

**CONSTITUTION UNDER COMPANIES ACT 1993**

**FOR**

**QUEENSTOWN AIRPORT CORPORATION  
LIMITED**

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## CONTENTS

1. **DEFINITIONS**
  - PART I: SHARES AND DIVIDENDS**
  2. **ISSUE OF SHARES**
    - 2.1 Consent to new issues
    - 2.2 Permitted issues
    - 2.3 Section 45
    - 2.4 Pre-emptive rights
    - 2.5 Section 107(2) issue
    - 2.6 Consideration for issue of Shares
    - 2.7 Directors' certificate on consideration for issue
    - 2.8 Payment for Shares already issued
    - 2.9 Directors' certificate on payment for Shares already issued
    - 2.10 Deemed payment other than for cash
    - 2.11 Amount owing on issue of Shares
    - 2.12 Bonus Shares
    - 2.13 Company paying up partly paid Shares
  3. **PURCHASE OF OWN SHARES**
    - 3.1 Purchase by Company of its Shares
    - 3.2 Treasury stock
  4. **TRANSFER OF SHARES**
    - 4.1 Entry in Register
    - 4.2 Signed transfer
    - 4.3 Form of transfer
    - 4.4 Board's right to refuse registration of transfer
    - 4.5 Registration of transfer
    - 4.6 Freedom to transfer is qualified
    - 4.7 Restrictions on transfer
    - 4.8 Sale Notice
    - 4.9 Acceptance of Sale Notice
    - 4.10 Disputed sale price
    - 4.11 Terms of sale
    - 4.12 Consents
    - 4.13 Repurchase by Company
    - 4.14 Sale to third parties
    - 4.15 Corporate Shareholders
    - 4.16 Exceptions
  5. **SHARE REGISTER**
    - 5.1 Maintain Register
    - 5.2 Contents of Register
    - 5.3 Directors' duty to supervise Register
    - 5.4 Register prima facie evidence
    - 5.5 Register evidence of rights
    - 5.6 Trust not to be registered or recognised
  6. **SHARE CERTIFICATES**
    - 6.1 Application for Share certificate
    - 6.2 Issue of Share certificate
    - 6.3 Transfer to be accompanied by certificate
    - 6.4 Surrendered Share Certificate
  7. **TRANSMISSION OF SHARES**
  8. **CALL ON SHARES**
    - 8.1 Board may make Calls
    - 8.2 Notice of Calls
    - 8.3 Liability for Calls
    - 8.4 Agreement to differentiate Calls
-

- 9. **SUSPENSION OF RIGHT TO DIVIDENDS AND LIEN**
  - 9.1 Notice of suspension of right to Dividends
  - 9.2 Application of suspended Dividends
  - 9.3 Lifting of suspension of right to Dividends
  - 9.4 Lien
  - 9.5 Sale on exercise of lien
  - 10. **DISTRIBUTIONS**
  - 10.1 Solvency Test
  - 10.2 Dividends payable pari passu
  - 10.3 Bonus Shares in lieu of Dividend
  - 10.4 Discounts to Shareholders
  - 10.5 Financial assistance on acquisition of Shares
  - PART II: SHAREHOLDERS' RIGHTS AND OBLIGATIONS**
  - 11. **STATEMENT OF SHAREHOLDER RIGHTS**
  - 11.1 Issue of statement of rights to Shareholder
  - 12. **EXERCISE OF POWERS RESERVED TO SHAREHOLDERS**
  - 12.1 Powers reserved to Shareholders
  - 12.2 Special Resolutions
  - 12.3 Management review by Shareholders
  - 12.4 Dissenting Shareholder may require Company to purchase Shares
  - 12.5 Shareholder proposals
  - 13. **MEETINGS OF SHAREHOLDERS**
  - 13.1 Annual Meeting
  - 13.2 Special Meetings
  - 13.3 Resolution in lieu of meeting
  - 13.4 Chairperson of meetings of Shareholders
  - 13.5 Shareholders entitled to notice of meeting
  - 13.6. Notice of meeting
  - 13.7 Contents of notice
  - 13.8 Irregularities in notice
  - 13.9 Method of holding meeting
  - 13.10 Adjournments
  - 13.11 Minutes
  - 14. **VOTING AT MEETINGS**
  - 14.1 Quorum
  - 14.2 Voting
  - 14.3 Proxies and representatives
  - 14.4 Postal votes
  - 14.5 Votes of joint holders
  - 14.6 Unpaid Calls
  - PART III: DIRECTORS**
  - 15. **APPOINTMENT, ROTATION AND RETIREMENT**
  - 15.1 Number of Directors
  - 15.2 Shareholding qualifications
  - 15.3 First Directors
  - 15.4 Appointment
  - 15.5 Rotation and retirement
  - 15.6 Re-election and maximum term
  - 15.7 Notice of retirement
  - 15.8 Filling of vacancies
  - 15.9 Removal of Director from office
  - 15.10 Appointment of replacement Director to fill casual vacancy or as an additional Director
  - 15.11 Term of office
  - 15.12 Alternate directors
  - 15.13 Disqualification
-

- 16. **INDEMNITY AND INSURANCE**
  - 16.1 Indemnity of Directors and employees
  - 16.2 Insurance of Directors and employees
  - 16.3 Definitions
  - 17. **POWERS AND DUTIES OF THE BOARD**
  - 17.1 Powers of the Board
  - 17.2 Delegation by Board
  - 17.3 Directors to act in good faith
  - 17.4 Major Transactions
  - 18. **PROCEEDINGS OF THE BOARD**
  - 18.1 Chairperson and Deputy Chairperson
  - 18.2 Notice of meeting
  - 18.3 Method of holding meetings
  - 18.4 Quorum
  - 18.5 Voting
  - 18.6 Minutes
  - 18.7 Unanimous resolution
  - 18.8 Other proceedings
  - 18.9 (Not used)
  - 18.10 Continuing Directors
  - 19. **INTERESTED DIRECTORS**
  - 19.1 Authority to remunerate directors
  - 19.2 Other Offices with Company held by Director
  - 19.3 Notice of interest to be given
  - 20. **(NOT USED)**
  - PART IV: MISCELLANEOUS**
  - 21. **NOTICES**
  - 21.1 Service
  - 21.2 Time of service by facsimile
  - 21.3 Time of service by post
  - 21.4 Proof of service
  - 21.5 Service on joint holders
  - 21.6 Service on representatives
  - 21.7 Interpretation
  - 22. **LIQUIDATION**
  - 22.1 Distribution of surplus assets
  - 22.2 Distribution in specie
  - 23. **REMOVAL FROM THE NEW ZEALAND REGISTER**
  - 23.1 Directors may apply for removal
-

**Constitution of Queenstown Airport Corporation Limited  
under  
the Companies Act 1993**

**1. DEFINITIONS**

**1.1 Definitions:** In this Constitution unless the context otherwise requires the following words and expressions have the meaning given to them in this clause:

**Acceptance Date** is defined in clause 4.9.1;

**Act** means the Companies Act 1993;

**Alternate Director** means a Director appointed under clause 15.12;

**Amalgamation** means the completed act of the Company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company;

**Annual Meeting** means a meeting of Shareholders held pursuant to clause 13.1 and section 120 of the Act;

**Auckland Airport Director** is defined in clause 15.14.1;

**Board** means Directors numbering not less than the required quorum acting together as the board of directors of the Company and where one Director is a quorum it means that Director so acting alone;

**Buyer** is defined in clause 4.11.1;

**Call** means a resolution of the Board under clause 8.1 requiring Shareholders to pay all or part of the unpaid amount of the issue price of any Shares and, where the context requires, means the obligation of a Shareholder to meet the amount due pursuant to such a resolution;

**Class** and **Class of Shares** means a class of Shares having attached to them identical rights, privileges, limitations, and conditions;

**Chairperson** means the chairperson of the Board, elected under clause 18.1;

**Company** means **Queenstown Airport Corporation Limited**;

**Company Acceptance Date** is defined in clause 4.13.3;

**Company Repurchase Notice** is defined in clause 4.13.3;

**Constitution** means this constitution of the Company and all amendments to it from time to time;

**Council** means the Queenstown Lakes District Council, a Local Authority;

**Deputy Chairperson** means the Deputy Chairperson of the Board elected pursuant to clause 18.1;

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**Director** means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company;

**Disputing Shareholder** is defined in clause 4.10.2;

**Distribution** means:

- (a) the direct or indirect transfer of money or property, other than Shares, by the Company to or for the benefit of a Shareholder; or
- (b) the incurring of a debt by the Company to or for the benefit of a Shareholder,

in relation to Shares held by that Shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means;

**Dividend** means a Distribution other than a Distribution to which section 59 (acquisition of company's own shares) or section 76 (financial assistance in acquisition of company's shares) of the Act applies;

**General Meeting** means any meeting of Shareholders, other than an Interest Group meeting;

**Interest Group**, in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical;
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) (subject to the proviso below) who comprise the holders of one or more Classes of Shares,

provided that:

- (a) one or more Interest Groups may exist in relation to any action or proposal; and
- (b) if-
  - (i) action is taken in relation to some holders of Shares in a Class and not others; or
  - (ii) a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares of that Class, -

holders of Shares in the same Class may fall into 2 or more Interest Groups;

**Interests Register** means a the register kept by the Company at its registered office as required by section 189(1)(c) of the Act;

**Local Authority** has the same meaning as in the Local Government Act 2002;

**Major Transaction** has the same meaning as in the Act;

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**Month** means calendar month;

**Notice of Dispute** means a written notice given by:

- (a) a Shareholder to the other Shareholders and the Company, that the Shareholder does not accept the price specified in a Sale Notice; or
- (b) the Company to the Shareholders, that the Company does not accept the price specified in a notice from a Seller under clause 4.13.1;

