

# Shareholders' Agreement relating to Northland Waters Limited

---

## **PARTIES**

Far North District Council

Whangarei District Council

Kaipara District Council

## CONTENTS

SCHEDULE 1 .....	1
AGREEMENT DETAILS .....	1
SCHEDULE 2 .....	1
TERMS AND CONDITIONS .....	1
1. DEFINITIONS AND INTERPRETATION .....	1
2. ESTABLISHMENT OF COMPANY .....	4
3. PURPOSE OF COMPANY .....	5
4. BOARD AND DIRECTORS .....	5
5. SHAREHOLDERS' OBLIGATIONS .....	5
6. SHAREHOLDERS REPRESENTATIVE GROUP .....	6
7. LOANS AND GUARANTEES BY SHAREHOLDERS .....	7
8. STATEMENT OF EXPECTATIONS .....	7
9. TRANSFER AGREEMENTS .....	8
10. SHARES AND SHAREHOLDINGS .....	9
11. DISTRIBUTIONS .....	9
12. CAPITAL CONTRIBUTIONS .....	9
13. TERM AND TERMINATION .....	10
14. SUSPENSION OF RIGHTS .....	11
15. DISPUTE RESOLUTION .....	12
16. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS .....	14
17. NOTICES .....	14
18. GENERAL .....	15
SCHEDULE 3 .....	17
Reserved Matters .....	17
SCHEDULE 4 .....	18
Shareholders Representative Group (SRG) Terms of Reference .....	18
SCHEDULE 5 .....	24
Major Decisions during the Establishment Period .....	24
SCHEDULE 6 .....	26
Statement of Expectations .....	26
SCHEDULE 7 .....	28
Transfer Principles .....	28
SCHEDULE 8 .....	30
Shareholder Entry Principles .....	30
SCHEDULE 9 .....	32

Shareholder Exit Principles .....32

**AGREEMENT** dated [date] 2026

**PARTIES**

Far North District Council

("FNDC")

Whangarei District Council

("WDC")

Kaipara District Council

("KDC")

**BACKGROUND**

FNDC, WDC and KDC are Shareholders in the Company and have entered into this agreement to record how the parties will manage their shareholdings in the Company and their respective relationships with each other.

**AGREEMENT**

FNDC, WDC and KDC agree to give effect to the provisions set out in this agreement, including by exercising their rights as Shareholders in the Company.

**SIGNATURES**

**FAR NORTH DISTRICT COUNCIL**

By:

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

**WHANGAREI DISTRICT COUNCIL**

By:

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

**KAIPARA DISTRICT COUNCIL**

By:

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SCHEDULE 1**

**AGREEMENT DETAILS**

<p><b>Address for notices</b> <i>(clause 17.1, Schedule 2)</i></p>	<p><b>Far North District Council</b></p>	<p><b>Whangarei District Council</b></p>
	<p>Private Bag 752 Kaikohe 0440 5 Memorial Avenue Kaikohe Email: TBD Attention: TBD</p>	<p>Private Bag 9023 Te Mai Whangārei 0143 9 Rust Avenue Whangārei Email: TBD Attention: TBD</p>
	<p><b>Kaipara District Council</b></p>	
	<p>Private Bag 1001 Dargaville 32 Hokianga Road Dargaville 0310 Email: TBD Attention: TBD</p>	
<p><b>Shareholders Representative Group membership</b> <i>(Schedule 4)</i></p>	<p>Total number of members of the Shareholders Representative Group: 7</p> <p>Appointment of SRG Members:</p> <ul style="list-style-type: none"> <li>• Two (2) SRG Members appointed by FNDC;</li> <li>• Two (2) SRG Members appointed by WDC; and</li> <li>• Two (2) SRG Members appointed by KDC.</li> </ul> <p>An independent Chairperson will be appointed by the Shareholders Representative Group in accordance with Schedule 4.</p>	

## SCHEDULE 2

### TERMS AND CONDITIONS

#### AGREEMENT

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 **Definitions:** In this agreement the following definitions apply:

**Alternate** means in relation to a Shareholder, an alternate to that Shareholder's appointed SRG Representative to attend and vote at meetings of the SRG but only where the relevant Shareholder's appointed SRG Representative is unable to do so.

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

**Board Skills Matrix** means the board skills matrix to be developed, approved and updated by the SRG in consultation with the Board.

