

Constitution of Tiaki Wai Limited

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1. Defined terms and interpretation

1.1 Defined terms

In this Constitution, unless the context otherwise requires:

Alternate has the meaning given to it in the Partners Agreement.

Annual Meeting of Partners has the meaning given to it in the Partners' Agreement.

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 Partners 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 Wellington, New Zealand.

Chair means the chair of the Board appointed in accordance with clause 12.9.

Companies Act means the *Companies Act 1993*.

Company means Tiaki Wai Limited.

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

Customer Charter means the customer charter referred to in clause 3(e).

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

Financial Year has the meaning given to it in 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.

LGA02 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 the LGA02.

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.

Partner means each Shareholder, and each of Te Rūnanga O Toa Rangatira and Taranaki Whānui ki Te Upoko o Te Ika.

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

Partners Committee has the meaning given to it in the Partners Agreement.

Partner Reserved Matters has the meaning given to it in the Partners Agreement.

Service Area has the meaning given to it in the Partners Agreement.

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 and, as at the date this Constitution is adopted, means:

- (a) Wellington Regional Council;
- (b) Hutt City Council;
- (c) Porirua City Council;
- (d) Upper Hutt City Council; and
- (e) Wellington City Council.

Shareholder Representative has the meaning given to it in the Partners Agreement.

Shareholder Reserved Matters has the meaning given to it in the Partners Agreement.

Special Resolution 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.

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

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

Water Services has the meaning given to it in 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 and otherwise provided by the Company in its Service Area.

Water Services Annual Budget has the meaning given to it in the LG(WS) Act.

Water Services Annual Report has the meaning given to it in 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 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 that 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, schedule, appendix or attachment is to a clause, schedule, appendix or attachment of this agreement;
- (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 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 Conflict of terms

If there is any conflict:

- (a) between a provision of this Constitution and the provisions of the Partners Agreement, the terms of the Partners Agreement will prevail (other than to the extent prohibited by the Companies Act) and the Shareholders must pass any resolutions that may be necessary to amend the provisions of this Constitution to make it consistent with the Partners Agreement;
- (b) between a provision in this Constitution and a mandatory provision in the Companies Act, the LG(W) Act or the LGA02, then the mandatory provision in the Companies Act, the LG(W) Act or the LGA02 (as the case may be) will prevail; and
- (c) between:
 - (a) a provision in this Constitution and a provision in the Companies Act which is expressly permitted to be altered by this Constitution; or
 - (b) 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 and objectives

2.1 Water Organisation

- (a) As at the date of its incorporation, the Company is a Water Organisation for the purposes of the LG(W) Act.

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

2.2 Capacity

Subject to this Constitution, the Companies Act, the LG(WS) Act, the LGA02 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.

3. Water Organisation requirements

- (a) The Company must comply with:
 - (i) its obligations under the LGA02 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;
 - (ii) all applicable statutory and regulatory obligations relating to Māori and the Treaty of Waitangi, including those set out in the LGA02 and LG(WS) Act; and
 - (iii) the applicable part of the *Local Government Official Information and Meetings Act 1987*.
- (b) The Partners 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 Partners will not have the power to require changes or approve the final Strategy or final Budget.
- (c) The Company must ensure that its Water Service Strategy states how its intended activities will contribute to the expectations, outcomes, or any other relevant matters that have been set out in the Statement of Expectations.
- (d) In accordance with the LG(WS) Act, the auditor for the Company will be the Auditor-General.
- (e) The Company must adopt and maintain a customer charter before it commences the provision of Water Services. The Customer Charter must include an explanation of how customers can make complaints in relation to the Water Services provided by the Company and address any other matters provided for in the Statement of Expectations.

4. Shares

Subject to this Constitution, the Partners Agreement and the LG(WS) 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(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 Special Resolution and, to the extent that it is relation to another territorial authority becoming a Shareholder, as a Partner Reserved Matter.

5. Calls on shares

5.1 Board may make calls

Subject to the Partners 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. That 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 that payment is not made on or before the specified date, clause 6.2 will apply.

6.2 First lien

The Company has a first lien over each Share and the proceeds of any sale of the Share for:

- (a) all unpaid calls owing in respect of the Shares and any amount payable under clause 5.2; and
- (b) sale expenses owing to the Company in respect of the Shares.

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 LGA02, the LG(WS) Act and the Partners 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 the relevant sale, assignment, transfer or disposal:

- (a) has first been approved by Special Resolution; or
- (b) is a permitted transfer in accordance with clause 7.4.

7.3 No delay

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(WS) Act, the restrictions in this clause 7 do not apply to the transfer of Shares by a Shareholder to any successor Local Authority to that Shareholder.

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 Partners 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

Without limiting clause 9, the Company must not pay any dividend or distribute any surplus in any way, directly or indirectly, to the Shareholder.

9. Company acquiring its own shares

Regardless of clause 8, the Company may 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 a majority of the Partners Committee or a Shareholder or Shareholders in accordance with section 121 of the Companies Act.