**Ordinary Resolution** means a resolution of Shareholders approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question;

**Register** means the register of Shares required by clause 5 of this Constitution and section 87 of the Act to be kept;

**Registrar** means the Registrar of Companies appointed under section 357(1) of the Act;

**Relevant Interest** has the same meaning as in the Securities Markets Act 1988 provided that, for the purposes of this Constitution:

- (a) section 5B(1)(d) of the Securities Markets Act 1988 will be deemed to be replaced by the words "B is a subsidiary of A";
- (b) section 6 of the Securities Markets Act 1988 will not apply; and
- (c) where a Local Authority is a registered holder and beneficial owner of Shares, no member or employee of that Local Authority shall have a Relevant Interest in those Shares;

**Sale Shares** is defined in clause 4.8.1;

**Sale Notice** is defined in clause 4.8.1;

**Securities** has the same meaning as in the Securities Act 1978;

**Seller** is defined in clause 4.8.1;

**Share** means a share in the capital of the Company;

**Shareholder** means:

- (a) a person whose name is entered in the Register as the holder for the time being of one or more Shares; or
  - (b) until the person's name is entered in the Register, a person named as a shareholder in the application for registration of the Company at the time of registration of the Company; or
  - (c) until the person's name is entered in the Register, a person who is entitled to have that person's name entered in the Register under a registered Amalgamation proposal as a shareholder in an amalgamated company;
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**Solvency Test** has the same meaning as in the Act, subject to any applicable modifications which apply under the Act in different circumstances;

**Special Meeting** means any meeting (other than an Annual Meeting) of Shareholders entitled to vote on a matter, called at any time by the Board or by any other person, who is authorised by this Constitution to call meetings of Shareholders;

**Special Resolution** means a resolution of Shareholders approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question;

**Term of Appointment** is defined in clause 15.4.2;

**Working Day** means a day of the week other than:

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

**Writing** includes all modes of representing or reproducing words, figures or symbols in a visible form including reproduction by facsimile machine.

- 1.2 Words importing the singular include the plural and vice versa.
  - 1.3 A reference to a person includes any firm, company or other body corporate.
  - 1.4 Words importing one gender include the other genders.
  - 1.5 Subject to this clause 1, expressions contained in this Constitution bear the same meaning as in the Act.
  - 1.6 A reference to a clause means a clause of this constitution.
  - 1.7 The clause headings are included for convenience only and do not affect the construction of this Constitution.
  - 1.8 Reference to any legislation or to any provisions in any legislation shall be deemed to be reference to that legislation or provisions as from time to time amended, re-enacted, or substituted, and unless otherwise stated, to New Zealand legislation.
  - 1.9 References to one person being **controlled** by another person mean that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power:
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- (a) to appoint and/or remove the majority of the members of the governing body of that person;
- (b) to appoint a member or members of the governing body of that person, with the power to exercise, or control the exercise of, more than 50% of the maximum number of votes that might be cast at a meeting of the governing body of that person; or
- (c) to control, by any other means, the affairs or policies of that person,

but excludes any power exercisable by a Commissioner appointed under section 255 of the Local Government Act 2002, and **control** and **change in control** have corresponding meanings.

## **PART I**

### **SHARES AND DIVIDENDS**

#### **2. ISSUE OF SHARES**

##### **2.1 Consent to new issues:**

**2.1.1** The Board must not issue any Shares, Securities that are convertible into or exchangeable for Shares or options to acquire Shares without the prior approval of an Ordinary Resolution.

##### **2.2 Permitted issues:**

**2.2.1** Subject to clause 2.1 and clause 2.4, the Board may issue Shares (including redeemable Shares) ranking equally with or in priority to existing Shares. Any issue of Shares made in accordance with this clause will be deemed not to be an action affecting the rights attached to the existing Shares. The Company is expressly authorised to issue redeemable Shares for the purposes of section 68 of the Act.

##### **2.3 Section 45:**

**2.3.1** Section 45 of the Act will not apply to the Company.

##### **2.4 Pre-emptive rights:**

**2.4.1** Any new Shares must be offered to the Shareholders in proportion to the number of existing Shares held by them. Each such offer will be in writing and state:

- (a) the number of Shares offered to each Shareholder;
- (b) the consideration for which, and other terms on which, the Shares are offered;
- (c) the time within which the offer, if not accepted, will be deemed to be declined, being a period ending on the day which is the later of:
  - (i) if the Council is a Shareholder, such date as is notified by the Council to the Company and other

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Shareholders no later than one month after receipt of the offer, being a date set to allow the Council to complete any necessary or desirable consultative procedures in connection with the Share issue); and

- (ii) the day which is three months after the offer is received by all Shareholders; and
- (d) that a Shareholder may, in accepting the offer, request that all or any Shares remaining unaccepted after the offer be allocated to such Shareholder.

**2.4.2** New Shares offered to Shareholders pursuant to clause 2.4.1 and not accepted will be used for satisfying requests for allocations under clause 2.4.1(d). The consideration payable for, and any other terms and conditions of, such new Shares will be the same as under the original offer pursuant to clause 2.4.1. If there are insufficient unaccepted Shares to satisfy such requests, the unclaimed Shares must be divided among those Shareholders who request excess Shares, in proportion to their existing shareholdings in the Company, provided that no Shareholder will be allocated more excess Shares than the number which that Shareholder has requested and Shares remaining unallocated after such proportional division (or any subsequent division) will be used to satisfy the requests for excess Shares which remain unsatisfied, in proportion to the existing shareholdings of the relevant Shareholders.

**2.4.3** Shares remaining unallocated after compliance with clauses 2.4.1 and 2.4.2 may be disposed of by the Board in such manner as may be approved by Ordinary Resolution.

**2.5 Section 107(2) issue:**

**2.5.1** Nothing in clauses 2.1, 2.4 and 2.6 to 2.10 (inclusive) applies to any issue of shares made with the agreement or concurrence of all entitled persons as provided in section 107(2) of the Act.

**2.6 Consideration for issue of Shares:**

**2.6.1** Subject to clause 2.6.2, before the Board issues Shares (other than Shares issued upon incorporation), it must:

- (a) decide the consideration for which the Shares will be issued and the terms on which they will be issued;
  - (b) if the Shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue;
  - (c) resolve that, in its opinion, the consideration for the Shares and their terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
  - (d) if the Shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of that consideration is not less than the amount to be credited for the issue of the Shares.
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**2.6.2** Clause 2.6.1 does not apply to:

- (a) the issue of shares that are fully paid up from the reserves of the Company to all Shareholders of the same Class in proportion to the number of Shares held by each such Shareholder; nor
- (b) the consolidation or subdivision of Shares.

**2.6.3** The consideration for which Shares are issued or for the payment of Shares already issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the Company.

**2.7 Directors' certificate on consideration for issue:**

**2.7.1** The Directors who vote in favour of a resolution under clause 2.6.1 to issue Shares, must sign a certificate:

- (a) stating the consideration for, and the terms of, the issue;
- (b) describing the consideration in sufficient detail to identify it;
- (c) where a present cash value has been determined in accordance with clause 2.6.1(b), stating that value and the basis for assessing it;
- (d) stating that, in their opinion, the consideration for and the terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
- (e) if the Shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value is not less than the amount to be credited as paid up for the issue of the Shares.

**2.7.2** A copy of the Directors' Certificate given under clause 2.7.1 in respect of the consideration for the issue of Shares must be filed with the Registrar within 10 Working Days after it is given.

**2.8 Payment for Shares already issued:**

**2.8.1** Before Shares that have already been issued are credited as fully or partly paid up other than for cash, the Board must:

- (a) determine the reasonable present cash value of the consideration; and
- (b) resolve that, in its opinion, the present cash value of the consideration is:
  - (i) fair and reasonable to the Company and all existing Shareholders; and

- (ii) not less than the amount to be credited in respect of the Shares.

## **2.9 Directors' certificate on payment for Shares already issued:**

**2.9.1** The Directors voting in favour of a resolution under clause 2.8.1. regarding the consideration payable for Shares previously issued, must sign a certificate:

- (a) describing the consideration in sufficient detail to identify it; and
- (b) stating:
  - (i) the present cash value of the consideration and the basis for assessing it;
  - (ii) that the present cash value of the consideration is fair and reasonable to the Company and to all existing Shareholders; and
  - (iii) that the present cash value of the consideration is not less than the amount to be credited in respect of the Shares.

**2.9.2** A copy of the Directors' certificate given under clause 2.9.1 must be filed with the Registrar within 10 Working Days after it is given.

## **2.10 Deemed payment other than for cash:**

**2.10.1** For the purposes of clauses 2.6 and 2.8, Shares that are or are to be credited as paid up, whether wholly or partly as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.

## **2.11 Amount owing on issue of Shares:**

**2.11.1** Where money or other consideration is due at a fixed time to the Company on Shares in accordance with their terms of issue, that amount does not comprise a Call and no notice is required to be given to the Shareholder (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.

## **2.12 Bonus Shares:**

**2.12.1** The Board may authorise the allotment to all Shareholders of the same Class, of Shares issued as fully or partly paid up from the assets of the Company in proportion to the number of Shares held by each such Shareholder.

## **2.13 Company paying up partly paid Shares:**

**2.13.1** Subject to the Solvency Test being satisfied after the Distribution is made, and to clause 2.8.1, the Board may authorise the payment from

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the assets of the Company of any amount unpaid on Shares already issued by the Company.

### **3. PURCHASE OF OWN SHARES**

#### **3.1 Purchase by Company of its Shares:**

**3.1.1** The Company may purchase or otherwise acquire its Shares, in accordance with, but subject to, sections 58 to 66, 107 and 110 to 112 of the Act.

