act and the Shareholders' Agreement, a Share may be transferred by entry of the name of the transferee in the share register for the Company following receipt by the Company of a validly signed form of transfer.
- 7.2 **Prior approval required:** No Shareholder may sell, assign, transfer or dispose of, directly or indirectly, the legal or beneficial ownership of any of its Shares except in accordance with the provisions of this clause 7 and unless such sale, assignment, transfer or disposal:
 - (a) has first been approved in writing by all Shareholders; or
 - (b) is a permitted transfer in accordance with clause 7.4.
- 7.3 **No delay:** Subject to clause 7.5, the Board may not exercise any powers conferred by this Constitution to refuse or delay the registration of any sale, assignment, transfer or disposal of Shares completed in accordance with clause 7.2.
- 7.4 **Permitted transfers:** Subject to the LG(W.S) Act, the restrictions in this clause 7 do not apply to the transfer of Shares by a Local Authority to:
 - (a) another Local Authority within the Service Area; or
 - (b) any successor Local Authority to that Local Authority.
- 7.5 **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; or
- (f) 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:** Any Distribution to be made will be subject to the Company being able to:

- (a) comply with its then current business plan;
- (b) comply with its legal obligations, including under the LG (WS) Act;
- (c) meet the solvency test under the Companies Act; and
- (d) maintain a prudent level of reserves,

in each case, as determined by the Board (except for any Distribution pursuant to clause 15).

8.2 **Approach to Distributions:** Subject to clause 8.1, any Distributions will be made to the Shareholders taking into account where the surplus arose from, consistent with the ringfencing principles in clause 2.7.

9. COMPANY ACQUIRING ITS OWN SHARES

9.1 **Company may acquire its own Shares:** The Company may purchase or otherwise acquire its own Shares only if it has first been authorised to do so by Special Resolution in which case the Shares purchased or otherwise acquired will 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; and
- (b) must be called by the Board on the written request of the Shareholders Representative Group.

10.3 **Proceedings at Shareholders' meetings:** The provisions of Schedule 1 to the Companies Act as modified by this Constitution, including the rules set out in Schedule 1, govern proceedings at Shareholders' meetings.

11. REPORTING REQUIREMENTS

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

- (a) the Board must prepare the plans or reports required by the Shareholders Representative Group by notice in writing to the Company (provided that such

notice must comply with the requirements in section 249(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, adopt and deliver to the Shareholders (in accordance with section 248 of the LG(WS) Act) a Water Services Half-yearly Report, which must include information required to be included by any current Statement of Expectations, and publish that report in accordance with section 223 of LG(WS) Act; 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 (in accordance with section 243 of the LG(WS) Act), and publish in accordance with section 223 of 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) section 246 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 **Independent Directors:** All Directors must be Independent Directors.

12.2 **Number of Directors:** The minimum number of Directors is five and the maximum number of Directors is seven.

12.3 **Appointment and removal by Shareholders Representative Group:**

- (a) Subject to clause 12.1 and the Shareholders' Agreement, the Shareholders Representative Group must appoint up to the maximum number of Directors set out in clause 12.2, by notice in writing to the Company. Directors may be removed and replaced in the same way at any time during their term.
- (b) The Shareholders and the Company must 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 12.3 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).

12.4 **Appointment and removal where vacancy exists:** Where there is a casual vacancy on the Board, the Board may, by majority vote, recommend an appointment to fill that vacancy to the Shareholders Representative Group for its approval in accordance with the Shareholders' Agreement. A Director appointed under this clause 12.4 may be removed and replaced in the same way.

12.5 Skills of Directors:

- (a) A person may only be appointed to be a Director if the person has, in the opinion of the Shareholders Representative Group, the skills, knowledge, or experience to:
 - (i) guide the Company, given the nature and scope of its activities; and
 - (ii) contribute to the achievement of the objectives of the Company.
- (b) Without limiting clause 12.5(a), all Director appointments must be made having regard to the Board Skills Matrix, with the aim of ensuring that the Board as a whole has the skills required by the Board Skills Matrix.

12.6 Term of Appointment: Unless otherwise approved by the Shareholders:

- (a) Each Director will be appointed for a term of up to 3 consecutive years
- (b) A Director may be reappointed at the expiry of his or her term of appointment, provided that, subject to this clause 12.6, no Director may be appointed for more than 9 consecutive years except where approved by a Special Resolution.
- (c) A person who has previously served as a Director (for any period), but who subsequently to resigning or being removed as a Director has not served as a Director for a continuous period of at least 2 years, may then be appointed as a Director for up to 9 consecutive years.
- (d) Each person who is appointed as a Director upon incorporation of the Company will serve an initial term of 3 years, and then each of those Directors will be offered automatic re-appointment for a period of 1, 2 or 3 years (as recommended by the Board and approved by the Shareholders Representative Group), in order to enable an orderly rotation of the Board and with the intention that at least 2 Directors will have their appointments expire in each of the following 3 years.

12.7 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) reaches the end of their term and is not reappointed;
- (c) is removed from office in accordance with clause 12.3;
- (d) becomes disqualified from being a Director pursuant to section 151 of the Companies Act or clause 12.17; or
- (e) dies.

12.8 Appointment of Chair:

- (a) The Shareholders Representative Group will appoint the Chair of the Board.
- (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 Shareholders Representative Group.

