

# Constitution

Under the Companies Act 1993

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City Rail Link Limited (the **Company**)

# Constitution

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|-----------|--|-----------|
| <b>1.</b> | <b>Defined terms and interpretation</b>                      | <b>8</b>  |
| 1.1       | Defined terms  | 8         |
| 1.2       | Interpretation   | 10        |
| 1.3       | Other definitions have meaning set out in the Act            | 11        |
| 1.4       | Constitution subject to changes in the Act                   | 11        |
| 1.5       | Use of electronic means                                      | 11        |
| 1.6       | Receipt of electronic communications                         | 11        |
| <b>2.</b> | <b>Capacity and powers</b>                                   | <b>12</b> |
| 2.1       | Rights, powers and duties                                    | 12        |
| 2.2       | Full capacity  | 12        |
| <b>3.</b> | <b>Purpose and nature of Company</b>                         | <b>12</b> |
| 3.1       | Purpose of Company   | 12        |
| 3.2       | Statement of Intent  | 12        |
| 3.3       | Nature of Company  | 12        |
| 3.4       | Compliance with certain provisions of the Crown Entities Act | 12        |
| 3.5       | Application of Crown Entities Act generally                  | 13        |
| 3.6       | Controller and Auditor-General                               | 13        |
| <b>4.</b> | <b>Issue of Shares</b>                                       | <b>13</b> |
| 4.1       | Classes of Shares  | 13        |
| 4.2       | Issue of Shares  | 14        |
| 4.3       | No statutory pre-emptive rights                              | 15        |
| 4.4       | Board may make Calls   | 15        |
| 4.5       | Redeemable Shares  | 15        |
| 4.6       | Requirements for Board issuing Shares                        | 15        |
| 4.7       | Exceptions to requirements in case of certain Share issues   | 15        |
| 4.8       | Directors' certificate on consideration for issue            | 16        |
| 4.9       | Directors' certificate to be filed                           | 16        |
| <b>5.</b> | <b>Purchase of own Shares</b>                                | <b>16</b> |
| <b>6.</b> | <b>Transfer of Shares</b>                                    | <b>16</b> |
| 6.1       | Transfer of Shares   | 16        |
| 6.2       | Signed transfer  | 17        |
| 6.3       | Form of transfer   | 17        |
| 6.4       | Board's right to refuse or delay registration of transfer    | 17        |
| 6.5       | Board resolutions refusing or delaying Share transfers       | 17        |
| 6.6       | Registration of transfer                                     | 17        |
| <b>7.</b> | <b>Call on Shares</b>  | <b>17</b> |
| 7.1       | Board may make Calls   | 17        |
| 7.2       | Calls to apply equally                                       | 18        |
| 7.3       | Notice of Calls  | 18        |
| 7.4       | Deemed receipt of notice                                     | 18        |
| 7.5       | Joint Shareholder liability                                  | 18        |
| 7.6       | Unpaid calls to accrue interest                              | 18        |
| 7.7       | Current Shareholder liable                                   | 18        |

|            |  |           |
|------------|--|-----------|
| 7.8        | No notice to new Shareholder required  | 18        |
| 7.9        | Agreement to differentiate between Calls                                     | 18        |
| <b>8.</b>  | <b>Distributions</b>   | <b>19</b> |
| 8.1        | Distributions must satisfy Solvency Test and have prior Shareholder approval | 19        |
| 8.2        | Board to sign certificate  | 19        |
| 8.3        | Dividends payable pari passu   | 19        |
| 8.4        | Shareholder may waive rights to Dividend                                     | 19        |
| 8.5        | Dividends payable other than pari passu                                      | 19        |
| 8.6        | Investment of unclaimed Distributions  | 19        |
| 8.7        | Forfeiture of unclaimed Distributions  | 19        |
| 8.8        | Financial assistance on acquisition of Shares                                | 19        |
| <b>9.</b>  | <b>Alteration of Shareholder's rights</b>                                    | <b>20</b> |
| 9.1        | Alteration of Shareholder's rights   | 20        |
| <b>10.</b> | <b>Exercise of powers reserved to Shareholders</b>                           | <b>20</b> |
| 10.1       | Powers reserved to Shareholders  | 20        |
| 10.2       | Powers exercised by Special Resolution                                       | 20        |
| <b>11.</b> | <b>Meetings of Shareholders</b>  | <b>21</b> |
| 11.1       | Annual Meeting   | 21        |
| 11.2       | Date of meeting  | 21        |
| 11.3       | Resolution instead of Annual Meeting   | 21        |
| 11.4       | Special Meetings   | 21        |
| 11.5       | Resolution in lieu of meeting  | 21        |
| 11.6       | More than one document   | 21        |
| 11.7       | Copy of resolution to non-signing Shareholder                                | 21        |
| 11.8       | Chairperson of meetings of Shareholders                                      | 21        |
| 11.9       | Shareholders entitled to notice of meeting                                   | 22        |
| 11.10      | Date on which entitlement decided  | 22        |
| 11.11      | Notice of meeting  | 22        |
| 11.12      | Content of notice  | 22        |
| 11.13      | Irregularities in notice   | 22        |
| 11.14      | Accidental omission not to invalidate proceedings                            | 22        |
| 11.15      | Method of holding meeting  | 22        |
| 11.16      | Adjournments   | 23        |
| 11.17      | Notice of the adjourned meeting  | 23        |
| 11.18      | Minutes  | 23        |
| 11.19      | Shareholder proposals for management review                                  | 23        |
| <b>12.</b> | <b>Voting at meetings</b>  | <b>23</b> |
| 12.1       | Quorum   | 23        |
| 12.2       | Lack of quorum   | 23        |
| 12.3       | Voting at actual meeting   | 24        |
| 12.4       | Voting at meeting by conference  | 24        |
| 12.5       | Declaration by chairperson that resolution is carried                        | 24        |
| 12.6       | Demand of a poll   | 24        |
| 12.7       | Counting of votes on a poll  | 24        |
| 12.8       | Chairperson not entitled to casting vote                                     | 24        |
| 12.9       | Right of proxy to demand a poll  | 24        |
| 12.10      | Proxies  | 24        |