#### **3.2 Treasury stock:**

**3.2.1** The Company is expressly permitted to hold its own Shares for the purposes of section 67A of the Act.

### **4. TRANSFER OF SHARES**

#### **4.1 Entry in Register:**

**4.1.1** Subject to clause 4.2, Shares may be transferred by entry of the name of the transferee on the Register.

#### **4.2 Signed transfer:**

**4.2.1** For the purchase of transferring Shares, a form of transfer signed by the present holder of the Shares or the holder's personal representative must be delivered to the Company or to the agent of the Company who maintains the Register.

#### **4.3 Form of transfer:**

**4.3.1** The form of transfer may be in the form set out in the First Schedule to the Securities Transfer Act 1991 or in any usual or common form, or any other form approved by the Board.

**4.3.2** The form of transfer must be signed by the transferee if registration as holder of the Shares would impose a liability to the Company on the transferee.

#### **4.4 Board's right to refuse registration of transfer:**

**4.4.1** The Board may, within 30 Working Days of the receipt of a transfer of Shares, refuse or delay the registration of the transfer if:

- (a) the holder of the Shares has failed to pay an amount due to the Company in respect of those Shares; or
  - (b) the provisions of clauses 4.6 to 4.15 dealing with pre-emptive rights have not been fully complied with; or
  - (c) the Board considers that to effect the transfer would result in a breach of the law; or
  - (d) the Board considers that it is not in the best interests of the Company to register the transfer; or
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- (e) clause 6.3 (production of shares certificate) has not been complied with or the Share transfer has not been properly executed or does not comply with clause 4.3.1.

**4.4.2** A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so and must be sent to the transferor and transferee within 5 Working Days of the date of the resolution.

**4.5 Registration of transfer:**

**4.5.1** Subject to clauses 4.2 and 4.3, on receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the Register as holder of the Shares, unless the Board has resolved in accordance with clause 4.4 to refuse or delay the registration of the transfer of shares.

**4.6 Freedom to transfer is qualified:**

**4.6.1** Every direct or indirect change in the ownership of Shares will be subject to the following limitations and restrictions.

**4.7 Restrictions on transfer:**

**4.7.1** Unless and until the rights of pre-emption set out in this Constitution have been exhausted, no Share (nor any legal or beneficial interest in a Share) may be sold, transferred or otherwise disposed of by any Shareholder.

**4.8 Sale Notice:**

**4.8.1** If any Shareholder (**Seller**) wishes to sell, transfer or otherwise dispose of any of its Shares or any legal or beneficial interest in any of its Shares (**Sale Shares**), that Shareholder shall give notice (**Sale Notice**) to the other Shareholders (copied to the Company) offering to sell its Sale Shares and specifying:

- (a) the number of Sale Shares offered;
- (b) the price which the Seller wishes to receive for the Sale Shares; and
- (c) any other terms and conditions of sale of the Sale Shares (which shall be described sufficiently precisely to enable an acceptance of the offer in the Sale Notice to constitute a binding contract).

A Sale Notice may not be revoked without the consent of all Shareholders or under clause 4.10.1(b) or 4.13.2(b).

**4.9 Acceptance of Sale Notice:**

**4.9.1** Each Shareholder other than the Seller may, not later than the date which is the later of:

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- (a) four months after the day on which the Sale Notice is received by all Shareholders (other than the Seller);
  - (b) two months after the day on which the fair market value of the Sale Shares is determined by an independent valuer under clause 4.10 (if applicable) or, if more than one Notice of Dispute is given by Shareholders, two months after the day on which the last such determination (if applicable) is made; or
  - (c) if the Council is a Shareholder, such date as is notified by the Council to the Company and other Shareholders no later than one month after receipt of the Sale Notice, being a date set to allow the Council to complete any necessary or desirable consultative procedures in connection with the acquisition or disposition of the relevant Sale Shares;

(**Acceptance Date**), give notice to the Seller that that Shareholder wishes to acquire the Sale Shares at the price specified in the Sale Notice or, if the Shareholder has given a Notice of Dispute, at the fair market value determined under clause 4.10.2 and otherwise on the terms and conditions specified in the Sale Notice.

#### **4.10 Disputed sale price:**

**4.10.1** A Shareholder other than the Seller may give a Notice of Dispute no later than two months after receiving a Sale Notice, in which case:

- (a) the fair market value of the Sale Shares will be determined in accordance with clause 4.10.2; and
- (b) if the fair market value of the Sale Shares is determined by an independent valuer under clause 4.10.2, and is less than the price specified in the Sale Notice, the Seller may, within one month of receiving the valuer's determination, revoke its Sale Notice.

**4.10.2** If a Shareholder (**Disputing Shareholder**) has given a Notice of Dispute then the fair market value of the Sale Shares shall be determined in accordance with the following provisions:

- (a) the Seller and the Disputing Shareholder shall, for a period of two months after receipt by the Buyer of the Notice of Dispute, endeavour to agree on the fair market value of those Shares;
  - (b) if the Seller and the Disputing Shareholder do not agree on the fair market value of those Shares within the period of two months referred to in clause 4.10.2(a), the fair market value shall be determined by an independent valuer agreed upon by them or, failing agreement within one month after the end of that period, appointed on the application of either of them by the president for the time being of the New Zealand Institute of Chartered Accountants or his or her nominee;
  - (c) the person appointed as valuer under clause 4.10.2(b) shall:
    - (i) act as an expert and not as an arbitrator;
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- (ii) determine the fair market value of the Shares within two months following their appointment, which valuation shall be conclusive;
  - (iii) take into account any written submissions received from any Shareholder and the Company as to the matters to be given regard to in determining the fair market value of the Shares; and
  - (iv) provide a copy of their valuation to the Company and all Shareholders;
- (d) the Shareholders shall promptly and openly make available to the valuer all information in their possession or under their control relating to the Company to enable the valuer to proceed with the valuation on an informed basis as to the financial position, affairs, performance, and prospects of the Company; and
- (e) the fees and expenses of the valuer shall be paid by the Seller and the Disputing Shareholder in proportion to their holdings of Shares, or in such other manner as the valuer may determine.

#### **4.11 Terms of sale:**

**4.11.1** A Shareholder which gives notice to the Seller in accordance with clause 4.9 that it wishes to acquire the Sale Shares (a **Buyer**) shall be entitled and bound (subject to clause 4.12) to acquire the Sale Shares. If more than one Shareholder gives notice to the Seller that it wishes to acquire the Sale Shares, those Shareholders shall be entitled and bound to acquire the Sale Shares in proportion to their respective holdings of Shares.

**4.11.2** The purchase of the Sale Shares shall be effected at the price specified in the Sale Notice or, in the case of a Shareholder which has given a Notice of Dispute, the fair market value determined in accordance with clause 4.10.2. If there is more than one Buyer, the price payable by each Buyer will be a proportion of the relevant price of Sale Shares applicable in the case of that Buyer, equivalent to the proportion of the Sale Shares to be purchased by the Buyer. The purchase of the Sale Shares shall otherwise be effected on the terms and conditions specified in the Sale Notice, and, subject to anything to the contrary in the Sale Notice, on the following terms:

- (a) the purchase of the Sale Shares shall be settled on the date 10 Working Days after the Acceptance Date or, if clause 4.12 applies, 10 Working Days after the last of the consents referred to in clause 4.12 is obtained;
  - (b) if there is more than one Buyer, the purchase of the Sale Shares by all Buyers shall be settled simultaneously;
  - (c) the Seller shall transfer to each Buyer good title to the Sale Shares free of any security or other adverse interest; and
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- (d) on settlement of the purchase of the Sale Shares each Buyer shall pay the purchase price to the Seller in cleared funds and the Seller shall deliver to each Buyer a transfer of the Sale Shares in a form reasonably acceptable to each Buyer. All Shareholders and the Board shall take all necessary steps to cause each Buyer to be registered as holder of any Shares comprised in the Sale Shares purchased by that Buyer.

#### **4.12 Consents:**

**4.12.1** Each Buyer and the Seller shall use their reasonable endeavours, with all due speed and diligence, to obtain all necessary consents to the sale and purchase of the Sale Shares, including any consent required from any governmental or regulatory agency or authority. If a necessary consent is:

- (a) not granted within 50 Working Days after the Acceptance Date; or
- (b) granted on terms and conditions that are not reasonably acceptable to the party affected thereby;

the Seller or any Buyer may, by notice to all Shareholders and the Company, terminate the obligation to buy and sell the Sale Shares created by clause 4.11 and, unless clause 4.13.1(b) applies, the Seller must comply with clauses 4.6 to 4.15 in connection with any further or future proposal to undertake a transaction of the type described in clauses 4.6 to 4.8 (inclusive). For the avoidance of doubt, this clause has no effect on how the Council may conduct any necessary consultation process.

#### **4.13 Repurchase by Company:**

**4.13.1** If:

- (a) acceptances in respect of all the Sale Shares have not been received by the Seller pursuant to clause 4.9 before the end of the day which is the Acceptance Date; or
- (b) the obligation to buy and sell the Sale Shares is terminated (in whole or in part) pursuant to clause 4.12 by reason of a consent required on the part of any Buyer not being granted, or being granted on terms and conditions not reasonably acceptable to any Buyer,

the Seller must give notice to the Company offering to sell the Sale Shares to the Company at the price specified in the Sale Notice or, if lower, the lowest of any fair market value determined in accordance with clause 4.10.2, and otherwise on the terms and conditions specified in the Sale Notice. The Seller's notice under this clause must state that the Seller irrevocably agrees to and concurs in the purchase of the Sale Shares by the Company, otherwise than in accordance with sections 59 to 65 of the Act, for the purposes of section 107(1)(c) of the Act. Once the Seller has given notice under this clause, it may not withdraw from such agreement and concurrence.