**Business** means the business and activities set out in clause 2.2 of the Constitution.

**Business Day** means any day other than a Saturday, Sunday or statutory public holiday in any of the Service Areas.

**Class A Shares** has the meaning given in the Constitution.

**Class B Shares** has the meaning given in the Constitution.

**Companies Act** means the Companies Act 1993.

**Company** means Northland Waters Limited.

**Confidential Information** means the provisions of this agreement and all other information of a confidential nature (which, where the confidentiality of the information is not expressly stated, shall be determined by the recipient, acting reasonably) obtained by one party from the other party under or in connection with this agreement, including, in relation to the Company, trade secrets, proprietary information and confidential information belonging to the Company that are not generally known to the public, including information concerning business plans, financial statements and other information provided pursuant to this agreement, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential, and any other information in respect of which the Company is bound by an obligation of confidence owed to a third party.

**Constitution** means the constitution of the Company as filed with the New Zealand Companies Office on the incorporation of the Company, as amended from time to time.

**Director** means a director of the Company.

**Establishment Costs** means the costs incurred by each Shareholder:

- (a) during the period prior to the incorporation of the Company, in relation to the scoping and planning activities and establishment documents; and

- (b) during the Establishment Period in respect of the operational and transition costs incurred by the Company.

**Establishment Period** means the period between the Incorporation Date and the Operational Date.

**Event of Default** in respect of a Shareholder means where a Shareholder breaches or fails to observe any of the obligations under this agreement and:

- (a) if that breach or failure is capable of remedy, does not remedy that breach or failure within 20 Business Days of notice from any other Shareholder specifying the breach or failure and requiring remedy;
- (b) if that breach or failure is not capable of remedy; or
- (c) that breach or failure is material in the context of the obligations of that Shareholder under this agreement.

**Expert Determination** means determination of a dispute by reference to the process set out in clause 15.5.

**Incorporation Date** means the date on which the Company is incorporated as determined by the date recorded by the New Zealand Companies Office.

**Independent Director** has the meaning given in the Constitution.

**LGA** means the Local Government Act 2002.

**LGFA** means the New Zealand Local Government Funding Agency Limited.

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

**Local Authority** has the meaning given to it in the LGA.

**Operational Date** means 1 July 2027, or any other later date as agreed by the Shareholders.

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

**Reserved Matters** means those matters listed in Schedule 3.

**Security Interest** includes a mortgage, debenture, charge, lien, pledge, assignment or deposit by way of security, bill of sale, lease, hypothecation, hire purchase, credit sale, agreement for sale on deferred terms, option, right of pre-emption, caveat, claim, covenant, interest or power in or over an interest in an asset and any agreement or commitment to give or create any such security interest or preferential ranking to a creditor including set off.

**Service Area:**

- (a) in the context of the Company, has the meaning set out in the LG(WS) Act; and
- (b) in respect of each Shareholder, means that Shareholder's territorial district.

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

**Shareholder** means a shareholder in the Company and includes any person who subsequently becomes a shareholder. Where Shares are held by persons jointly, those persons are considered one Shareholder for the purpose of this agreement.

**Shareholders Representative Group or SRG** means the joint committee formed by the Shareholders pursuant to clause 6.1.

**SRG Representative** means a member of the SRG.

**Special Resolution** has the meaning given in the Companies Act.

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

**Terms of Reference** means the terms of reference of the SRG set out in Schedule 4

**Transfer Agreement** has the meaning set out in the LG(WS) Act.

**Transfer Principles** means the principles set out in Schedule 7.

**Transition Agreement** means the agreement entered into between the Shareholders and the Company on or about the date of this agreement, which relates to the activities to be carried out by the Company, and the funding to be provided by the Shareholders to the Company, during the Establishment Period.

**Water Services Annual Budget** has the meaning set out in the LG(WS) Act.

**Water Services Annual Report** has the meaning set out in the LG(WS) Act.

**Water Services Strategy** has the meaning set out in the LG(WS) Act.

**Water Services** has the meaning set out in the LG(WS) Act, which will be the water services obligations to be transferred to the Company in accordance with the Transfer Agreement to be entered into between the Company and each Shareholder and as otherwise provided by the Company in the Service Areas.

1.2 **Interpretation:** In this agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) words in this agreement have the same meaning as in the Companies Act unless inconsistent with the context;
- (e) a reference to a party, person or entity includes:

- (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
  - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;
- (f) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause or schedule is to a clause or schedule of this agreement;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, reenactments or replacements of any of them;
- (i) references to the word 'include' or 'including' are to be construed without limitation;
- (j) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (l) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (m) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
- (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

1.3 **Subsidiaries of the Company:** If at any time the Company has a subsidiary (as defined in the Companies Act) or subsidiaries, the provisions of this agreement relating to the operation of the Company shall be read so as to relate to the group of companies consisting of the Company and its subsidiaries, rather than to the Company alone.