---

|            |   |           |
|------------|---|-----------|
| 12.11      | Rights of proxy   | 25        |
| 12.12      | Appointment of proxy                                      | 25        |
| 12.13      | Representatives   | 25        |
| 12.14      | Postal votes  | 25        |
| 12.15      | Votes of joint holders                                    | 25        |
| 12.16      | Unpaid amounts  | 25        |
| 12.17      | Meetings of Interest Groups                               | 25        |
| 12.18      | Other proceedings   | 25        |
| <b>13.</b> | <b>Appointment and removal</b>                            | <b>25</b> |
| 13.1       | Number of Directors and composition of the Board          | 25        |
| 13.2       | Appointment of Directors                                  | 26        |
| 13.3       | Term of appointment                                       | 26        |
| 13.4       | Restrictions on appointment                               | 26        |
| 13.5       | Removal of Directors                                      | 26        |
| 13.6       | Tenure of office  | 26        |
| 13.7       | Resignation   | 26        |
| 13.8       | Chairperson   | 27        |
| 13.9       | Shareholding qualification                                | 27        |
| 13.10      | Appointment and removal of Alternate Directors            | 27        |
| 13.11      | Remuneration of Alternate Director                        | 27        |
| 13.12      | Powers of Alternate Director                              | 27        |
| 13.13      | Alternate Director counted in quorum                      | 27        |
| 13.14      | No right to attend meetings if appointed Director present | 28        |
| 13.15      | Termination of appointment of Alternate Director          | 28        |
| 13.16      | Address of Alternate Director required                    | 28        |
| <b>14.</b> | <b>Indemnity and insurance</b>                            | <b>28</b> |
| 14.1       | Types of proceedings that may be indemnified against      | 28        |
| 14.2       | Types of liability that may be indemnified against        | 28        |
| 14.3       | Insurance of Directors and employees                      | 28        |
| 14.4       | Directors to sign certificate                             | 29        |
| 14.5       | Entry in the Interests Register                           | 29        |
| 14.6       | Definitions   | 29        |
| <b>15.</b> | <b>Powers and duties of the Board</b>                     | <b>29</b> |
| 15.1       | Management by Board                                       | 29        |
| 15.2       | Powers of Board   | 29        |
| 15.3       | Duties under the Crown Entities Act                       | 29        |
| 15.4       | Delegation by Board                                       | 29        |
| 15.5       | Board's responsibility for delegation                     | 30        |
| 15.6       | Proceedings of committees                                 | 30        |
| 15.7       | Exercise of powers in relation to employees               | 30        |
| 15.8       | Major Transactions  | 30        |
| <b>16.</b> | <b>Proceedings of the Board</b>                           | <b>31</b> |
| 16.1       | Third Schedule  | 31        |
| 16.2       | Chairperson   | 31        |
| 16.3       | Convening a meeting                                       | 31        |
| 16.4       | Notice of meeting   | 31        |
| 16.5       | Notice not required to absent Director                    | 31        |
| 16.6       | Irregularity in notice                                    | 31        |

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|            |   |           |
|------------|---|-----------|
| 16.7       | Method of holding meetings  | 31        |
| 16.8       | Acknowledgment of presence at meeting by conference                   | 32        |
| 16.9       | Quorum  | 32        |
| 16.10      | Voting  | 32        |
| 16.11      | Chairperson does not have a casting vote                              | 32        |
| 16.12      | Resolution passed by majority of votes                                | 32        |
| 16.13      | Absence of vote counts for the resolution                             | 32        |
| 16.14      | Alternate Director may attend   | 32        |
| 16.15      | Minutes   | 32        |
| 16.16      | Unanimous resolution  | 32        |
| 16.17      | Other proceedings   | 32        |
| 16.18      | Continuing Directors  | 33        |
| <b>17.</b> | <b>Interested Directors</b>   | <b>33</b> |
| 17.1       | Interested Directors may not vote                                     | 33        |
| 17.2       | Shareholder discretion  | 33        |
| <b>18.</b> | <b>Remuneration</b>   | <b>33</b> |
| 18.1       | Board's power to authorise remuneration and other benefits is limited | 33        |
| 18.2       | Shareholder approval required   | 33        |
| 18.3       | Reimbursement of reasonable expenses                                  | 34        |
| 18.4       | No compensation for loss of office                                    | 34        |
| <b>19.</b> | <b>Authority to bind</b>  | <b>34</b> |
| 19.1       | Method of contracting   | 34        |
| 19.2       | Resolution of authority proof of authority                            | 34        |
| 19.3       | Attorneys   | 34        |
| <b>20.</b> | <b>Liquidation</b>  | <b>35</b> |
| 20.1       | Appointment of liquidator   | 35        |
| 20.2       | Distribution of surplus assets  | 35        |
| 20.3       | Distribution of assets in kind  | 35        |
| 20.4       | Distribution of assets on solvent dissolution                         | 35        |
| <b>21.</b> | <b>Change of Company name</b>   | <b>35</b> |
| <b>22.</b> | <b>Change of registered office or address for service</b>             | <b>35</b> |
| <b>23.</b> | <b>Whole of government directions</b>                                 | <b>36</b> |
| <b>24.</b> | <b>Crown's shareholdings</b>  | <b>36</b> |
| 24.1       | Ministers of the Crown  | 36        |
| 24.2       | Change of Ministerial portfolio                                       | 36        |
| 24.3       | No transfer of Shares required  | 36        |
| 24.4       | Appointment of representative   | 36        |
| <b>25.</b> | <b>Council Representative</b>   | <b>37</b> |
|            | <b>Schedule 1 – Issue of Class B Shares</b>                           | <b>38</b> |
| <b>1.</b>  | <b>Definitions</b>  | <b>38</b> |
| <b>2.</b>  | <b>Requirements and procedure for issue of Class B Shares</b>         | <b>38</b> |

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# Administration and miscellaneous

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this Constitution:

**Act** means the *Companies Act 1993*;

**Alternate Director** means a Director appointed pursuant to clause 13.10;

**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 11.1;

**Balance Date** means the date adopted by the Company as the end of its financial year for the purpose of its annual financial statements;

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

**Call** means a resolution of the Board under clause 7.1 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;

**Chairperson** means the Chairperson of the Board appointed under clause 13.8;

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

**Class B Share** means a Share having the rights set out at clause 4.1(c);

**Company** means City Rail Link Limited;

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

**Council** means the unitary authority established under the Local Government (Auckland Council) Act 2009;

**Council Representative** means any person, as notified to the Board in writing by Council, who has express authority to act on behalf of the Council and who is not a Director of the Company;

**Crown** means Her Majesty the Queen in right of New Zealand;

**Crown Entities Act** means the *Crown Entities Act 2004*;

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

**Distribution**, in relation to Shares held by a Shareholder, means:

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- (a) the direct or indirect transfer of money or property, other than Shares, by the Company to or for the benefit of the Shareholder; or
- (b) the incurring of a debt by the Company to or for the benefit of the Shareholder, 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 by the Company other than a Distribution to which section 59 or section 76 of the Act applies;

**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; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more Classes of Shares.

For the purposes of this definition:

- (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 two or more Interest Groups;

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

**Major Transaction**, in relation to the Company, has the meaning given to it in section 129 of the Act;

**month** means a calendar month;

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

**Ordinary Share** means a Share having the rights set out at clause 4.1(b);

**Project Delivery Agreement** means the agreement entered, or to be entered, into between the Company, the Crown and the Council relating to the delivery of the City Rail Link project;

**Public Finance Act** means the *Public Finance Act 1989*;

**Register** means the register of Shares required by section 87 of the Act to be kept;

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

**Settlement Agreement** means the agreement entered, or to be entered, into between the Company, the Crown, the Council and Auckland Transport relating to certain cash-flows, financial transactions and set offs in relation to the City Rail Link project.