10.3 Proceedings at Shareholders' meetings

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

11. Reporting requirements

11.1 Reporting

Subject to clause 11.2:

- (a) the Board must prepare the reports required by a majority of the Partners Committee by notice in writing to the Company (any 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 Partners (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 the Statement of Expectations (in accordance with section 248(2) of the LG(WS) Act), and publish that Half-yearly 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 Partners (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:
 - (a) the Statement of Expectations;
 - (b) the Companies Act; and
 - (c) 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, half-yearly report, annual report, financial statements or other 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 adoption of this Constitution, 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 date the Company begins providing Water Services, all Directors will be Independent Directors.

12.3 Number of Directors

The maximum number of Directors will be seven and the minimum number of Directors will be three.

12.4 Appointment and removal of Directors

- (a) Subject to clauses 12.2 and 12.3, a Director may be appointed or removed from office by notice in writing to the Company from the Partners Committee in accordance with the Partners Agreement. A resolution of the Partners Committee to appoint two or more Directors may be voted on as one resolution without each appointment being voted on individually.
- (b) The Partners and the Company will promptly take all steps necessary or desirable 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 recommendations by Board

Where there is a casual vacancy on the Board, the Board, may, by majority vote, recommend an appointment to fill that vacancy to the Partners Committee for its approval in accordance with the Partners Agreement. The Board may recommend the removal of a Director in a similar manner. If the number of Directors falls below the minimum number specified in clause 12.3, the Directors in office shall constitute a quorum for the purposes of calling a meeting of the Partners to effect the appointment of new Directors.

12.6 Skills of Directors

- (a) Other than the Directors appointed on incorporation a person may only be appointed to be a Director if the person has, in the opinion of the group appointing that person, 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) All Director appointments must be made in accordance with the Board Skills Matrix (if any), with the aim of ensuring that the Board as a whole has the skills required by the Board Skills Matrix.

12.7 Term of appointment

- (a) No person may be appointed as a Director for a term of more than four consecutive years (the **Term**). The Term of appointment of the first Directors is as set out in their letter of appointment. The Term of appointment of subsequent Directors will be determined by the Partners Committee at the time of appointment, and recorded in their letter of appointment.
- (b) A Director holds office until the expiry of their Term, or that Director's resignation, retirement, disqualification or removal in accordance with this Constitution.
- (c) A Director may be reappointed at the expiry of his or her term of appointment, provided that no Director may be reappointed for more than three consecutive Terms.

12.8 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 12.4;
- (d) becomes disqualified from being a Director pursuant to section 151 of the Companies Act or clause 12.18; or
- (e) dies.

12.9 Appointment of Chair

- (a) The Partners Committee will appoint a Chair of the Board in accordance with the Partners Agreement.
- (b) The Chair will hold office until:
 - (i) he or she ceases to be a Director of the Company; or
 - (ii) a new Chair is appointed by the Partners Committee.

12.10 Powers of the Board

- (a) Subject to clause 12.10(b) and any restrictions in the Companies Act, the LG(WS) Act, the Partners 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 Partners Agreement, the Companies Act or the LG(WS) Act expressly requires those powers to be exercised by the Shareholders, the Partners or any other person.

12.11 Prohibited matters

Regardless of clause 12.10(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 or 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 Partners Agreement.

12.12 Shareholder Reserved Matters and Partner Reserved Matters

Regardless of clause 12.10(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 Partner Reserved Matter or a Shareholder Reserved Matter, unless first approved by the Partners or the Shareholders (as the case may be) in accordance with the Partners Agreement.

12.13 Solvency test

Regardless of any approval obtained pursuant to clause 12.11, 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).

12.14 Proceedings of the Board

The rules set out in Schedule 2 govern proceedings at meetings of Directors. Schedule 3 to the Companies Act does not apply.

12.15 Directors' duties

In addition to the duties set out in the Companies Act, the Directors must assist the Company to meet the objectives set out and referred to in clause 2.1(b) and any other requirements set out in the Statement of Expectations or the LG(WS) Act.

12.16 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 (regardless that it may not be in the best interests of any particular Partner).

12.17 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 12.17 "director" includes any former director, "employee" includes any former employee and "Company" includes any related company.

12.18 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.

12.19 Remuneration of Directors

- (a) The Partners will determine the total amount available to the Board each year to make remuneration payments in accordance with clause (b) below.
- (b) The Board may not authorise any form of remuneration to be paid to a Director without Board approval and unless that payment is made and authorised in accordance with the provisions of the Companies Act and the Partner's determination in accordance with clause (a) above.
- (c) The Board may authorise the reimbursement by the Company of reasonable travelling, hotel and other expenses incurred by Directors in attending Board meetings, Partner meetings, Shareholder meetings, or in relation to any other affairs of the Company.

12.20 Other offices with company held by Director

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.