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**4.13.2** If a Notice of Dispute has not been given by a Shareholder in connection with the Sale Notice, then the Company may give a Notice of Dispute within one month of receiving the Seller's notice under clause 4.13.1, in which case:

- (a) the fair market value of the Sale Shares will be determined in accordance with clause 4.10.2, but applied as if the Company were a Disputing Shareholder; and
- (b) if the fair market value of the Sale Shares is determined by an independent valuer under clause 4.10.2, and is less than the price specified in the Sale Notice, the Seller may, within one month of receiving the valuer's determination, revoke its Sale Notice and its notice under clause 4.13.1.

**4.13.3** The Company may, on or before the day which is the later of:

- (a) three months after the day on which the Seller's notice under clause 4.13.1 is received; and
- (b) one month after the day on which fair market value of the Sale Shares is determined by an independent valuer under clause 4.10.2 (if applicable);

(**Company Acceptance Date**) give notice to the Seller that it wishes to acquire the Sale Shares (**Company Repurchase Notice**) in which case it will do so:

- (c) at the price specified in the Seller's notice under clause 4.13.1 or, if the Company has given a Notice of Dispute, the price determined in accordance with clause 4.10.2; and
- (d) on the terms and conditions specified in the Sale Notice, and, subject to anything to the contrary in the Sale Notice, the terms and conditions set out in clauses 4.11.2(a) to 4.11.2(d) inclusive (provided that the Company Acceptance Date shall apply in place of the Acceptance Date in clause 4.11.2(a)),

as if the Company was a Buyer.

**4.13.4** For the avoidance of doubt, the Company may not give a Company Repurchase Notice unless all Shareholders have agreed or concurred in writing that the Company may purchase the Sale Shares, otherwise than in accordance with sections 59 to 65 of the Act, for the purposes of section 107(1)(c) of the Act. The Company may, at any time, require the Seller to provide or confirm in writing its agreement and concurrence that the Company may purchase the Sale Shares in such manner.

#### **4.14 Sale to third parties:**

**4.14.1** If, after the Seller has given a notice to the Company under clause 4.13.1, the Company does not give a Company Repurchase Notice in accordance with clause 4.13.3 the Seller may, during the three months following the Company Acceptance Date, transfer the Sale Shares to

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any other person at a price not less than, and on terms and conditions no more favourable to the other person than, those specified in the Sale Notice.

#### 4.15 Corporate Shareholders:

##### 4.15.1 If:

- (a) a change in control occurs in relation to a Shareholder;
- (b) a Shareholder disposes of a Relevant Interest in its Shares otherwise than in accordance with clauses 4.6 to 4.14 inclusive;
- (c) a Relevant Interest in a Shareholder's Shares or any of them arises or comes into existence otherwise than in accordance with clauses 4.6 to 4.14 inclusive;
- (d) a Shareholder that is a subsidiary of another body corporate, ceases to be a subsidiary of that body corporate; or
- (e) a Shareholder that is a wholly-owned subsidiary of a body corporate ceases to be a wholly-owned subsidiary of that body corporate;

(each a **Restricted Transaction**), the Shareholder must immediately give notice of the Restricted Transaction to the Company and the other Shareholders, failing which any Shareholder may give notice of the Restricted Transaction to the other Shareholders. Such notice (**Restricted Transaction Notice**) shall state it is, and in any case shall be deemed to be, a Sale Notice by the Shareholder undertaking or suffering the Restricted Transaction, in relation to all Shares held by that Shareholder:

- (f) at a price determined by an independent valuer appointed by the Shareholders including, for the avoidance of doubt, the transferring Shareholder or, failing their agreement within one month after receipt of all Shareholders of the Restricted Transaction Notice, appointed on the application of any of the other Shareholders by the president for the time being of the New Zealand Institute of Chartered Accountants or his or her nominee (and clauses 4.10.2(c) to (e) shall apply to such valuation with all necessary changes); and
- (g) otherwise on the terms and conditions of clauses 4.9, 4.11, 4.12 and 4.13 inclusive which shall be deemed to apply to such Sale Notice (and clauses 4.10 and 4.14 shall not apply to such Sale Notice). Any Shareholder shall be entitled to give notice to the Company under clause 4.13.1, if that clause applies.

#### 4.16 Exceptions:

##### 4.16.1 Clauses 4.6 to 4.15 do not apply to any transfer of Shares by a Shareholder:

- (a) to any person, if all Shareholders consent to the transfer by notice in writing signed by a duly authorised representative,
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which consent may be given or withheld in each Shareholder's absolute and unfettered discretion; or

- (b) to the Company, if made in accordance with this Constitution and the Act.

## **5. SHARE REGISTER**

### **5.1 Maintain Register:**

**5.1.1** The Company must maintain a Register which records all Shares issued by the Company and which states:

- (a) whether, under this Constitution or the terms of issue of any Shares, there are any restrictions or limitations on their transfer; and
- (b) where any document that contains the restrictions or limitations may be inspected.

**5.1.2** The Company may appoint an agent to maintain the Register.

### **5.2 Contents of Register:**

**5.2.1** The Register must state, with respect of each Class of Shares:

- (a) the names, alphabetically arranged, and the latest known address of each person who is, and each person who has within the last 10 years been, a Shareholder;
- (b) the number of Shares of each Class of Shares held by each shareholder within the last 10 years; and
- (c) the date of any:
- (i) issue of Shares to; or
  - (ii) repurchase or redemption of Shares from; or
  - (iii) transfer of Shares by or to:

each Shareholder within the last 10 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

### **5.3 Directors' duty to supervise Register:**

**5.3.1** It is the duty of each Director to take reasonable steps to ensure that the Register is properly kept and that share transfers are promptly entered on it in accordance with clause 4.5.

### **5.4 Register prima facie evidence:**

**5.4.1** Subject to section 91 of the Act (power of court to rectify Register), the entry of the name of a person in the Register as holder of a Share is prima facie evidence that the legal title to the Share is vested in that person.

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**5.5 Register evidence of rights:**

**5.5.1** The Company may treat the registered holder of a Share as the only person entitled to:

- (a) exercise the right to vote attaching to the Share;
- (b) receive notices in respect of the Share;
- (c) receive a Distribution in respect of the Share; and
- (d) exercise the other rights and powers attaching to the Share.

**5.6 Trust not to be registered or recognised:**

**5.6.1** No notice of trust, whether express, implied, or constructive may be entered on the Register.

**5.6.2** Except as required by law, no person will be recognised by the Company as holding any Share upon trust or holding any interest in a Share whether equitable, contingent, future or partial except the absolute legal right to the entirety of the Share vested in the registered holder.

**5.6.3** A personal representative of a deceased holder of Shares is entitled to be entered in the Register as the holder of such Shares as a personal representative.

**5.6.4** The registration of a trustee, executor or administrator as a personal representative of a deceased Shareholder does not constitute notice of a trust.

**6. SHARE CERTIFICATES**

**6.1 Application for Share certificate:**

**6.1.1** A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares.

**6.2 Issue of Share certificate:**

**6.2.1** On receipt of an application for a share certificate under clause 6.1, the Company must, within 20 Working Days after receiving the application, send to the Shareholder a certificate stating the name of the Company, and the Class and number of shares to which the certificate relates.

**6.2.2** If the application relates to some but not all of the applicants' Shares, the Company must separate the Shares shown in the Register as owned by the applicant into separate parcels; one parcel being the Shares to which the Share certificate relates, and the other parcel being any remaining Shares.

**6.3 Transfer to be accompanied by certificate:**

**6.3.1** Notwithstanding clause 4 of this Constitution and Section 84 of the Act (transfer of shares), where a Share certificate has been issued, a

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transfer of the Shares to which it relates must not be registered by the Company, unless the form of transfer is accompanied by the Share certificate relating to the Shares, or by evidence as to its loss or destruction, and, if required an indemnity in a form required by the Board.

#### **6.4 Surrendered Share certificate:**

**6.4.1** Where Shares to which a Share certificate relates are transferred, and the Share certificate has been sent to the Company to enable registration of the transfer, the Share certificate will be cancelled and no further Share certificate issued except at the request of the transferee.

### **7. TRANSMISSION OF SHARES**

**7.1** In the case of a death of a Shareholder, the survivor, where the deceased was a joint holder, and the legal personal representative of the deceased, where the deceased was a sole holder, will be the only persons recognised by the Company as having any title to the deceased's interest in the Shares. Nothing contained in this clause 7.1 will release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by the deceased with other persons.

**7.2** Notwithstanding clauses 4.6 to 4.15 (inclusive), the assignee of the property of a bankrupt Shareholder is entitled to be registered as the holder of the Shares held by the bankrupt.

### **8. CALL ON SHARES**

#### **8.1 Board may make Calls:**

**8.1.1** Subject to the terms of issue of any Shares, the Board may resolve to require the holders of unpaid or partly paid Shares to pay all or part of the amount unpaid on the Shares. The terms of the resolution of the Board will constitute the terms of the obligation to pay the Call including payment by instalments. The Call may be revoked or postponed at any time by the Board.

#### **8.2 Notice of Calls:**

**8.2.1** Subject to the terms of issue of any Class of Shares and to clause 8.4, unless all the holders of a Class of Shares subject to a Call unanimously agree, a Call or the postponement or revocation of a Call will apply to all the holders of Shares of the Class equally.

**8.2.2** Notice of the Call must be given to the holder of the Shares at the time of the Call or to a subsequent holder. Failure to give notice to a Shareholder will not invalidate a Call but it will not be payable by that Shareholder until the notice has been served on the Shareholder.