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

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**Shareholder** means a person:

- (a) registered in the Register as the holder 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;

**Shareholding Ministers** means the Ministers of the Crown who hold shares in the Company;

**Solvency Test** means an examination to be applied to the financial state of the Company, which will be satisfied if:

- (a) the Company is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the Company's assets is greater than the value of its liabilities, including contingent liabilities and in respect of which regard has been had to the matters referred to in section 4(2) of the Act,

and, for the purpose of this definition, **debts** and **liabilities** have the meanings given to those terms in sections 52(4) or 108(5) of the Act, as applicable;

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

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

**Statement of Intent** means the statement of intent to be completed by the Company from time to time in accordance with the applicable provisions of the Crown Entities Act;

**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;
- (b) a day in the period commencing with the 25th day of December in any year and ending with the second 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.

## 1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) headings are inserted for convenience only and will be ignored in construing this Constitution;
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- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
- (e) **written** and **in writing** includes any means of reproducing words, figures or symbols:
  - (i) in a tangible and visible form in any medium; or
  - (ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read;
- (f) **signature** includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory's approval of the information contained in the document
- (g) examples and the use of the word **including** and similar expressions do not limit what else may be included; and
- (h) a reference to a clause is to that clause in this Constitution unless stated otherwise.

### **1.3 Other definitions have meaning set out in the Act**

Subject to clause 1.1, expressions contained in this Constitution bear the same meaning as specified in the Act as amended from time to time.

### **1.4 Constitution subject to changes in the Act**

If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause will be deemed to be amended in the same manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.

### **1.5 Use of electronic means**

Where a legal requirement under the Act is reproduced in this Constitution, that legal requirement may be met, for the purposes of this Constitution, by using electronic means in accordance with the *Electronic Transactions Act 2002* in the same manner as is required by the *Electronic Transactions Act 2002* to meet that legal requirement under the Act. In this clause, the term "legal requirement" has the meaning given to it by the *Electronic Transactions Act 2002*.

### **1.6 Receipt of electronic communications**

For the purposes of section 11 of the *Electronic Transactions Act 2002*, a document under this Constitution which is sent in electronic form and by way of an electronic communication is taken to be received:

- (a) if sent by the Company, on the Working Day it is sent or the next Working Day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message
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was received by the information systems used by the Company to send the electronic communication; and

- (b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the Company may agree.

To avoid doubt, any document so sent may be in any widely used electronic form.

## **2. Capacity and powers**

### **2.1 Rights, powers and duties**

The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.

### **2.2 Full capacity**

Subject to this Constitution, the Act, any other enactment and the general law, the Company has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction to pursue the purpose of the Company as set out at clause 3.1.

## **3. Purpose and nature of Company**

### **3.1 Purpose of Company**

The purpose of the Company is to manage, deliver and complete the City Rail Link project.

### **3.2 Statement of Intent**

The Company must prepare Statement(s) of Intent for the Company in accordance with section 45OA(1)(n) of the Public Finance Act.

### **3.3 Nature of Company**

- (a) The Company is a company named in Schedule 4A of the Public Finance Act from the date on which an Order in Council made under section 3AB of that Act amending Schedule 4A of that Act by adding the name of the Company to Schedule 4A of that Act takes effect.
- (b) The Company is not a Council-Controlled Organisation (as defined in section 6 of the Local Government Act 2002).
- (c) The Company is intended to operate in a financially sustainable manner.

### **3.4 Compliance with certain provisions of the Crown Entities Act**

Pursuant to section 45OA(1)(a)-(p) of the Public Finance Act, the Company will comply with sections:

- (a) 79, 81-85, 89-92, 94-97, 99, 100, 102, 107 to 111, 113, 114, 118 and 132 to 158 of the Crown Entities Act; and
  - (b) 161, 162, 163 and 164 of the Crown Entities Act (subject to section 160 of the Crown Entities Act),
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to the extent that those sections apply to the Company, as if the Company was a Crown entity company under the Crown Entities Act, and as if those sections were expressly incorporated into this Constitution.

### 3.5 Application of Crown Entities Act generally

For the avoidance of doubt, any sections of the Crown Entities Act which apply to the Company by virtue of the Public Finance Act, this Constitution or otherwise, will apply to the Company as if references in those sections to:

- (a) Crown entity company were to the Company;
  - (b) responsible Ministers were to the Shareholding Ministers;
  - (c) Crown entity group were to the Company and its subsidiaries;
  - (d) the board were to the Board of the Company; and
  - (e) members were to Directors of the Company,
- respectively.

### 3.6 Controller and Auditor-General

Under the *Public Audit Act 2001*, the Controller and Auditor-General will be the auditor of the Company.

## Shares and Dividends

### 4. Issue of Shares

#### 4.1 Classes of Shares

- (a) At the time of adoption of this Constitution, the Company has issued, or intends to issue, Shares of the following classes:
    - (i) Ordinary Shares, having the rights, powers and obligations set out in clause 4.1(b); and
    - (ii) Class B Shares, having the rights, powers and obligations set out in clause 4.1(c).
  - (b) **Ordinary Shares:** Each Ordinary Share confers on the holder:
    - (i) the right to vote at meetings of Shareholders and on a poll to cast one vote for each Share held;
    - (ii) subject to the rights of any other Class of Shares, the right to an equal share in Dividends and other Distributions made by the Company; and
    - (iii) subject to the rights of any other Class of Shares, the right to an equal share in the distribution of the surplus assets of the Company on its liquidation.
  - (c) **Class B Shares:** The issue price of each fully paid up Class B Share shall be \$1.00 (NZD). Each individual Class B Share confers on the holder:
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- (i) no rights to vote on any resolution at a meeting of Shareholders (other than where an action requires the approval of an affected interest group pursuant to clause 117 of the Act and this Constitution);
  - (ii) subject to the rights of any other Class of Shares, the right to an equal share in Dividends and other Distributions made by the Company; and
  - (iii) subject to the rights of any other Class of Shares, the right to an equal share in the distribution of the surplus assets of the Company on its liquidation.
- (d) Subject to the Act and this Constitution, further Shares in the Company (including different Classes of Shares) may be issued which have any one or more of the following features:
- (i) rank equally with, or in priority to, existing Shares in the Company;
  - (ii) are redeemable (as further described in clause 4.5);
  - (iii) confer preferential rights to distributions of capital or income;
  - (iv) confers special, limited, or conditional voting rights;
  - (v) do not confer voting rights;
  - (vi) are convertible;
  - (vii) have limitations or restrictions on transferability; or
  - (viii) any other terms the Board deems appropriate.