1.4 **Constitution:** In the event of any inconsistency between this agreement and the Constitution, this agreement will (as between the parties) prevail over the Constitution to the extent of the inconsistency (and consistent with the Companies Act) and the Shareholders will take such steps necessary to resolve the inconsistency.

## 2. ESTABLISHMENT OF COMPANY

2.1 **Incorporation:** The Shareholders shall immediately after signing this agreement take all steps necessary (including signing documents) to incorporate the Company as a New Zealand registered company, on the basis set out below.

- (a) each Shareholder will be issued [10] Class A Shares, at an issue price of \$1.00 per share (which amount is deemed to have been received by the Company);
- (b) the initial directors will be [names];
- (c) the registered office and address for service of the Company will be [TBC]; and
- (d) the Constitution of the Company, in the form approved by the Shareholders, will be adopted on incorporation.

### 3. PURPOSE OF COMPANY

- 3.1 **Purpose:** It is the intention of the Shareholders that the Company is to carry on the Business.
- 3.2 **Review of Operating Model:** The Shareholders will review the Company's operations and financial performance, including its progress towards financial sustainability, not later than the date which is 3½ years after the Incorporation Date. As part of this review, the Shareholders will consider whether the Company should move towards price harmonisation across all Service Areas. Any decision to make any changes to the approach set out in clause 2.6 of the Constitution will require approval as a Reserved Matter.
- 3.3 **Public Ownership:** The Shareholders agree that all water services infrastructure and related assets owned by the Company shall remain in public ownership. This does not preclude the Company from accessing or benefiting from private funding or financing arrangements, provided such arrangements do not result in any transfer of ownership of those assets. No Shareholder will take any steps to approve or otherwise give effect to any action which is inconsistent with this clause.

### 4. BOARD AND DIRECTORS

- 4.1 **Board:**
  - (a) Following the Incorporation Date, the Shareholder Representative Group will appoint (and subsequently remove or replace) each Director in accordance with the Board Skills Matrix, with the aim of ensuring that the Board as a whole has the skills required by the Board Skills Matrix.
  - (b) The Company will have the number of Directors that comply with the Constitution.
  - (c) The Directors will be appointed and removed in accordance with the Constitution.

### 5. SHAREHOLDERS' OBLIGATIONS

- 5.1 **Voting and Shareholder Reserved Matters:**
  - (a) Subject to clause 5.1(b) and any resolution that is required by the Companies Act or the Constitution to be passed as a Special Resolution, all resolutions of meetings of the Shareholders may be passed by Ordinary Resolution.

- (b) The Company will not enter into any transaction or matter which is a Reserved Matter unless the entry into of that transaction or matter is approved in writing by the Shareholders in accordance with the relevant approval thresholds set out in Schedule 3.

5.2 **Duty to comply with Constitution:** Each Shareholder shall comply with the Company's Constitution.

5.3 **Compliance with laws:** The Shareholders will each ensure they comply with their, and the Company complies with its, obligations under the LGA, Local Government (Water Services Preliminary Arrangements) Act 2024, the LG(WS) Act and the Companies Act.

5.4 **Spirit of collaborative working:** The Shareholders must at all times act in a spirit of co-operation and collaborative working, endeavouring to act together to allow for the effective communication of the Shareholders' intentions or requirements to the Company.

5.5 **No surprises:** The Shareholders shall use best endeavours to act under the principle of "no surprises", both with the Company and with each other in relation to their respective interests.

## 6. SHAREHOLDERS REPRESENTATIVE GROUP

6.1 **Establishment and Terms of Reference:** The Shareholders will establish a SRG in the manner set out below:

- (a) Promptly after the date of this agreement, the Shareholders will jointly establish, maintain and operate a SRG in accordance with the Terms of Reference to provide overarching governance of the Company, including:

- (i) in relation to the appointment of Directors to the Board of the Company;
- (ii) to assist the Shareholders to fulfil their obligations under this agreement; and
- (iii) where the Company has any obligation to consult with the Shareholders under the LG (WS) Act or other applicable law, to allow the Company to meet such obligation by consulting with the SRG.

- (b) Each Shareholder confirms the Terms of Reference for the SRG are the terms attached at Schedule 4.

6.2 **Delegations to a SRG Representative:** Each Shareholder agrees to delegate to its appointed SRG Representatives, and their Alternates, those responsibilities and powers set out in the Terms of Reference.