#### **8.3 Liability for Calls:**

**8.3.1** The joint holders of shares are jointly and severally liable to pay all Calls in respect of the Shares.

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**8.3.2** If a Call is not paid before or on the day appointed for payment the person from whom the sum is due will be liable to pay interest on the sum, from the day appointed for payment to the time of actual payment, at such rate as the Board determines either at the time of the Call or subsequently.

**8.3.3** The liability for a Call which has become due and payable attaches to the holder of the Shares for the time being and not a prior holder of the Shares, whether or not the liability became enforceable before the Shares became registered in the name of the current owner.

**8.3.4** Following the registration in the Register of a change of ownership of shares in respect of which a Call has been made, a notice of the Call is not required to be served on the new holder of the Shares.

**8.4 Agreement to differentiate Calls:**

**8.4.1** The Board may, on the issue of Shares, by agreement with the Shareholders concerned, differentiate between the holders of the same Class as to the amount to be paid on the Shares and the times of payment.

**9. SUSPENSION OF RIGHT TO DIVIDENDS AND LIEN**

**9.1 Notice of suspension of right to Dividends:**

**9.1.1** If a Shareholder fails to pay for any Call or instalment of a Call on the day appointed for payment, the Board may at any time after that date, while any part of the Call or instalment payable by the Shareholder remains unpaid, suspend payment of any Dividends or other Distributions payable to the Shareholder until the amount owing under the Call or instalment has been paid to the Company in full.

**9.1.2** If an amount called in respect of a Share is not paid on or before the time appointed for payment, the Board may charge interest on the amount outstanding from the date appointed for payment until the date of payment, together with expenses incurred by the Company by reason of the non-payment. The Board may set the rate of interest at its discretion, acting reasonably. The amount owing under the Call for the purposes of clauses 9.1, 9.2 and 9.3 will include any interest accrued and all expenses charged.

**9.2 Application of suspended Dividends:**

**9.2.1** All Dividends and other Distributions which would have been payable in respect of Shares which are subject to a suspension of the right to Dividends or Distributions, must be withheld and applied by the Company to reduce the amount owing under the Call.

**9.3 Lifting of suspension of right to Dividends:**

**9.3.1** When the total Dividends and Distributions withheld and applied under clause 9.2 equal the total amount owing under the Call, including amounts owing under clause 9.1.2 the suspension of the right to Dividends and Distribution will be lifted, and all rights to be paid Dividends and Distributions on the Shares will resume.

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**9.4 Lien:**

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

**9.5 Sale on exercise of lien:**

- 9.5.1** The Company may, by giving a Sale Notice under clause 4.8 on behalf of a Shareholder at such price and on such terms as the Board thinks fit, sell any Shares on which the Company has a lien but no sale may be made unless a sum in respect of which the lien exists is due and payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of the amount due and payable in respect of which the lien exists, has been given to the registered holder for the time being of the Share or the person entitled to that share by reason of the registered holder's death or bankruptcy. The Board may, after giving a Sale Notice in accordance with this clause, exercise all rights and powers of the relevant Shareholder under clause 4 to the exclusion of the relevant Shareholder.
- 9.5.2** The net proceeds of the sale of any Shares sold for the purpose of enforcing a lien, are to be applied in or towards satisfaction of any unpaid Calls, instalments or any other money in respect of which the lien existed and the residue, if any, paid to the former holder of the Shares.
- 9.5.3** A certificate signed by a Director stating that the power of sale provided in this clause 9.5 has arisen, and is exercisable by the Company under this Constitution, will be conclusive evidence of the facts stated in the certificate.
- 9.5.4** For giving effect to any sale enforcing a lien in purported exercise of the powers given in this Constitution, the Board may authorise some person to transfer the Shares sold to the purchaser. The purchaser will be registered as the holder of the Shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the Shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the Company exclusively. If the certificate for the Shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered up.
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## **10. DISTRIBUTIONS**

### **10.1 Solvency Test:**

**10.1.1** Subject to clause 10.2, the Board may, if it is satisfied on reasonable grounds that the Company will, immediately after the Distribution, satisfy the Solvency Test, authorise a Distribution by the Company to Shareholders of an amount and to any Shareholder as it thinks fit.

**10.1.2** The Directors who vote in favour of a Distribution must sign a certificate stating that, in their option, the Company will, immediately after the Distribution, satisfy the Solvency Test and stating the grounds for that opinion.

### **10.2 Dividends payable pari passu:**

**10.2.1** Subject to clause 10.2.2 and 10.2.3, the Board may not authorise a Dividend:

- (a) in respect of some but not all the Shares in a Class; or
- (b) that is of a greater value per Share in respect of some Shares of a class than in respect of other Shares of the Class;

unless the amount of the Dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the holder of the shares under this Constitution or under the terms of issue of the Share or is required for a portfolio tax rate entity, as a result of section HL 7 of the Income Tax Act 2004.

**10.2.2** A Shareholder may, by notice in writing signed by or on behalf of the Shareholder, and given to the Company, waive his or her entitlement to receive a Dividend.

**10.2.3** Nothing in this clause 10.2 applies in relation to a Dividend which is the subject of an agreement of entitled persons under section 107(1)(a) of the Act.

### **10.3 Bonus Shares in lieu of Dividend:**

**10.3.1** Subject to clause 2.1, the Board may issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of a proposed Dividend or proposed future Dividends if:

- (a) the right to receive Shares, wholly or partly, in lieu of the proposed dividend or proposed future Dividends, has been offered to all Shareholders of the same Class on the same terms; and
  - (b) if all Shareholders elected to receive the Shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained; and
  - (c) the Shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
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- (d) the Shares issued to each Shareholder are issued on the same terms and subject to the same rights as the Shares issued to all Shareholders in that Class who agree to receive the Shares; and
- (e) the provisions of section 47 of the Act are complied with by the Board.

#### **10.4 Discounts to Shareholders:**

**10.4.1** The Board may, pursuant to a discount scheme, resolve that the Company offer Shareholders discounts in respect of some or all of goods sold or services provided by the Company.

**10.4.2** The Board may approve a discount scheme only if it has previously resolved that the proposed discounts are:

- (a) fair and reasonable to the Company and all Shareholders; and
- (b) will be available to all Shareholders or all Shareholders of the same Class on the same terms.

**10.4.3** The discount scheme may not be approved or continued by the Board unless the Board is satisfied on reasonable grounds that the Company satisfies the Solvency Test.

**10.4.4** Nothing in this clause 10.4 applies in relation to a discount scheme which is the subject of an agreement of entitled persons under section 107(1)(b) of the Act.

#### **10.5 Financial assistance on acquisition of Shares:**

**10.5.1** The Company may, subject to and in accordance with sections 76 to 81 (inclusive), 107(1)(e) and 108 of the Act, give financial assistance to a person for the purpose of, or in connection with, the purchase of Shares issued, or to be issued by the Company, or by its holding company, whether directly or indirectly.

## **PART II**

### **SHAREHOLDERS' RIGHTS AND OBLIGATIONS**

#### **11. STATEMENT OF SHAREHOLDER RIGHTS**

##### **11.1 Issue of statement of rights to Shareholder:**

**11.1.1** The Company must issue to any Shareholder, on request, a statement that sets out:

- (a) the Class of Shares held by the Shareholder, the total number of shares of that Class issued by the Company, and the number of Shares of that Class held by the Shareholder;
- (b) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the Shares held by the Shareholder; and

- (c) the relationship of the Shares held by the Shareholder to other Classes of Shares.

**11.1.2** The Company is not obliged to provide a Shareholder with a statement under clause 11.1.1, if:

- (a) a statement in those terms has been provided within the previous 6 months;
- (b) the Shareholder has not acquired or disposed of Shares since the previous statement was provided;
- (c) the rights attached to the Shares have not been altered since the previous statement was provided; and
- (d) there are no special circumstances which would make it unreasonable for the Company to refuse the request.

**11.1.3** A statement issued pursuant to clause 11.1.1:

- (a) is not evidence of title to the Shares or of any of the matters set out in it; and
- (b) must state in a prominent place that it is not evidence of title to the Shares or of the matters set out in it.

## **12. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS**

### **12.1 Powers reserved to Shareholders:**

**12.1.1** Powers reserved to Shareholders of the Company by the Act or by this Constitution may be exercised:

- (a) at an Annual Meeting or a Special Meeting; or
- (b) by a resolution in lieu of a meeting passed in accordance with clause 13.3 and section 122 of the Act.

**12.1.2** Unless otherwise specified in the Act or this Constitution, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

### **12.2 Special Resolutions:**

**12.2.1** When Shareholders exercise a power to approve any of the following, that power may only be exercised by a Special Resolution:

- (a) an alteration to or revocation of this Constitution or the adoption of a new constitution;
  - (b) a Major Transaction;
  - (c) an Amalgamation under section 221 of the Act; or
  - (d) the liquidation of the Company.
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**12.3 Management review by Shareholders:**

- 12.3.1** A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders.
- 12.3.2** A meeting of shareholders may pass a resolution relating to the management of the Company.
- 12.3.3** Notwithstanding section 128 of the Act (management of company by Board) or any other clause of this Constitution, a resolution relating to the management of the Company and passed at a meeting of Shareholders, in accordance with clause 12.3.2 is not binding on the Board.