## **4.2 Issue of Shares**

- (a) At all times, more than 50 per cent of the Ordinary Shares in the Company must be held by the Crown acting by or through two or more Ministers of the Crown, one of whom must be the Minister of Finance.
  - (b) Shares may only be held by the Crown (through the Shareholding Ministers) and by the Council.
  - (c) All Shares issued to the Crown (acting through the Shareholding Ministers) will be issued pro rata to the Shareholding Ministers in proportion to their existing holdings.
  - (d) The Board may only issue Shares, or securities convertible into Shares, or options to acquire Shares, in the Company if the issue is:
    - (i) made pursuant to the terms of the Settlement Agreement;
    - (ii) made pursuant to the terms of the Project Delivery Agreement and Schedule 1 of this Constitution; or
    - (iii) as otherwise approved by the Shareholders.
  - (e) Subject to paragraphs (a), (b) and (d) above, the Board may:
    - (i) issue further Shares that rank as to voting or distribution rights, or both, equally with or prior to any existing Shares in the Company; and/or
    - (ii) agree to issue further Shares that rank as to voting or distribution rights, or both, equally with or prior to any existing Shares in the Company,
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to such persons and on such terms as the Board thinks fit.

- (f) Other than in relation to Class B Shares issued under the Settlement Agreement and subject to paragraph 4.2(d)(iii), the Company shall follow the procedure set out in Schedule 10 of the Project Delivery Agreement and Schedule 1 of this Constitution in relation to an issue of (non-voting) Class B Shares to the Crown (acting through the Shareholding Ministers) and/or the Council.

#### **4.3 No statutory pre-emptive rights**

Section 45 of the Act does not apply to the Company.

#### **4.4 Board may make Calls**

The Board may make Calls on any Shareholder for any money that is unpaid on the Shareholder's Shares and not otherwise payable at a specified time or times under this Constitution or the terms of issue of those Shares or any contract for the issue of those Shares. Clause 7 governs Calls on Shares.

#### **4.5 Redeemable Shares**

If redeemable Shares are to be issued, the terms of issue of the redeemable Shares must make provision for the redemption of each redeemable Share by the Company:

- (a) at the option of the Company; or
- (b) at the option of the holder of redeemable Shares; or
- (c) on a specified date,

for a consideration that is:

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

#### **4.6 Requirements for Board issuing Shares**

Before the Board issues Shares pursuant to clause 4.2, it must:

- (a) decide the consideration for which the Shares will be issued (subject to clause 4.1(c) with respect to Class B Shares) 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 by which the Shares would be credited as paid up.

#### **4.7 Exceptions to requirements in case of certain Share issues**

Clauses 4.6, 4.8 and 4.9 do not apply to:

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- (a) any issue of Shares to which all entitled persons have agreed or concurred in accordance with section 107(2) of the Act;
- (b) 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; or
- (c) the consolidation or subdivision of Shares.

#### **4.8 Directors' certificate on consideration for issue**

The Directors who vote in favour of a resolution under clause 4.6 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 4.6(b), stating that value and the basis for assessing it;
- (d) stating that, in their opinion, the consideration for and 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.

#### **4.9 Directors' certificate to be filed**

A copy of the Directors' certificate given under clause 4.8 must be filed with the Registrar within 10 Working Days after it is given.

### **5. Purchase of own Shares**

- (a) The Company may purchase or otherwise acquire its Shares in accordance with, and subject to, sections 58 to 65, 107, 108 and 110 to 112 of the Act and the Board may make an offer to acquire Shares to one or more Shareholders, provided that it does so in accordance with the procedure set out in section 61 of the Act.
- (b) The Company may hold its own shares in accordance with section 67A to 67C of the Act. Unless the Board resolves otherwise, Shares purchased or otherwise acquired by the Company in accordance with this clause will be deemed to be cancelled immediately on purchase or acquisition.

### **6. Transfer of Shares**

#### **6.1 Transfer of Shares**

- (a) Shares may only be transferred:
    - (i) in accordance with the provisions of the Project Delivery Agreement; or
    - (ii) as approved by the Shareholders by Special Resolution.
  - (b) Subject to clauses 6.1(a)(i) and 6.2, Shares may be transferred by entry of the name of the transferee on the Register.
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## **6.2 Signed transfer**

For the purpose 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.

## **6.3 Form of transfer**

The form of transfer:

- (a) may be in the form set out in the Schedule 18 of the Financial Markets Conduct Regulations 2014 or in any usual or common form, or any other form approved by the Board; and
- (b) must be signed by the transferee if registration as holder of the Shares would impose a liability to the Company on the transferee.

## **6.4 Board's right to refuse or delay registration of transfer**

The Board may, within 30 Working Days of the receipt of a form of 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 Board considers that to effect the transfer would result in a breach of the law; or
- (c) the Board considers that it is not in the best interests of the Company to register the transfer; or
- (d) clauses 6.1 and 6.2 have not been complied with or the form of transfer has not been properly executed or does not comply with clause 6.3.

## **6.5 Board resolutions refusing or delaying Share transfers**

A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five Working Days of the date of the resolution being passed.

## **6.6 Registration of transfer**

Subject to clauses 6.2 and 6.3, 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 6.4 to refuse or delay the registration of the transfer of the Shares.

# **7. Call on Shares**

## **7.1 Board may make Calls**

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 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.

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## **7.2 Calls to apply equally**

Subject to the terms of issue of any Class of Shares and to clause 7.9, 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.

## **7.3 Notice of Calls**

Notice of the Call must be given to the Shareholder at the time of the Call or to a subsequent holder of the Shares. 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. The notice must specify the day by which and the place at which the Call must be paid.

## **7.4 Deemed receipt of notice**

Subject to section 392(1)(b) of the Act, notice of a Call sent by post to a Shareholder to the address recorded in the Register as the address of the Shareholder will be deemed to have been received by the Shareholder the day after it was posted. To avoid doubt, the notice may be sent by way of an electronic communication in accordance with clause 1.6 if the Shareholder has provided the Company with an address for the receipt of electronic communications.

## **7.5 Joint Shareholder liability**

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

## **7.6 Unpaid calls to accrue interest**

If a Call is not paid before or on the day appointed for payment, the person from whom the amount is due will be liable to pay interest on the sum (from the day appointed for payment until the time of actual payment) at such rate as the Board determines either at the time of the Call or subsequently. The Board may waive some or all of the payment of that interest.

## **7.7 Current Shareholder liable**

The liability for a Call which has become due and payable attaches to the current Shareholder and not a prior Shareholder, notwithstanding that at the date of the Call (or the date the Call fell due for payment) another person was the holder of the Shares or that the notice of the Call was served on the then Shareholder and not the current Shareholder.

## **7.8 No notice to new Shareholder required**

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 Shareholder.

## **7.9 Agreement to differentiate between Calls**

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 for payment.

