

# Share Sale and Purchase Agreement

relating to shares on issue in Northland Inc Limited

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between

**Northland Regional Council**

Vendor

and

**Far North District Council**

Purchaser

# Share Sale and Purchase Agreement

Dated the        day of                    2021

## Parties

Northland Regional Council (Vendor).

Far North District Council (Purchaser).

## Introduction

The Vendor owns the Sale Shares, which comprise one third of the total Shares on issue in the Company.

This agreement sets out the terms on which the Vendor will sell, and the Purchaser will purchase, the Sale Shares.

## Agreed Terms

### 1. Definitions and Interpretation

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#### 1.1 Definitions

The following definitions apply in this agreement:

**Board** means the board of directors of the Company.

**Business Day** means any day (other than a Saturday, Sunday or public holiday, as that term is defined in section 5(1) of the Holidays Act 2003) on which registered banks are open for general banking business in Northland, New Zealand.

**Company** means Northland Inc Limited (company number 857377).

**Completion** means the performance by the Parties of their respective obligations under clause 3, or the time at which such performance is completed.

**Completion Date** means 1 July 2021 or such other date as the Parties may agree in writing.

**Encumbrance** means:

- (a) any charge (whether fixed or floating), mortgage, debenture, pledge, lien, hypothecation, title retention, deferred purchase option, right of pre-emption or right of first refusal; and
- (b) any other security interest (as that term is defined in section 17 of the Personal Property Securities Act 1999) or third party right (whether legal or equitable).

**Parties** means the parties to this agreement and **Party** means either one of them.

**Purchase Price** means \$80, being \$2 per Share.

**Sale Shares** means 40 Shares.

**Share Register** means the share register of the Company, as kept and maintained in accordance with section 87 of the Companies Act 1993.

**Shareholders' Agreement** means the shareholders' agreement to be entered into between the Vendor, the Purchaser, Kaipara District Council and the Company in relation to the Company, in the agreed form.

**Shares** means fully paid ordinary shares in the Company.

**Share Transfer Form** means a share transfer form for the Sale Shares in a form agreed in writing by the Parties.

## 1.2 Interpretation

The following rules of interpretation apply in this agreement:

- (a) References to the **Parties** include their respective executors, administrators, successors and permitted assigns.
- (b) References to **persons** include natural persons, companies, and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
- (c) References to **this agreement** means this agreement, including the **introduction**, as amended and/or replaced from time to time.
- (d) References to **clauses** are to those in this agreement.
- (e) **Headings** and **subheadings** have been inserted for convenience only and will not affect the interpretation of this agreement.
- (f) References to the words **including, include** or similar words do not imply any limitation and are deemed to have the words **without limitation** following them.
- (g) References to a **statute** or **statutory provision** means a New Zealand statute or statutory provision as amended, consolidated and/or replaced from time to time.
- (h) A **gender** includes each other gender and the **singular** includes the plural and vice versa.
- (i) References to **\$** are references to New Zealand dollars.
- (j) References to **time** and **dates** are to time and dates in New Zealand.
- (k) References to **written** or **in writing** shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).
- (l) No **rule of construction** (including the contra proferentem rule) applies to the disadvantage of a Party because that Party (or its relevant advisor) was responsible for the preparation of this agreement or any part of it.

## 2. Sale and Purchase

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### 2.1 Agreement to sell and purchase

On the terms set out in this agreement, the Vendor agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Vendor, the Sale Shares.

### 2.2 Terms of sale

The Sale Shares shall be sold by the Vendor to the Purchaser:

- (a) **Completion Date:** on the Completion Date;
- (b) **no Encumbrances:** free of any Encumbrances; and
- (c) **with all rights, benefits and entitlements:** with all rights, benefits and entitlements that attach to the Sale Shares as at Completion.

### 2.3 Consideration

In consideration of the Vendor agreeing to sell the Sale Shares to the Purchaser on the terms of this agreement, the Parties agree that the Purchaser will pay to the Vendor the Purchase Price.

## 3. Completion

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### 3.1 Time and date

Completion is to take place before 5.00pm on the Completion Date.

### 3.2 Transfer of title

On Completion, the legal and beneficial title to the Sale Shares shall pass from the Vendor to the Purchaser, free of all Encumbrances. Until Completion, all risk of loss and diminution of value to the Sale Shares remains at the sole risk of the Vendor.