**12.4 Dissenting Shareholder may require Company to purchase Shares:****12.4.1** Where:

- (a) a Shareholder is entitled to vote on the exercise of one or more of the powers set out in:
  - (i) clause 12.2.1(a) (alteration to Constitution) and the proposed alteration imposes or removes a restriction on the activities of the Company; or
  - (ii) clause 12.2.1(b) or 12.2.1(c) (Major Transaction or an Amalgamation under section 221 of the Act); and
- (b) the Shareholders resolve to exercise the power; and
- (c) the Shareholder casts all the votes attached to Shares registered in the Shareholder's name and having the same beneficial owner against the exercise of the power; or
- (d) where the resolution to exercise the power was passed under section 122 of the Act, the Shareholder did not sign the resolution,

that Shareholder is entitled to require the company to purchase those shares in accordance with section 111 of the Act.

**12.4.2** Within 20 Working Days of receiving a notice from a Shareholder given under clause 12.4.1 and section 111 of the Act, the Board must:

- (a) agree to the purchase of the Shares by the Company from the shareholder giving the notice; or
  - (b) arrange for some other person to agree to buy the Shares; or
  - (c) apply to the Court under section 114 or section 115 of the Act; or
  - (d) arrange, before taking the action concerned, for the Special Resolution entitling the Shareholder to give the notice to be rescinded by a Special Resolution, or decide in the appropriate manner not to take the action concerned; and
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- (e) give written notice to the Shareholder of the Board's decision under this clause 12.4.2.

**12.4.3** Where the Board agrees, pursuant to clause 12.4.2(a) and section 111 of the Act, to the Company purchasing the Shares, section 112 to 113 of the Act (inclusive) will apply to any purchase.

**12.4.4** For the avoidance of doubt, nothing in clause 12.4 affects the ability of the Company to apply to the Court for an exemption under section 114 of the Act.

## **12.5 Shareholder proposals:**

**12.5.1** A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of the Shareholders at which the Shareholder is entitled to vote.

**12.5.2** If the notice is received by the Board not less than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

**12.5.3** If the notice is received by the Board not less than 5 Working Days and not more than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

**12.5.4** If the notice is received by the Board less than 5 Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

**12.5.5** If the Directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

**12.5.6** The Board is not required to include in or with the notice given by the Board:

- (a) any part of a statement prepared by a Shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or
  - (b) any part of a proposal or resolution prepared by a Shareholder that the Directors consider to be defamatory (within the meaning of the Defamation Act 1992).
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- 12.5.7** Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, (on giving notice to the Board) deposit with the Company or tender to the Company a sum sufficient to meet those costs.

### **13. MEETINGS OF SHAREHOLDERS**

#### **13.1 Annual Meeting:**

- 13.1.1** The Board must, in accordance with section 120 of the Act, call an Annual Meeting of Shareholders to be held:

- (a) not later than 6 months after the balance date of the Company; and
- (b) not later than 15 months after the previous Annual Meeting, or in respect of its first Annual Meeting not later than 18 months after its date of incorporation.

- 13.1.2** The Company must hold the Annual Meeting on the date which it is called to be held.

#### **13.2 Special Meetings:**

- 13.2.1** A Special Meeting of Shareholders entitled to vote on an issue:

- (a) may be called at any time by the Board or a person who is authorised by this Constitution to call the meeting; and
- (b) must be called by the Board on the written request of Shareholders holding not less than 5 percent of the voting rights entitled to be exercised on the issue.

For the purposes of clause 13.2.1(a) the Chief Executive of the Council shall be a person authorised by this Constitution to call a Special Meeting of Shareholders.

#### **13.3 Resolution in lieu of meeting:**

- 13.3.1** Subject to clause 13.3.2, a resolution in writing signed by not less than 75 percent of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders who together hold not less than 75 percent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at meeting of those Shareholders.

- 13.3.2** A resolution pursuant to section 196(2) of the Act to not appoint an auditor may be passed as provided in clause 13.3.1, provided that the resolution must be signed by all the Shareholders entitled to vote on the resolution.

- 13.3.3** Within 5 Working Days of a resolution being passed under this clause, the Company must send to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed:
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- (a) a copy of the resolution; and
- (b) if the resolution was a Special Resolution required by section 106(1)(a) or (b) of the Act, a statement setting out the rights of Shareholders under section 110 of the Act.

#### **13.4 Chairperson of meetings of Shareholders:**

**13.4.1** If a Chairperson or Deputy Chairperson has been elected pursuant to clause 18.1 and that Chairperson or Deputy Chairperson is present at a meeting of Shareholders he or she must chair the meeting.

**13.4.2** If no Chairperson or Deputy Chairperson has been elected or if at any meeting of Shareholders, the Chairperson or Deputy Chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

#### **13.5 Shareholders entitled to notice of meeting:**

**13.5.1** The Shareholders entitled to receive notice of a meeting of Shareholders are those Shareholders who:

- (a) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of meeting, whose names are registered in the Register on that date; or
- (b) if the Board does not fix a date for the purpose of establishing an entitlement to receive the notice of meeting, whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.

**13.5.2** A date fixed by the Board under clause 13.5.1(a) must not precede by more than 30 Working Days nor less than 10 Working Days the date on which the meeting is to be held.

#### **13.6 Notice of meeting:**

**13.6.1** Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting, and to every Director and the auditor of the Company, not less than 10 Working Days before the meeting.

#### **13.7 Contents of notice:**

**13.7.1** The notice referred to in clause 13.6 must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasonable judgment in relation to it;
  - (b) the text of any resolution to be submitted to the meeting;
  - (c) the postal address to which postal votes may be sent and the name or office of person to whom they may be sent; and
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- (d) that the postal vote must be received by the person referred to in paragraph (c) at least 48 hours prior to the start of the meeting.

### **13.8 Irregularities in notice:**

**13.8.1** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting, attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

**13.8.2** The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.

### **13.9 Method of holding meeting:**

**13.9.1** A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting;
- (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting; or
- (c) in such other manner as the Act permits.

### **13.10 Adjournments:**

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

### **13.11 Minutes:**

**13.11.1** The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

**13.11.2** Minutes which have been signed correct by the Chairperson of the meeting are prima facie evidence of the proceedings.

## **14. VOTING AT MEETINGS**

### **14.1 Quorum:**

**14.1.1** A quorum for a meeting of Shareholders is present if those Shareholders or their proxies who are present or who have cast postal votes are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

**14.1.2** Subject to clause 14.1.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

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

- (a) in the case of a meeting called pursuant to a requisition of Shareholders under clause 13.2.1(b), the meeting is dissolved;
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint, and if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders present or their proxies are a quorum.

## **14.2 Voting:**

**14.2.1** In the case of a meeting of Shareholders held under clause 13.9.1(a) unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the Chairperson of the meeting:

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

**14.2.2** In the case of a meeting of Shareholders held under clause 13.9.1(b) or (c), unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice or by any other method permitted by the Act.

**14.2.3** A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded in accordance with clause 14.2.4.

**14.2.4** At a meeting of Shareholders, a poll may be demanded by:

- (a) not less than 5 Shareholders having the right to vote at the meeting; or
- (b) a Shareholder or Shareholders representing not less than 10 percent of the total voting rights of all Shareholders having the right to vote at the meeting; or
- (c) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all Shares that confer that right.

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

**14.2.6** If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present (in person or by proxy) and voting.

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14.2.7 The Chairperson of a Shareholders' meeting is not entitled to a casting vote.

**14.3 Proxies and representatives:**

14.3.1 A Shareholder may exercise the right to vote either by being present or by proxy.

14.3.2 A proxy for a Shareholder is entitled to attend and be heard and vote at a meeting of Shareholders as if the proxy were the Shareholder.

14.3.3 A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

14.3.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

14.3.5 A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholder on its behalf in the same manner as that in which it could appoint a proxy.

14.3.6 A proxy form shall be sent with each notice calling a meeting of the Company.

14.3.7 An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:

..... **LIMITED**  
**INSTRUMENT APPOINTING A PROXY**

I/We ..... of .....being a member of ..... Limited hereby appoint ..... of ..... or failing him/her ..... of as my/our proxy to vote for me/us on my/our behalf at the Annual/Special Meeting of the company to be held at ..... on ..... commencing at ..... am/pm (or all meetings of the company held within 12 months of the date hereof) and at any adjournment of any such meeting.

Signed this ..... day of ..... 20...

14.3.8 Where it is desired to afford Shareholders an opportunity of voting for or against a resolution, the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit.

..... **LIMITED**  
**INSTRUMENT APPOINTING A PROXY**

I/We ..... of ..... being a member of ..... Limited hereby appoint (print name of proxy) ..... of ..... or failing him/her ..... of ..... as my/our proxy to vote

for me/us on my/our behalf at the Annual/Special Meeting of the company to be held at ..... on ..... commencing at ..... am/pm and at any adjournment thereof.

I/We direct my/our proxy to vote in the following manner

Vote with a Tick

Resolutions	For	Against
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- 1.
- 2.

Signed this ..... day of ..... 20...

[usual signature/s]

**14.3.9** A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or revocation of the authority under which the proxy was executed, or the transfer of any share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation or transfer as aforesaid has been received by the Company before the start of the meeting or adjourned meeting at which the proxy is used.

**14.3.10** The instrument appointing a proxy and a power of attorney or other authority, if any, under which it is signed or a ~~notarially~~ certified copy of that power or authority shall be deposited at the registered office of the Company (or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting) not less than 48 hours before the time for holding the meeting or adjourned meeting at which the persons named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the talking of the poll, and in default, the instrument of proxy shall be treated as invalid.