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## **8. Distributions**

### **8.1 Distributions must satisfy Solvency Test and have prior Shareholder approval**

Subject to clause 8.3, the Board may, if it is satisfied on reasonable grounds that the Company will satisfy the Solvency Test immediately after the Distribution and the Shareholders have approved the terms of such proposed Distribution by Special Resolution, authorise a Distribution by the Company to Shareholders of any amount and to any Shareholders as it thinks fit.

### **8.2 Board to sign certificate**

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

### **8.3 Dividends payable pari passu**

Subject to clause 8.4 and 8.5, 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 that 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 Shareholder's liability under this Constitution or under the terms of issue of the Share.

### **8.4 Shareholder may waive rights to Dividend**

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

### **8.5 Dividends payable other than pari passu**

If all the Shareholders of the same Class concur in writing in respect of each proposed Dividend, the Company may pay a Dividend which is distributed other than in accordance with clause 8.3.

### **8.6 Investment of unclaimed Distributions**

Any Distribution that has not been claimed after one year from the date of the Distribution may be invested or otherwise made use of by the Board for the benefit of the Company until it is claimed. The Company will not be regarded as holding any such amount used on trust for the claimant.

### **8.7 Forfeiture of unclaimed Distributions**

Any Distribution remaining unclaimed for a period of five years from the date of the Distribution may be forfeited by the Board for the benefit of the Company, provided that the Board may in its discretion cancel the forfeiture and pay the Distribution to any person producing evidence satisfactory to the Board that he or she is entitled to the amount claimed.

### **8.8 Financial assistance on acquisition of Shares**

The Company may, subject to and in accordance with sections 76 to 80, 107 and 108 of the Act, give financial assistance (whether directly or indirectly) to a person for the

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purpose of, or in connection with, the purchase of Shares issued (or to be issued) by the Company, or by its holding company.

## Shareholders' rights and obligations

### 9. Alteration of Shareholder's rights

#### 9.1 Alteration of Shareholder's rights

- (a) The Company must not take action that affects the rights attached to Shares unless that action has been approved by a Special Resolution of each Interest Group.
- (b) An issue of Shares will not be treated as an action affecting the rights attached to the existing Shares.

### 10. Exercise of powers reserved to Shareholders

#### 10.1 Powers reserved to Shareholders

Powers reserved to Shareholders by the Act or by this Constitution may be exercised:

- (a) by Special Resolution (or, where specified in this Constitution, Ordinary Resolution) of the Shareholders at an Annual Meeting or a Special Meeting; or
- (b) by a resolution in lieu of a meeting pursuant to clause 11.5.

#### 10.2 Powers exercised by Special Resolution

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;
- (d) the liquidation of the Company;
- (e) the approval of a transfer of Shares in the Company other than pursuant to clause 6.1(a)(i);
- (f) the approval of a Distribution to the Shareholders pursuant to clause 8.1; or
- (g) matters relating to remuneration of the Directors pursuant to clause 18 which require Shareholder approval.

Any decision made by Special Resolution pursuant to this clause may be rescinded only by a Special Resolution, provided that a resolution to put the Company into liquidation cannot be rescinded.

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## **11. Meetings of Shareholders**

### **11.1 Annual Meeting**

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

- (a) not later than six months after the Balance Date of the Company; and
- (b) not later than 15 months after the previous Annual Meeting, or in respect of the first Annual Meeting not later than 18 months after the date of the Company's incorporation.

### **11.2 Date of meeting**

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

### **11.3 Resolution instead of Annual Meeting**

It will not be necessary for the Company to hold an Annual Meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with section 122 of the Act.

### **11.4 Special Meetings**

A Special Meeting:

- (a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting; and
- (b) must be called by the Board on the written request of Shareholders holding not less than five per cent of the votes entitled to be cast on the issue.

### **11.5 Resolution in lieu of meeting**

A resolution in writing signed by not less than 75 per cent of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders, who together hold not less than 75 per cent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.

### **11.6 More than one document**

Any resolution in writing under clause 11.5 may consist of one or more documents in similar form (including letter, facsimiles, electronic mail, or other similar means of communication), each signed or assented to by or on behalf of one or more of the Shareholders entitled to vote on the resolution.

### **11.7 Copy of resolution to non-signing Shareholder**

Within five Working Days of a resolution being passed under this clause, the Company must send a copy of the resolution to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed.

### **11.8 Chairperson of meetings of Shareholders**

If the Shareholders have elected a Chairperson pursuant to clause 13.8, and that Chairperson is present at a meeting of Shareholders, he or she must chair the meeting. If no Chairperson has been elected or if, at any meeting of Shareholders, the Chairperson is not present within 15 minutes of the time appointed for the

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commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

### **11.9 Shareholders entitled to notice of meeting**

The Shareholders entitled to receive notice of a meeting of Shareholders of a Class or Classes are those Shareholders of the relevant Class:

- (a) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of the 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 notice of the 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.

### **11.10 Date on which entitlement decided**

A date fixed by the Board under clause 11.9(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.

### **11.11 Notice of meeting**

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.

### **11.12 Content of notice**

The notice referred to in clause 11.11 must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any special resolution to be submitted to the meeting.

### **11.13 Irregularities in notice**

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.

### **11.14 Accidental omission not to invalidate proceedings**

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.

### **11.15 Method of holding meeting**

A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.
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## **11.16 Adjournments**

The chairperson of a meeting of Shareholders may, at the request of those Shareholders present in person or by proxy who are, between them, able to exercise a majority of the votes able to be cast at the meeting, adjourn the meeting. No business will be transacted of any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

## **11.17 Notice of the adjourned meeting**

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. In any other case, notice of the adjourned meeting will be given in accordance with clauses 11.11 and 11.12.

## **11.18 Minutes**

The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Shareholders. Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## **11.19 Shareholder proposals for management review**

- (a) Upon a Shareholder receiving notice of a shareholder meeting, or a Shareholder requesting that a special meeting of Shareholders be held, a Shareholder entitled to vote at that meeting of Shareholders may provide to the Board:
  - (i) Pursuant to section 109 of the Act, written notice of any matter relating to the management of the Company which the Shareholder proposes to raise for questioning, discussion or comment at the next meeting of Shareholders; and
  - (ii) Pursuant to section 178 of the Act, a request for any information held by the Company relating to such matter.
- (b) Except as permitted by law, the Company must provide to the Shareholders the information requested under clause 11.19(a)(ii) not less than 5 Working Days prior to the next Shareholder meeting, to enable the Shareholders to review such material prior to the proposed discussion at the Shareholders meeting.
- (c) This clause does not limit the provisions of the Crown Entities Act.

## **12. Voting at meetings**

### **12.1 Quorum**

A quorum for a meeting of Shareholders is present if those Shareholders who are present, or their proxies who are present, are between them able to exercise seventy five percent (75%) of the votes to be cast on the business to be transacted by the meeting. Subject to clause 12.2, no business may be transacted at a meeting of Shareholders if a quorum is not present.