### 3.3 Vendor's obligations

On the Completion Date, the Vendor shall deliver the following documents to the Purchaser:

- (a) **Share Transfer Form:** The Share Transfer Form, duly signed by the Vendor.
- (b) **Shareholders' Agreement:** The Shareholders' Agreement duly executed by the Vendor.
- (c) **Board resolution:** A resolution in writing of the Board that directs the name of the Purchaser to be entered into the Share Register as the holder of the Sale Shares, signed by the Directors of the Company.

### 3.4 Purchaser's obligations

On the Completion Date, the Purchaser will:

- (a) deliver to the Vendor the Share Transfer Form, duly signed by the Purchaser;
- (b) deliver to the Vendor the Shareholders' Agreement duly executed by the Purchaser; and
- (c) pay the Purchase Price to the Vendor in cleared funds.

### 3.5 Completion simultaneous

The actions of the Vendor under clause 3.3, and the actions of the Purchaser under clause 3.4, are interdependent and must take place, as nearly as possible, simultaneously. If one action does not take place, then there is no obligation on either Party to undertake to perform any of the other actions. To the extent that such actions have already been undertaken, the Parties must do everything reasonably required to reverse those actions.

## 4. Warranties

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### 4.1 Mutual warranties

Each Party warrants to the other that:

- (a) **power and authority:** it has full power and authority to enter into this agreement;
- (b) **authorisation and approvals:** all authorisations and approvals that are required of that Party in connection with the signing of this agreement, and the assumption of rights and obligations under it, have been obtained; and
- (c) **no breach:** the signing, delivery and performance of this agreement does not

constitute a breach of any obligation by which that Party is bound.

#### 4.2 **Vendor's warranties**

The Vendor warrants to the Purchaser that:

- (a) **title:** it has legal and beneficial title to the Sale Shares, free of any Encumbrances; and
- (b) **capacity:** it has the right and power to sell the Sale Shares on the terms set out in this agreement.

#### 4.3 **Date of warranties**

Each of the warranties in this clause 4 is given by the relevant Party on the Completion Date.

## 5. **General Provisions**

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### 5.1 **Entire agreement**

This agreement constitutes the entire agreement and understanding of the Parties relating to the matters dealt with in this agreement and supersedes and extinguishes any previous agreement (whether oral or written) between the Parties in relation to such matters. Nothing in this clause 5.1 operates to limit or exclude any liability for fraud.

### 5.2 **Further assurances**

Each Party shall, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this agreement.

### 5.3 **No merger**

The obligations, warranties and representations of the Parties under this agreement, to the extent not already performed by Completion, will not merge on Completion or on the execution or delivery of any document in connection with this agreement, but will remain enforceable to the fullest extent notwithstanding any rule of law to the contrary.

### 5.4 **No waiver**

No Party will be deemed to have waived any right under this agreement unless the waiver is given in writing and signed by that Party.

### 5.5 **Amendments**

This agreement may not be amended or varied in any way unless such amendment or variation is made in writing and signed by each Party.

### 5.6 **Assignment**

No Party will assign or transfer, or purport to assign or transfer, any of their rights or obligations under this agreement without the prior written consent of the other Party (such consent shall not be unreasonably or arbitrarily withheld or delayed).

### 5.7 **Severability**

If any provision of this agreement is found by a court or other competent authority to be void or unenforceable, such provision will be deemed to be deleted from this agreement and the remaining provisions of this agreement will continue in full force and effect.

### 5.8 **Rights and remedies**

Unless otherwise expressly provided in this agreement, the rights and remedies set forth in this agreement are in addition to, and not in limitation of, any other rights and remedies under or relating to this agreement (whether at law or in equity).

**5.9 Counterparts**

This agreement may be signed and delivered in any number of counterparts, including by way of electronic transmission where a Party signs a counterpart and sends it as a PDF to the other Party by email. All such counterparts, when taken together, shall constitute one and the same instrument and, notwithstanding the date of execution, will be deemed to bear the date of this agreement.

**5.10 Electronic signatures**

A Party may sign this agreement by way of the application of that Party's electronic signature in accordance with Part 4 of the Contract and Commercial Law Act 2017.

**5.11 Governing law and jurisdiction**

This agreement, and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual claims), will be governed by and construed in accordance with the laws of New Zealand and the Parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this agreement or its subject matter or formation or the relationships established by it (including non-contractual claims).

## **Signatures**

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**Signed by Northland Regional Council** as Vendor

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Signature

**Signed by Far North District Council** as Purchaser

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Signature