12.9 **Powers of the Board:**

- (a) Subject to clause 12.9(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 appoint a Director who is not the Chair as the managing director of the Company, where this appointment is approved by the Shareholders Representative Group. Any such appointment may be terminated by the Shareholders Representative Group at any time by notice in writing to the Company.

12.10 **Prohibited matters:** Notwithstanding clause 12.9(b), except to the extent permitted by the Shareholders' Agreement, the Board must not, and must not cause the Company to:

- (a) incur indebtedness, outside the ordinary course of the Company's business, to any person other than the New Zealand Local Government Funding Agency Limited or a New Zealand registered banking institution; or
- (b) grant a security interest over any of the assets of the Company except as permitted by the LG(WS) Act.

12.11 **Shareholder Reserved Matters:** Notwithstanding clause 12.9(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.

12.12 **Solvency test:** Notwithstanding any approval obtained pursuant to clause 12.10, 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).

12.13 **Proceedings of the Board:** The provisions of Schedule 3 to the Companies Act as modified by this Constitution, including the rules set out in Schedule 2, govern proceedings at meetings of Directors.

12.14 **Directors duties:** In addition to the duties set out in the Companies Act, the Directors must assist the Company to meet the requirements set out in the Statement of Expectations or the LG(WS) Act.

12.15 **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).

12.16 **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 12.16 "director" includes any former director, "employee" includes any former employee, and "Company" includes any Subsidiary of the Company.

12.17 **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) is not or ceases to be an Independent Director.

12.18 **Remuneration of Directors:**

- (a) The Shareholders Representative Group will determine the total sum available to the Board each year to make remuneration payments in accordance with clause 12.18(b).
- (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 the Shareholders Representative Group resolution passed in accordance with clause 12.18(a).
- (c) The Board may authorise the reimbursement by the Company of reasonable travelling, hotel and other expenses incurred by Directors in attending Board meetings, Shareholders Representative Group meetings, Shareholder meetings or in relation to any other affairs of the Company.

12.19 **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.

12.20 **Performance evaluation:** The Board will undertake a self-evaluation of its performance on a biennial basis, in line with accepted good governance principles and practices, and the results will be reported directly to the Shareholders Representative Group and to the Chief Executives (or equivalent) of each of the Shareholders.

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) they are a party to the transaction or may derive a material financial benefit from it;
 - (b) they have a material interest in another party to the transaction;
 - (c) they are a director, officer or trustee of another party to the transaction;
 - (d) they are a director, officer or trustee of a person who may derive a material financial benefit from the transaction;
 - (e) they are a parent, child or spouse, civil union partner, or de facto partner of a person described in clauses 13.2(a) to 13.2(d); or
 - (f) they are otherwise directly or indirectly materially interested in the transaction.

- 13.3 **Interested Directors may not 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) vote on or 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 12.18;
- (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 12.16; 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 will 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 by personal delivery, 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

If the Company is liquidated, the liquidator may, with the unanimous approval of the Shareholders 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:

- 15.1 distribute to the Shareholders in kind the whole or any part of the assets of the Company; and
- 15.2 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 no Shareholder is compelled to accept any Shares or other securities on which there is any liability.

16. METHODS OF CONTRACTING

- 16.1 **Deeds:** 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 **In writing:** 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 **Other:** 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

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 Shareholders (or their representatives) present may elect a chair for that meeting.

2. NOTICE OF MEETINGS

- 2.1 Each Shareholder and every Director of the Company must be sent written notice of the time and place of the meeting at least 10 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 the Shareholders to form a reasoned judgment in relation to it; and
 - (b) the text of any Reserved Matter resolution or other resolution to be put to the meeting.
- 2.3 An irregularity in a notice of a meeting is waived if:
 - (a) the Shareholders 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 in any of the following ways:
 - (a) at the place, date, and time appointed for the meeting;
 - (b) by means of audio, or audio and visual, communication; or
 - (c) a combination of (a) and (b).

The Shareholders (or their 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 each Shareholder or their proxies:

- (a) is present; or
- (b) has completed postal votes (where permitted).

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; or
- (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 AND POSTAL VOTES

7.1 Each Shareholder has the right to appoint a 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 Shareholder.

- 7.2 A Shareholder may not cast a postal vote at a Shareholders' meeting unless the Board has previously authorised postal votes for that meeting in which case:
- (a) the notice of that meeting must state whether postal votes are authorised; and
 - (b) postal voting must be carried out in accordance with clause 7 of the Schedule 1 to the Companies Act.

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 may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next Shareholder meeting. The provisions of clause 9 of Schedule 1 of the Companies Act apply to any notice given under this rule 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, a Shareholder meeting may regulate its own procedure.

SCHEDULE 2

RULES FOR BOARD PROCEEDINGS

1. FREQUENCY OF MEETINGS

1.1 The Board will meet at least 10 times per annum, or as otherwise resolved by the Board.

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 At least five Business Days' notice of a meeting of the Board must be given to every Director who is able to be contacted. 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 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.

3. METHOD OF HOLDING MEETINGS

3.1 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.

4. QUORUM

4.1 At any meeting of Directors a quorum will only be present if at least 75% of Directors are present.

4.2 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 Chair 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.

5. VOTING

5.1 Every Director has one vote.

5.2 The Chair does not have a second or casting vote.

5.3 Subject to clauses 12.9 and 12.10, 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 who abstains from voting is not presumed to have voted in favour of, or dissented to, the relevant resolution 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. MINUTES

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

8. OTHER PROCEEDINGS

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