### **12.2 Lack of quorum**

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 11.4(b), the meeting is dissolved;
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- (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
- (c) 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.

### **12.3 Voting at actual meeting**

In the case of a meeting of Shareholders held under clause 11.15(a), unless a poll is demanded, voting at the meeting will 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.

### **12.4 Voting at meeting by conference**

In the case of a meeting of Shareholders held under clause 11.15(b), unless a poll is demanded, voting at the meeting will be by the Shareholders signifying individually their assent or dissent by voice.

### **12.5 Declaration by chairperson that resolution is carried**

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 12.6.

### **12.6 Demand of a poll**

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

- (a) a Shareholder or Shareholders representing not less than 10 per cent of the total voting rights of all Shareholders having the right to vote at the meeting; or
- (b) 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 per cent of the total amount paid up on all Shares that confer that right; or
- (c) the chairperson of the meeting.

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

### **12.7 Counting of votes on a poll**

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.

### **12.8 Chairperson not entitled to casting vote**

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

### **12.9 Right of proxy to demand a poll**

For the purposes of clause 12.6, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

### **12.10 Proxies**

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

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### **12.11 Rights of proxy**

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

### **12.12 Appointment of proxy**

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. 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.

### **12.13 Representatives**

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

### **12.14 Postal votes**

Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act (relating to postal votes) will apply, with such modifications (if any) as the Board thinks fit.

### **12.15 Votes of joint holders**

Where two or more persons 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.

### **12.16 Unpaid amounts**

If an amount 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.

### **12.17 Meetings of Interest Groups**

The provisions of clauses 11 and 12 will, with such consequential amendments as may be necessary, govern the proceedings of any meeting of an Interest Group.

### **12.18 Other proceedings**

Except as provided in this Constitution the Shareholders may regulate their own procedure.

## **The Board**

### **13. Appointment and removal**

#### **13.1 Number of Directors and composition of the Board**

Subject to clause 16.18, the number of Directors may not be fewer than one. The maximum number of Directors from time to time shall be six.

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### **13.2 Appointment of Directors**

A person may be appointed as a Director by Special Resolution. Two or more persons may be appointed by a single resolution.

### **13.3 Term of appointment**

- (a) Each member of the Board shall be appointed for a term of three years (or such shorter term as agreed by the Shareholders) and, at the end of such three year term, may be re-appointed for further periods of three years per term in accordance with clause 13.2.
- (b) Notwithstanding the provisions of clause 13.3(a) but subject to clause 13.6, a member of the Board shall continue in office after the expiry of his/her term of office until:
  - (i) the member is reappointed;
  - (ii) the member's successor is appointed; or
  - (iii) the Shareholders inform the member by written notice that the member is not to be reappointed and no successor is to be appointed at that time.

### **13.4 Restrictions on appointment**

A person must not be appointed as a Director (or an Alternate Director) if the person is, at the time of the appointment, a member of Parliament or a member of the governing body or local board of the Council.

### **13.5 Removal of Directors**

A person may be removed as a Director by Special Resolution.

### **13.6 Tenure of office**

A person will cease to hold the office of Director if he or she:

- (a) is removed under clause 13.5; or
- (b) resigns in writing under clause 13.7 and is not reappointed in accordance with this Constitution; or
- (c) becomes disqualified from being a Director pursuant to section 151 of the Act, or section 30 of the Crown Entities Act;
- (d) is prohibited from being a Director or promoter of or being concerned with or taking part in the management of a company under sections 382, 383 or 385 of the Act; or
- (e) dies; or
- (f) becomes a protected person under the *Protection of Personal and Property Rights Act 1988*; or
- (g) is under 18 years of age; or
- (h) is an undischarged bankrupt.

### **13.7 Resignation**

- (a) A Director may resign from office by signing a written notice of resignation and delivering it to the Chairperson. The notice takes effect upon the later of the
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receipt of it at the address for service of the Company (including receipt of a facsimile or electronic copy) and any later time specified in the notice.

- (b) Any Director (or an alternate) who is elected to the Council's governing body or a local board, or Parliament will be required to resign as a Director (or an alternate) before taking up such position. If a Director (or an alternate) does not resign prior to his or her election to the governing body of the Council or local board, that Director (or alternate) is deemed to have ceased to be a Director (or alternate) from the date of such election or employment.

### **13.8 Chairperson**

The Chairperson shall be chosen from amongst the Board members by the Shareholders by Special Resolution.

### **13.9 Shareholding qualification**

A Director is not required to hold Shares.

### **13.10 Appointment and removal of Alternate Directors**

Every Director may, by notice given in writing to the Company:

- (a) appoint any person who is not disqualified by the Act from being a Director and whose appointment has been approved by the Shareholders to act as an Alternate Director in his or her place either for a specified period, or generally during the absence or inability to act from time to time of such director; and
- (b) remove that person from that office.

### **13.11 Remuneration of Alternate Director**

An Alternate Director will look to the Director appointing him or her and not the Company for remuneration, but will have the same rights as a Director to be recompensed by the Company for reasonable travelling, hotel and other expenses incurred by him or her in attending meetings of the Board or of the Shareholders or in relation to any other affairs of the Company.

### **13.12 Powers of Alternate Director**

- (a) While acting in the place of the Director who appointed him or her, an Alternate Director has, and may exercise and discharge all the powers, rights, duties and privileges of that Director (including the right to sign any document, including a written resolution, and to act as Chairperson, but excluding the right to appoint an Alternate). The Alternate Director is also subject in all respects to the same terms and conditions of appointment as that Director, except in respect of remuneration.
- (b) A Director who is also an Alternate Director is entitled to exercise his or her voting and other powers as an Alternate Director in addition to and independently of the exercise of his or her powers as a Director.

### **13.13 Alternate Director counted in quorum**

For the purpose of establishing a quorum of the Board, an Alternate Director is deemed to be the Director appointing him or her, and if the Alternate Director is a Director he or she can count separately in both capacities.

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### **13.14 No right to attend meetings if appointed Director present**

An Alternate Director does not have a right to attend, speak or vote at a meeting of the Board while his or her appointing Director is present.

### **13.15 Termination of appointment of Alternate Director**

An Alternate Director's appointment terminates automatically if the Director who appointed him or her ceases to be a Director.

### **13.16 Address of Alternate Director required**

The notice of appointment of an Alternate Director must include an address for service of notice of meetings of the Board. Failure to give 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.

## **14. Indemnity and insurance**

### **14.1 Types of proceedings that may be indemnified against**

The Board will 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.

### **14.2 Types of liability that may be indemnified against**

The Board will 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; or
- (b) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above,

not being:

- (c) criminal liability; or
- (d) liability for the breach of section 131 of the Act; or
- (e) in the case of an employee, liability for breach of any fiduciary duty owed to the Company or related company.

### **14.3 Insurance of Directors and employees**

The Board may, subject to section 162 of the Act, cause the Company to effect insurance for Directors and 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
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- (c) costs incurred by a Director or employee in defending any criminal proceedings 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 in which he or she is acquitted.