#### **14.4 Postal votes:**

**14.4.1** A Shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause 14.4.

**14.4.2** The notice of a meeting at which Shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting.

**14.4.3** If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every Director is deemed to be so authorised.

**14.4.4** A Shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her Shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

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**14.4.5** It is the duty of the person authorised to receive and count postal votes at a meeting:

- (a) to collect together all postal votes received by him or her, or by any other authorised person, or by the Company; and
- (b) in relation to each resolution to be voted on at the meeting, to count:
  - (i) the number of Shareholders voting in favour of the resolution and the number of votes cast by each Shareholder in favour of the resolution; and
  - (ii) the number of Shareholders voting against the resolution, and the number of votes cast by each Shareholder against the resolution;
- (c) to sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) of this clause and which sets out the results of the counts required by paragraph (b) of this clause; and
- (d) to ensure that the certificate required by paragraph (c) of this clause is presented to the Chairperson of the meeting.

**14.4.6** If a vote is taken at a meeting on a resolution on which postal votes have been cast, the Chairperson of the meeting must:

- (a) on a vote by show of hands, count each Shareholder who has submitted a postal vote for or against the resolution;
- (b) on a poll, count the votes cast by each Shareholder who has submitted a postal vote for or against the resolution.

**14.4.7** The Chairperson of a meeting must call for a poll on a resolution on which the Chairperson holds sufficient postal votes that if a poll were taken the result could differ from that obtained on a show of hands.

**14.4.8** The Chairperson of a meeting must ensure that a certificate of postal votes held by the Chairperson is annexed to the minutes of the meeting.

**14.5 Votes of joint holders:**

**14.5.1** Where 2 or more person are recorded in the Register as the holder of a Share, the vote of the person named first in the Register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.

**14.6 Unpaid Calls:**

**14.6.1** If a sum due to the Company in respect of a Share has not been paid, that Share may not be voted at a Shareholders' meeting other than at a meeting of an Interest Group.

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**PART III****DIRECTORS****15. APPOINTMENT, ROTATION AND RETIREMENT****15.1 Number of Directors:**

**15.1.1** Subject to clause 18.10.1 (continuing Directors) the number of Directors may not be fewer than 3 nor more than the maximum number of Directors as may be determined from time to time by Ordinary Resolution and unless so determined there shall be no maximum number.

**15.1.2** There shall at all times be one Director appointed by Auckland Airport Holdings (No.2) Limited in accordance with clause 15.14.

**15.2 Shareholding qualifications:**

**15.2.1** A Director is not required to hold shares.

**15.3 First Directors:**

**15.3.1** The first Directors are the person named as the Directors in the application for re-registration under the Companies Re-Registration Act 1993.

**15.4 Appointment:**

**15.4.1** As at the date of adoption of this constitution, the Directors of the Company are Alison Gerry, John William Gilks, James William Peter Hadley, Grant Raymond Lilly, Richard Graham Tweedie and Murray Graham Valentine.

**15.4.2** The term of office for:

- (a) any Director appointed pursuant to clause 15.8.1 shall:
    - (i) begin at the conclusion of the annual meeting at which he or she is elected; and
    - (ii) end at the conclusion of the fourth Annual Meeting after the Annual Meeting at which he or she is elected;
  - (b) any Director appointed in accordance with clause 15.10 shall be determined in accordance with that clause;
  - (c) Murray Graham Valentine shall be until the conclusion of the 2012 Annual Meeting;
  - (d) James William Peter Hadley shall be until the conclusion of the 2013 Annual Meeting;
  - (e) Alison Gerry shall be until the conclusion of the 2014 Annual Meeting; and
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- (f) John William Gilks, Grant Raymond Lilly and Richard Graham Tweedie shall be until the conclusion of the 2015 Annual Meeting,

(**Term of Appointment**) unless the Director retires or otherwise vacates office prior to the expiry of that Term of Appointment.

**15.5 Rotation and retirement:**

- 15.5.1** A Director shall automatically retire from office at the end of his or her Term of Appointment.

**15.6 Re-election and maximum term:**

- 15.6.1** A Director retiring at an Annual Meeting shall be eligible for re-election at that meeting PROVIDED HOWEVER that a Director shall, in the absence of extraordinary circumstances, not be elected to office for more than a maximum of two Terms of Appointment. Nothing in this clause prevents a Director who was appointed to fill a casual vacancy in accordance with clause 15.10 from serving two (2) Terms of Appointment from the next Annual Meeting following their appointment under clause 15.10.

**15.7 Notice of retirement:**

- 15.7.1** The Chairperson of the Board shall by written notice to the Shareholders, delivered at least sixty (60) days prior to the meeting at which a Director is to retire, notify the Shareholder of that Director's impending retirement.

**15.8 Filling of vacancies:**

- 15.8.1** The Shareholders, at an Annual Meeting, may elect a person who is eligible for election to hold office as a Director by Ordinary Resolution. Any Director who is retiring at the Annual Meeting, eligible for re-election and offering himself or herself for re-election shall be deemed to have been elected or re-elected (as the case may be) at the conclusion of the Annual Meeting, unless an Ordinary Resolution:

- (a) is passed to not re-appoint the Director; or
- (b) for the re-election of that Director is put to that meeting and lost.

- 15.8.2** No person other than the Director retiring at the meeting shall, unless recommended by the Directors, be eligible for election to the office of Director at any Annual Meeting of the Shareholders unless not less than three (3) or more than twenty one (21) days before the date appointed for the meeting there has been left at the registered office of the Company a notice in writing, signed by a Shareholder duly qualified to attend and vote at the meeting for which the notice is given, of his, her or its intention to propose that person for election and also notice in writing signed by that person of his willingness to serve as a Director, if elected.

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**15.9 Removal of Director from office:**

**15.9.1** Notwithstanding anything in this Constitution a Director (other than a Director appointed pursuant to clause 15.14) may be removed from office by an Ordinary Resolution.

**15.9.2** A notice of meeting at which the removal of a Director will be considered must state that the purpose of the meeting is the removal of the Director.

**15.9.3** A resolution to remove a director takes effect immediately or on a later date and time stated in the resolution.

**15.10 Appointment of replacement Director to fill casual vacancy or as an additional Director:**

**15.10.1** The Shareholders may, by Ordinary Resolution, appoint a person as a Director to fill a casual vacancy or as an additional Director. Any person so appointed shall retire from office at the conclusion of the next Annual Meeting, but shall be eligible for election at that meeting.

**15.11 Term of office:**

**15.11.1** A Director holds office until his or her retirement, resignation, disqualification, removal or other vacation of office in accordance with this Constitution or the Act.

**15.12 Alternate directors:**

**15.12.1** This clause 15.12 shall have no effect unless it is brought into effect by Ordinary Resolution.

**15.12.2** Each Director will have the power from time to time to nominate, by notice in writing to the Company, any person (including any other Director) who is approved by Ordinary Resolution for this purpose to act as an Alternate Director in his or her place either for a specified period or generally during the absence from time to time of such Director and in like manner to remove any such Alternate Director.

**15.12.3** Any notice appointing or removing an Alternate Director:

- (a) may be given by delivering the same or by sending the same through the post or by facsimile to the Company;
- (b) must include an address for service of notice of meetings of Directors. Failure to have an address will not invalidate the appointment but notice of meetings of the Board need not be given to the Alternate Director until an address is provided to the Company; and
- (c) will be effective as from its receipt.

**15.12.4** Unless otherwise provided for by terms of his or her appointment or this Constitution, an Alternate Director will have the same rights, powers and privileges (including the right to receive notice of meetings of the Board but excluding the power to appoint an Alternate Director and excluding the right to act as Chairperson) and will discharge all the duties of and

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be subject to the same provisions as the Director in whose place he or she acts. An Alternate Director will not be remunerated otherwise than out of the remuneration of the Director in whose place he or she acts and will automatically vacate office as an Alternate Director if and when the Director in whose place he or she acts vacates office.

### **15.13 Disqualification:**

**15.13.1** A person will be disqualified from holding the office of Director if he or she:

- (a) becomes disqualified from being a Director pursuant to section 151 of the Act; or
- (b) is prohibited from being a Director or promoter of or being concerned with or taking part in the management of a company under section 382 or section 385 of the Act; or
- (c) dies; or
- (d) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (e) is under the age of 18 years; or
- (f) is or becomes an undischarged bankrupt; or
- (g) is prohibited by the Companies Act 1955 from being a Director or would be so prohibited but for the repeal of that statute.

### **15.14 Auckland Airport Director**

**15.14.1** While it is a Shareholder holding 20% of the Shares in the Company], Auckland Airport Holdings (No. 2) Limited may, by written notice to the Company, appoint one (1) person to be a Director (**Auckland Airport Director**), re-appoint such Auckland Director at the expiry of his or her term, remove from office any such Auckland Airport Director appointed by it, and appoint a successor to the removed Auckland Airport Director.

**15.14.2** Where Auckland Airport Holdings (No. 2) Limited ceases to hold more than 20% of the Shares in the Company, the Auckland Airport Director shall automatically retire from his or her office.

**15.14.3** Subject to clause 15.11.1, the term of appointment for the Auckland Airport Director shall be 4 years from the date he or she is appointed.

**15.14.4** For the avoidance of doubt, this clause 15.14 governs the appointment, retirement, replacement and removal of the Auckland Airport Director and clauses 15.4 – 15.10 shall not apply.

## **16. INDEMNITY AND INSURANCE**

### **16.1 Indemnity of Directors and employees:**

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**16.1.1** The Board may cause the Company to indemnify a director or employee of the Company or a related company for costs incurred by him or her in any proceeding:

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

**16.1.2** The Board may cause the Company to indemnify a director or an employee of the company or a related company in respect of:

- (a) liability to any person other than the Company or a related company for any act or omission in his or her capacity as a director or employee; and
- (b) costs incurred by such director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above,

not being a criminal liability or liability in respect of a breach, in the case of any director of the duty specified in section 131 of the Act (duty to act in good faith and in the best interests of the company) or, in the case of any employee, of any fiduciary duty owed to the company or related company.