12.21 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 cannot be appointed 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 12.19(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 12.21); 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 of the alternate;
 - (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) he or she is a party to the transaction or may derive a material financial benefit from it; or
- (b) he or she has a material interest in another party to the transaction; or
- (c) he or she is a director, officer or trustee of another party to the transaction; or
- (d) he or she is a director, officer or trustee of a person who may derive a material financial benefit from the transaction; or
- (e) he or she is a parent, child or spouse, civil union partner, or *de facto* partner of a person described in any of the above clauses; or
- (f) he or she is 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 his or her capacity as a Director in relation to that transaction,

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

- (c) any payment or other benefit of the type referred to in section 161 of the Companies Act in respect of that Director in accordance with clause 12.19;
- (d) the entry into an indemnity or insurance arrangement in respect of that Director in his or her capacity as a director of the Company in accordance with clause 12.17; or
- (e) transactions in which a Director is interested solely in his or her 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 Partner, 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 any 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 approval of the Shareholders by Special Resolution and any other approval required by the Companies Act or the LG(W.S) Act, but subject to the requirements of the Partners 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 any 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 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 Written obligations

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 obligations

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

- (a) If the Chair is present at the meeting, he or she must chair the meeting.
- (b) 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

- (a) 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.
- (b) The notice must state:
 - (i) 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
 - (ii) the text of any Special Resolution to be put to the meeting.
- (c) An irregularity in a notice of a meeting is waived if:
 - (i) the Shareholders attend the meeting without protest as to the irregularity; or
 - (ii) if each Shareholder agrees to the waiver.
- (d) 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.
- (e) 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

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

- (a) No business may be transacted at a Shareholder meeting if a quorum is not present.
- (b) A quorum for a Shareholder meeting is present if Shareholders holding a majority of the Shares or their proxies:
 - (i) are present; or

- (ii) have completed postal votes (where permitted).
- (c) If a quorum is not present within the 30 minutes after the start time for the meeting:
 - (i) if the meeting is called under section 121(b) of the Companies Act, the meeting is dissolved;
 - (ii) for any other meeting, the meeting is adjourned to:
 - (aa) the same day in the following week at the same time and place, or
 - (bb) to another date, time and place to be fixed by the Directors.

5. Adjournments

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

- (a) If a Shareholder meeting is held under clause 3(a) above, unless a poll is demanded, voting at the meeting will be by:
 - (i) voting by voice; or
 - (ii) voting by show of hands,
 and the chair of the meeting will decide which method is used.
- (b) If a Shareholder meeting is held under clause 3(b) or 3(c) above, unless a poll is demanded, voting at the meeting shall be by any method permitted by the chair of the meeting.
- (c) 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.
- (d) Subject to the Partners Agreement and to any rights or restrictions attached to any Share:
 - (i) where voting is by voice or a show of hands, every Shareholder present in person or by proxy or representative has one vote;
 - (ii) on a poll every Shareholder present in person or by proxy or representative has one vote in respect of every Share held by that Shareholder which entitles a Shareholder to vote; and
 - (iii) in the case of an equality of votes, the chair of the meeting does not have a casting vote.

7. Proxies and postal votes

- (a) Each Shareholder has the right to appoint a representative as its proxy to attend and vote at Shareholder meetings on its behalf, and each Shareholder Representative of a Shareholder, and the Alternate of such Shareholder, is deemed to be appointed as a representative under this clause. 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.

- (b) 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:
 - (i) the notice of that meeting must state whether postal votes are authorised; and
 - (ii) postal voting must be carried out in accordance with paragraph 7 of the First Schedule to the Companies Act.

8. Minutes

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

9. Shareholder proposals

- (a) 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 paragraph 9 of Schedule 1 to the Companies Act apply to any notice given under this clause.
- (b) 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

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. Notice of meeting

- (a) A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause.
- (b) 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.
- (c) 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.
- (d) Notice of a meeting may be given by any means, including by electronic mail or by telephone. Notice given by a letter addressed to a Director at his or her last known residential address in New Zealand will be deemed to have been given on the next Business Day after the letter is posted.

2. Method of holding meetings

The Board may meet in person or by any technological means that allows 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 any 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 any such manner will be valid and effective as if conducted at a meeting at which all of them were physically present.

3. Chairperson

- (a) If the Chair is present, he or she must chair the meeting.
- (b) If the Chair is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may elect one of their number to be chair of the meeting.

4. Quorum

- (a) At any meeting of Directors:
 - (i) a quorum will only be present if at least a majority of Directors are present; and
 - (ii) any resolution, unless otherwise specified in this Constitution or the Partners Agreement, will be passed if a majority of the votes cast on it are in favour of it.
- (b) 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 any 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.

5. Voting

- (a) Every Director has one vote.
- (b) The Chair or other chair of the relevant meeting does not have a casting vote.
- (c) Subject to clause 12.11 of the Constitution, 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.
- (d) A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.

6. Minutes

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

7. Resolutions

- (a) 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.
- (b) 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.
- (c) A copy of all resolutions must be entered in the minute book of Board proceedings.

8. Other proceedings

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