6.3 **Authority of SRG Representatives:** Subject to the delegations under clause 6.2, the Shareholders agree that any matter for a Shareholder under this agreement may be exercised by a duly authorised SRG Representative.

6.4 **Interface with SRG Representatives:** Each Shareholder is responsible for determining and managing the internal arrangements, processes, instructions, and decision-making protocols between that Shareholder and its appointed SRG Representative (and any Alternate).

## 7. LOANS AND GUARANTEES BY SHAREHOLDERS

- 7.1 **Loans and guarantees:** No Shareholder will be required to make any loans to the Company or guarantee the obligations of the Company, to any creditor or other party except with the express prior agreement of such Shareholder or as expressly set out in this agreement.
- 7.2 **Establishment Funding:** The Shareholders acknowledge and agree that, in advance of the Company receiving revenue from the Business (which will not occur until after the end of the Establishment Period), each Shareholder will provide working capital funding to the Company for the purpose of meeting the Establishment Costs. The terms on which such funding will be provided to the Company (which will include that this funding will be repaid by the Company upon the Company entering into its own funding arrangements) will be as agreed in writing between the Shareholders and the Company, including (in respect of funding provided during the Establishment Period) as set out in in the Transition Agreement.
- 7.3 **Debt Guarantee:** The Shareholders will provide a joint and several guarantee in favour of LGFA in respect of all of the Company's LGFA debt. Notwithstanding this, each Shareholder will only be responsible for the portion of the LGFA debt attributable to its Service Area if this guarantee is called on. The Shareholders will require the Board to review this attribution of liability on an annual basis for financial reporting purposes, with any change (which will take effect on 30 June in the relevant year) requiring the unanimous approval of the Shareholders in writing.

## 8. STATEMENT OF EXPECTATIONS

- 8.1 **Preparation:** The Shareholders will be responsible for jointly preparing the Statement of Expectations in accordance with the LG (WS) Act, within the time periods required by the LG (WS) Act. Each Shareholder will provide input into the proposed form of the Statement of Expectations, which will be reviewed and refined by the Shareholders Representative Group, who will consult with the Company to seek any feedback, to ensure a jointly agreed Statement of Expectations is adopted by the Shareholders. The Shareholders acknowledge that the first Statement of Expectations needs to be adopted by a date that is not later than 6 months from incorporation of the Company.
- 8.2 **Process:** Unless the Shareholders agree otherwise, or an alternative process is provided for in the LG(WS) Act (in which case that alternative process will be followed):
- (a) the SRG will meet within the timeframes required for the Company to adopt a Water Services Strategy under the LG(WS) Act, to discuss and agree to the process for preparing the next Statement of Expectations, which will include the input provided by each Shareholder for the Statement of Expectations and will be consistent with the Constitution and include consulting with the Company;
  - (b) the SRG Members will ensure that one or more Shareholders publish the process agreed in accordance with clause 8.2(a) on their website in accordance with the LG(WS) Act;
  - (c) the SRG Members will prepare a draft Statement of Expectations in accordance with the process agreed under clause 8.2(a) and the requirements of this agreement and the LG(WS) Act;

- (d) in addition to the requirements specified in the LG(WS) Act, the draft Statement of Expectations shall also include the matters set out in Schedule 6; and
- (e) the Shareholders must approve and adopt (as a Reserved Matter) the draft Statement of Expectations prepared in accordance with this clause, at least six months prior to the date on which the Company is required to adopt a Water Services Strategy under the LG(WS) Act.

Promptly after the Statement of Expectations has been approved and adopted in accordance with clause 8.2(e), the Statement of Expectations will be provided to the Chairperson of the Board, the Chief Executive of the Company and the Shareholders Representative Group.

**8.3 Amendments to the Statement of Expectations:** If the SRG considers that the Statement of Expectations, or any part of it, should be amended at any time, either on its own initiative or after request by any Shareholder, the SRG will follow the process set out in clauses 8.2(b) to (e) (with all necessary modifications). If any amendments to the Statement of Expectations are made out of cycle with the timing anticipated by the LG(WS) Act, the Shareholders acknowledge that the amended Statement of Expectations may not inform the Water Services Strategy required to be adopted by the Company, and also acknowledge that the Company is not required to amend its Water Services Strategy as a result of the amendments made.