## **16.2 Insurance of Directors and employees:**

**16.2.1** The Board may, subject to section 162 of the Act, cause the Company to effect insurance for directors and/or for employees of the Company or a related company in respect of:

- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
- (b) costs incurred by such directors or employees in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by a director or employee in defending any criminal proceedings:
  - (i) that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee; and
  - (ii) in which he or she is acquitted.

**16.2.2** The Directors who vote in favour of authorising the effecting of insurance under clause 16.2.1 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

**16.2.3** The Board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the Company or related company are forthwith entered in the Interests Register.

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**16.3 Definitions:**

**16.3.1** For the purpose of this clause 16:

- (a) "director" includes a former director and any Alternate Director;
- (b) "effect insurance" includes pay, whether directly or indirectly, the costs of the insurance;
- (c) "employee" includes a former employee;
- (d) "indemnity" includes relieve or excuse from liability, whether before or after the liability arises; and "indemnity" has a corresponding meaning;

**17. POWERS AND DUTIES OF THE BOARD****17.1 Powers of the Board:**

**17.1.1** Subject to clause 17.1.2 and any restrictions in the Act or this Constitution the business and affairs of the Company must be managed by or under the direction or supervision of the Board.

**17.1.2** 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 or the Act expressly requires those powers to be exercised by the Shareholders or any other person.

**17.2 Delegation by Board:**

**17.2.1** The Board may delegate to a committee of Directors, a Director, or an employee of the Company or any other person any one or more of its powers, other than the powers referred to in the following sections of the Act:

- (a) Section 23(1)(c) (change of company names);
  - (b) Section 42 (issue of shares);
  - (c) Section 44 (shareholder approval to the issue of shares);
  - (d) Section 47 (consolidation for the issue of shares);
  - (e) Section 49 (consideration for the issue of options or convertible securities);
  - (f) Section 52 (distributions);
  - (g) Section 54 (shares in lieu of dividends);
  - (h) Section 55 (shareholder discounts);
  - (i) Section 60 (offers to acquire shares);
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- (j) Section 61 (special offers to acquire shares);
  - (k) Section 63 (stock exchange acquisitions subject to prior notice to shareholders);
  - (l) Section 65 (stock exchange acquisitions subject to prior notice to shareholders);
  - (m) Section 69 (redemption of shares at the option of a company);
  - (n) Section 71 (special redemptions of shares);
  - (o) Section 76 (provision of financial assistance);
  - (p) Section 78 (special financial assistance);
  - (q) Section 80 (financial assistance not exceeding 5 percent of shareholders' funds);
  - (r) Section 84(4) (transfer of shares);
  - (s) Section 187 (change of registered office);
  - (t) Section 193 (change of address for service);
  - (u) Section 221 (manner of approving an amalgamation proposal);
  - (v) Section 222 (short form amalgamations).

**17.2.2** The Board is responsible for the exercise by any delegate of a power delegated under this clause 17.2 as if the power had been exercised by the Board, unless the board:

- (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the Directors by the Act and this Constitution; and
- (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

**17.3 Directors to act in good faith:**

**17.3.1** Subject to this clause 17.3, a Director, when exercising powers or performing duties, must act in good faith and in what the Director believes to be the best interests of the Company.

**17.3.2** Nothing in this clause 17.3 limits the power of a Director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.

**17.4 Major Transactions:**

**17.4.1** The Board may not procure or permit the Company to enter into a Major Transaction unless the transaction is:

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- (a) approved by a Special Resolution; or
- (b) made contingent on approval by a Special Resolution.

## **18. PROCEEDINGS OF THE BOARD**

### **18.1 Chairperson and Deputy Chairperson:**

- 18.1.1** The Shareholders may by Ordinary Resolution at either the Annual Meeting or at a Special Meeting called for the purpose of electing a new Chairperson or Deputy Chairperson elect one Director as Chairperson and one as Deputy Chairperson.
- 18.1.2** The Directors elected as Chairperson and/or Deputy Chairperson hold that office until they resign or otherwise vacate office as Directors or the Shareholders by Ordinary Resolution at an Annual Meeting or Special Meeting elect a Chairperson and/or Deputy Chairperson in their place.
- 18.1.3** A notice of meeting at which the replacement of the Chairperson and/or Deputy Chairperson will be considered must state the purpose of the meeting is the replacement of the Chairperson and/or Deputy Chairperson.
- 18.1.4** If at a meeting of the Board the Chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be the Chairperson of the meeting.

### **18.2 Notice of meeting:**

- 18.2.1** 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 18.2.
- 18.2.2** Not less than 2 days' notice of a meeting of the Board must be given to every Director who is in New Zealand, and the notice must include the date, time and place of meeting and the matters to be discussed.
- 18.2.3** An irregularity in the notice of a 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.
- 18.2.4** Notice of a meeting may be given by any means, including by telephone.

### **18.3 Method of holding meetings:**

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

**18.4 Quorum:**

**18.4.1** A quorum for a meeting of the Board is a majority of the Directors.

**18.4.2** No business may be transacted at a meeting of Directors if a quorum is not present.

**18.5 Voting:**

**18.5.1** Every Director has one vote except in the case of any Director in his or her own right who has also been appointed an Alternate Director by another Director pursuant to the provisions of clause 15.12, in which case such Director shall have one further vote in respect of such Alternate Directorship.

**18.5.2** The Chairperson (if any) does have a casting vote.

**18.5.3** A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.

**18.5.4** A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from, or votes against, the resolution at the meeting.

**18.5.5** A Director may vote in respect of any transaction in which the Director is interested and if the Director does so the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.

**18.5.6** An Alternate Director may attend and vote at meetings of the Board in accordance with and subject to clause 15.12.4 if the Director that has appointed the Alternate Director is absent from the meeting.

**18.6 Minutes:**

**18.6.1** The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.

**18.7 Unanimous resolution:**

**18.7.1** A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. For the purpose of this clause:

(a) an Alternate Director may sign in place of the Director who has appointed the Alternate Director; and

(b) an Alternate Director does not need to sign a resolution if the Director appointing him or her has signed the resolution.

**18.7.2** Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.

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**18.7.3** A copy of any such resolution must be entered in the minute book of Board proceedings.

**18.8 Other proceedings:**

**18.8.1** Except as provided in this clause 18 the Board may regulate its own procedure.

**18.9 [Not Used]**

**18.10 Continuing Directors:**

**18.10.1** The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors. If their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors will comprise the Board only for the purpose of summoning a General Meeting of the Company.

**19. INTERESTED DIRECTORS**

**19.1 Authority to remunerate directors:**

**19.1.1** The Board may only exercise the power conferred by section 161 to authorise any payment or other benefit of the kind referred to in that section with the approval of the Shareholders.

**19.1.2** Each Director will be entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business and the Board may authorise such payments without Shareholder approval.

**19.2 Other offices with Company held by Director:**

**19.2.1** Any Director may act by himself or herself or by the Director's firm in a professional capacity for the Company, and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor to the Company.

**19.2.2** A Director may hold any other office or place of profit under 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.

**19.2.3** Other than as provided in clause 19.3, a Director is not disqualified by virtue of his or her office from entering into any transaction with the Company and any such transaction will be valid and enforceable to the same extent if he or she were not a Director and not in a fiduciary relationship with the Company.

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**19.3 Notice of interest to be given:**

**19.3.1** A Director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, and, if the Company has more than one director, disclose to the Board of the Company:

- (a) if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.

**19.3.2** For the purposes of clause 19.3.1, a general notice entered in the Interests Register or disclosed to the Board to the effect that a Director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

**19.3.3** A Director is not required to comply with clause 19.3.1 if:

- (a) the transaction or proposed transaction is between the Director and the Company; and
- (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.

**20. [NOT USED]****PART IV****MISCELLANEOUS****21. NOTICES****21.1 Service:**

A notice may be served by the Company upon any Director or Shareholder either personally or by posting it by ordinary or fast post in a prepaid envelope or package addressed to such Director or Shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile telephone number of such Director or Shareholder.

**21.2 Time of service by facsimile:**

A notice serviced by facsimile shall be deemed to have been served on the day following completion of transmission thereof.

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**21.3 Time of service by post:**

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

- (a) in the case of a person whose last known address is in New Zealand, at the expiration of 48 hours after the envelope or package containing the same was duly posted or delivered in New Zealand; and
- (b) in the case of a person whose last known address is outside New Zealand, at the expiration of seven days after the envelope or package containing the same was duly posted by airmail or fast post in New Zealand.

**21.4 Proof of service:**

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

**21.5 Service on joint holders:**

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

**21.6 Service on representatives:**

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

**21.7 Interpretation:**

All the provisions of this clause 21 shall be subject to any provision to the contrary contained elsewhere in this Constitution.

**22. LIQUIDATION****22.1 Distribution of surplus assets:**

Subject to the terms of issue of any Shares in the Company and to clause 22.2, upon the liquidation of the Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding up (the **surplus assets**) shall be distributed among the Shareholders in proportion to their shareholding provided, however, that the holders of shares not fully paid up shall receive only a proportionate share of their entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares either under the Constitution of the Company or pursuant to the terms of issue of the Shares.

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**22.2 Distribution in specie:**

Upon a liquidation of the Company, the liquidator, with the sanction of an Ordinary Resolution and any other sanction required by law, may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the Shareholders or different Classes of Shareholders. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit, but so that no Shareholder shall be compelled to accept any Shares or other securities whereon there is any liability.

**23. REMOVAL FROM THE NEW ZEALAND REGISTER****23.1 Directors may apply for removal:**

In the event that:

- (a) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its Constitution and the Act; or
- (b) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation;

the Board may in the prescribed form request the Registrar to remove the company from the New Zealand register.

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