#### **14.4 Directors to sign certificate**

The Directors who vote in favour of authorising the effecting of insurance under clause 14.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

#### **14.5 Entry in the Interests Register**

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.

#### **14.6 Definitions**

For the purpose of this clause 14, **Director** includes a former Director and an Alternate Director and **employee** includes a former employee.

### **15. Powers and duties of the Board**

#### **15.1 Management by Board**

Subject to clause 15.2 and any restrictions in the Act, this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.

#### **15.2 Powers of Board**

The Board has, and may exercise, all the powers necessary for managing, and for 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.

#### **15.3 Duties under the Crown Entities Act**

Pursuant to section 92 of the Crown Entities Act, the Board must ensure that the Company acts in a manner consistent with its objectives, functions, current Statement of Intent (if any), and current Statement of Performance Expectations (if any).

#### **15.4 Delegation by Board**

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

- (a) section 23(1)(c) (change of company name);
  - (b) section 42 (issue of other shares);
  - (c) section 44 (Shareholder approval for the issue of shares);
  - (d) section 47 (consideration for the issue of shares);
  - (e) section 49 (consideration for the issue of options and convertible securities);
  - (f) section 52 (distributions);
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- (g) section 54 (shares in lieu of dividends);
- (h) section 55 (shareholder discounts);
- (i) section 60 (offers to acquire shares);
- (j) section 61 (special offers to acquire shares);
- (k) section 69 (redemption of shares at the option of the company);
- (l) section 71 (special redemptions of shares);
- (m) section 76 (provision of financial assistance);
- (n) section 78 (special financial assistance);
- (o) section 80 (financial assistance not exceeding five per cent of shareholders' funds);
- (p) section 84(4) (transfer of shares);
- (q) section 187 (change of registered office);
- (r) section 193 (change of address for service);
- (s) section 221 (manner of approving an amalgamation proposal); and
- (t) section 222 (short form amalgamations).

#### **15.5 Board's responsibility for delegation**

The Board is responsible for the exercise of a power by any delegate (where that power is delegated under clause 15.4) 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.

#### **15.6 Proceedings of committees**

The proceedings of meetings of any committee formed pursuant to clause 15.4 will be in accordance with the provisions of clause 16, with such consequential amendments as may be necessary, and any other rules that may be imposed on it by the Board.

#### **15.7 Exercise of powers in relation to employees**

Nothing in this constitution 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.

#### **15.8 Major Transactions**

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

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

## **16. Proceedings of the Board**

### **16.1 Third Schedule**

The provisions of the third schedule to the Act are deleted and replaced by this clause 16.

### **16.2 Chairperson**

The Shareholders may elect a Director to be Chairperson in accordance with clause 13.8. The Director elected as Chairperson holds that office until he or she ceases to be a Director or the Shareholders elect a Chairperson in his or her place. If no Chairperson is elected, or if at a meeting of the Board the Chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.

### **16.3 Convening a meeting**

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 clauses 16.4 and 16.5.

### **16.4 Notice of meeting**

Not less than five Working Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted. The notice must include the date, time and place of the meeting and the matters to be discussed. To avoid doubt, the notice may be sent by way of an electronic communication in accordance with clause 1.6 if the Director has provided the Company with an address for the receipt of electronic communications.

### **16.5 Notice not required to absent Director**

Notice of a meeting of the Board must be given to every Director (whether or not that Director is in New Zealand) but if a Director is outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand, and the Director has appointed an Alternate Director under the provisions of this Constitution, notice must be given to the Alternate Director.

### **16.6 Irregularity in notice**

The giving of a notice of a meeting or an irregularity in the notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

### **16.7 Method of holding meetings**

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.
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### **16.8 Acknowledgment of presence at meeting by conference**

Where a meeting of the Board is held pursuant to clause 16.7(b), at the commencement of the meeting each Director participating must acknowledge his or her presence to all the other Directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the Chairperson.

### **16.9 Quorum**

A quorum for a meeting of the Board is a majority of the Directors, or where the Company only has one Director, such Director. No business may be transacted at a meeting of Directors if a quorum is not present. An Alternate Director present at a meeting may be included for the purpose of establishing a quorum.

### **16.10 Voting**

Every Director has one vote.

### **16.11 Chairperson does not have a casting vote**

In the case of an equality of votes, the Chairperson does not have a casting vote.

### **16.12 Resolution passed by majority of votes**

A resolution of the Board is passed if it is agreed to by all Directors present without dissent, or the votes of the majority of Directors entitled to vote on the matter are cast are in favour of it.

### **16.13 Absence of vote counts for the resolution**

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.

### **16.14 Alternate Director may attend**

An Alternate Director may attend and vote at meetings of the Board in accordance with and subject to clauses 13.10 to 13.13 if the Director that has appointed the Alternate Director is absent from the meeting.

### **16.15 Minutes**

The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board. Minutes of proceedings of the Board which have been signed correct by the Chairperson are prima facie evidence of the proceedings.

### **16.16 Unanimous resolution**

A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting or a sufficient majority to pass a Board resolution pursuant to clause 16.12, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile, electronic or other similar means of communication) in like form each signed or assented to by one or more Directors. A copy of any such resolution must be entered in the minute book of Board proceedings.

### **16.17 Other proceedings**

Except as provided in this clause 16, the Board may regulate its own procedure.

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## **16.18 Continuing Directors**

The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors. Other than where the minimum number of Directors is fixed as one, 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 Special Meeting.

## **17. Interested Directors**

### **17.1 Interested Directors may not vote**

A Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company may attend a meeting of Directors at which a matter relating to the transaction arises, and be included among the Directors present at the meeting for the purpose of a quorum, but must not:

- (a) vote on any matter relating to the transaction (other than a transaction to which clause 14 applies, or a matter involving Directors' remuneration which has previously been approved by the Shareholders by Special Resolution in accordance with clause 18.1);
- (b) sign a document relating to the transaction on behalf of the Company; or
- (c) do anything else as a Director in relation to the transaction.

### **17.2 Shareholder discretion**

The Shareholders may suspend or relax the prohibition on Interested Directors voting to any extent in respect of any particular transaction by written notice signed by them to the address for service of the Company.

## **18. Remuneration**

### **18.1 Board's power to authorise remuneration and other benefits is limited**

Subject to clause 18.3, the Board may not exercise the power conferred by section 161 of the Act to authorise the payment of remuneration or any other benefit of the kind referred to in that section to or in respect of a Director in his or her capacity as such, except where the provision of such remuneration or benefit has been approved by the Shareholders by Special Resolution.

### **18.2 Shareholder approval required**

The power of the Board to authorise:

- (a) the making of loans by the Company to a Director or the giving of guarantees by the Company for debts incurred by a Director; and
  - (b) the entering into of a contract to do any of the things set out in this clause 18,
- is subject to the prior approval of the Shareholders.
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### **18.3 Reimbursement of reasonable expenses**

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

### **18.4 No compensation for loss of office**

The Board will not authorise the payment of any compensation or other payment or benefit to a Director for loss of office as a Director.

## **Administration and miscellaneous**

### **19. Authority to bind**

#### **19.1 Method of contracting**

A contract or other enforceable obligation may be entered into by the Company as follows:

- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
  - (i) two or more Directors of the Company (or where there is only one Director, by that Director whose signature must be witnessed); or
  - (ii) a Director, or any other person or class of persons authorised by the Board for that purpose, whose signature or signatures must be witnessed;
  - (iii) one or more attorneys appointed by the Company in accordance with clause 19.3;
- (b) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

#### **19.2 Resolution of authority proof of authority**

A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the Company will be proof of such authority notwithstanding that the authority may have been subsequently revoked.

#### **19.3 Attorneys**

The Company may, by an instrument in writing executed in accordance with clause 19.1(a), appoint a person as its attorney either generally or in relation to a specified matter or matters. An act of the attorney in accordance with the instrument binds the Company.

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## 20. Liquidation

### 20.1 Appointment of liquidator

A liquidator of the Company may be appointed by a Special Resolution of those Shareholders entitled to vote and voting on the question.

### 20.2 Distribution of surplus assets

Subject to the terms of issue of any Shares, upon the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation will be distributed among the holders of all Shares in proportion to their shareholding, provided however, that a holder of Shares not fully paid up will receive only a proportionate share of his or her 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.

### 20.3 Distribution of assets in kind

Upon the liquidation of the Company the liquidator may, with the sanction of an Ordinary Resolution and any other sanction required by law, 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). The liquidator may for that purpose set such value, as the liquidator deems fair upon any assets to be divided as aforesaid and may determine how the division will be carried out as between the Shareholders holding different classes of Shares. 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 Shareholders will be compelled to accept any shares or other securities whereon there is any liability).

### 20.4 Distribution of assets on solvent dissolution

For the purposes of a solvent dissolution under clause 318 of the Act, the Company will have distributed its surplus assets in accordance with this Constitution if the Company does so in accordance with clauses 20.2 or 20.3 except that no liquidator needs to be appointed and references to the liquidator in that clause will be construed as references to the Shareholders acting by an Ordinary Resolution.

## 21. Change of Company name

A Director may apply to the Registrar of Companies to change the name of the Company if:

- (a) the Board has approved the Director doing so; and
- (b) the Shareholders have approved the change of name.

## 22. Change of registered office or address for service

Whenever the Board gives notice to the Registrar of Companies of a change in the registered office or the address for service of the Company, the Board must at the same time give written notice of the change to the Shareholders.

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## **23. Whole of government directions**

The Company is required to give effect to any whole of government direction that applies to the Company by virtue of the Public Finance Act and the Crown Entities Act.

## **24. Crown's shareholdings**

### **24.1 Ministers of the Crown**

Shares in the Company held by the Crown acting by and through a person described as the holder of a specified Ministerial portfolio will be held by the Crown acting by and through the person for the time being holding that portfolio. A Minister of the Crown by and through whom the Crown acts as holder of Shares in the Company will be entitled to exercise all rights and powers in relation or attaching to those Shares, on behalf of the Crown, as if that Minister was the person registered in the Company's Register as the holder of those Shares and, to the extent that provisions of the Crown Entities Act apply to the Company, either under the Public Finance Act or by virtue of this Constitution, any such Minister will have all the powers of a responsible Minister under those provisions in relation to the Company, as if the Company was a crown entity company under the Crown Entities Act.

### **24.2 Change of Ministerial portfolio**

The Prime Minister may at any time or times, by written notice to the address for service of the Company which specifies the existing Ministerial portfolio and the new Ministerial portfolio, change the Ministerial portfolio by and through which the Crown acts in relation to any Shares in the Company and any such change will have effect from the date specified in the notice (or, if no date is specified, from the date on which the notice is received by the Company).

### **24.3 No transfer of Shares required**

It will not be necessary to complete or register a transfer of Shares in the Company consequent upon a change in the person holding a Ministerial portfolio as contemplated by clause 24.1 or upon a change in a Ministerial portfolio as contemplated by clause 24.2 and the new person or holder of the new Ministerial portfolio may, on behalf of the Crown, act in relation to the Shares as if the person or holder was registered in the Company's Register as the person by and through whom the Crown acts in relation to the Shares. Regardless of this provision, the Board may, on receiving evidence that such a change to Ministerial responsibilities has occurred, enter in to the Register the name and other details of such person who has assumed such responsibility.

### **24.4 Appointment of representative**

A Shareholding Minister of the Crown may at any time or times, by written notice to the address for service of the Company, authorise (on such terms and conditions as are specified in the notice) any such person the Shareholding Minister thinks fit to act as the Crown's representative at any or all of the meetings of Shareholders of the Company, and any person so authorised will be entitled to exercise at the meeting or meetings the same powers as the Crown acting by and through that Shareholding Minister could exercise if present in person at the meeting or meetings.

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## 25. Council Representative

The Council has the right to appoint a Council Representative as its proxy to attend and vote at meetings of Shareholders on its behalf. Any Council Representative so appointed is entitled to attend and be heard at such meetings and to demand or join in demanding a poll, as if that Council Representative was the Council.

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# Schedule 1 – Issue of Class B Shares

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## 1. Definitions

Capitalised terms in the Schedule which are not otherwise defined have the meaning given to those terms in the Project Delivery Agreement.

## 2. Requirements and procedure for issue of Class B Shares

- (a) Subject to receipt of:
  - (i) the Crown Requested Funding as specified in a Funding Request, the Company shall issue Class B Shares (having the rights, privileges and limitations (including any restrictions on transfer) attached to Class B Shares as set out in this Constitution) to the Shareholding Ministers upon the issue date set out in the Funding Request and in accordance with the amounts and proportions of Class B Shares set out in such request; and
  - (ii) the Council Requested Funding as specified in a Funding Request, the Company shall issue Class B Shares (having the rights, privileges and limitations (including any restrictions on transfer) attached to Class B Shares as set out in this Constitution) to the Council upon the issue date set out in the Funding Request and in accordance with the amounts and proportions of Class B Shares set out in such request.
- (b) If a Non-Defaulting Sponsor pays an NDS Payment Amount, the Company shall issue Class B Shares (having the rights, privileges and limitations (including any restrictions on transfer) attached to Class B Shares as set out in this Constitution) to the Non-Defaulting Sponsor pursuant to clause 5(d) of Schedule 10 to the PDA.

## 3. Issue of New Shares

- (a) CRLI must update the Register of the Company to record each issue of new Class B Shares; and
  - (b) CRLI must update the Companies Office regarding the issue of new Shares within 10 working days (as that term is defined in the Companies Act) of such issue.
-