## **9. TRANSFER AGREEMENTS**

**9.1 Process:** During the Establishment Period, the Shareholders will:

- (a) agree with the Board a template form of Transfer Agreement, which will be used as the basis for preparing a Transfer Agreement for each Shareholder with the Company, together with the template form of any ancillary agreements required to be entered into as part of the transfer, such as transitional services agreements and shared interest agreements;
- (b) each undertake the process of identifying which assets, obligation and liabilities (including water debt) will be transferred by that Shareholder to the Company under its Transfer Agreement, by applying the Transfer Principles;
- (c) each negotiate the form of the Transfer Agreement (and any ancillary agreements) with the Company, in accordance with the provisions of this clause 9.1 and as contemplated by the LG (WS) Act; and
- (d) each enter into their agreed Transfer Agreement (and any ancillary agreements), prior to the Operational Date, with a completion date of 30 June 2027.

**9.2 Disputes:** If any Shareholder has not agreed the form of its Transfer Agreement with the Company by 30 April 2027 then that Shareholder will refer any unresolved issues between that Shareholder and the Company to Expert Determination.

**9.3 Stormwater:** The parties acknowledge that:

- (a) each Shareholder will remain responsible for all stormwater assets, and the provision of and charging for, stormwater services (as defined in the LG (WS) Act), within its Service Area; and

- (b) no stormwater assets will be transferred by a Shareholder to the Company;
- (c) a Shareholder may contract some services from the Company in respect of the stormwater services that are required to be provided by that Shareholder in its Service Area.

## 10. SHARES AND SHAREHOLDINGS

- 10.1 **Share issue:** Subject to approval of the Shareholders in accordance with clause 5.1, the Board may issue Shares in accordance with the Constitution and this agreement.
- 10.2 **No sale:** No Shareholder shall directly or indirectly sell, transfer, or dispose of the legal or beneficial ownership of, or the control of, any of its Shares otherwise than in compliance with this clause 10, the Constitution and the LG(WS) Act.
- 10.3 **New Shareholders:** A Local Authority who is not an existing Shareholder may be admitted as an additional Shareholder in accordance with the process and requirements set out in Schedule 8.
- 10.4 **Shareholder Exit:** A Shareholder who wishes to exit from its shareholding in the Company may do so in accordance with the process and requirements set out in Schedule 9.
- 10.5 **No Security Interest:** A Shareholder must not grant a Security Interest over any of its Shares.
- 10.6 **Amalgamation of Local Authorities:** In the event of an amalgamation or any other change in the governance structure of a Shareholder, the Shareholders will meet and discuss the effect of the amalgamation on the shareholding structure of the Company and will exercise their voting rights to ensure that the shareholding percentages for the Shares remain reasonable as agreed by all Shareholders.

## 11. DISTRIBUTIONS

- 11.1 **Principle:** The Shareholders acknowledge and agree that:
  - (a) if the Company generates any surplus, it is the Shareholders' expectation that such surplus will be either retained by the Company or reinvested in the provision of the Water Services, taking into account clause 2.7 of the Constitution; and
  - (b) there is no expectation by the Shareholders of any distributions being made by the Company to the Shareholders.

## 12. CAPITAL CONTRIBUTIONS

- 12.1 **Principles:** The Shareholders acknowledge that the Company may request that a capital contribution be made by one or more of the Shareholders to the Company, for example where those assets have been requested by that Shareholder (or by more than one Shareholder) to support the delivery of the Water Services in one or more of the Service Areas. Where this occurs, the capital contribution will be identified as either:
  - (a) benefiting one Service Area only; or

- (b) benefiting more than one of the Service Areas,

and the amount of any such requested capital contribution from any Shareholder will be determined by whether that capital contribution benefits that Shareholder's Service Area or other Service Areas. Nothing in this clause operates to require any Shareholder to make any capital contribution to the Company.

- 12.2 **Policy:** A capital contributions policy will be developed by the Company and approved by the Shareholders, which will set out the basis on which any such capital contribution requests will be made by the Company, consistent with the principles in clause 12.1.

### 13. TERM AND TERMINATION

- 13.1 **Term:** This agreement commences on the date signed by all parties and continues until the first date on which:

- (a) in respect of a Shareholder, that Shareholder no longer holds any Shares;
- (b) only one Shareholder owns all Shares;
- (c) none of the Shareholders hold Shares; or
- (d) the date on which the Company is liquidated.

- 13.2 **Effect of termination:** Any termination of this agreement with respect to a Shareholder does not affect any accrued rights that Shareholder may have against the other parties to this agreement or which the other parties to this agreement may have against it.

- 13.3 **Liquidation:**

- (a) Where this agreement terminates under clause 13.1(a), 13.1(c) or 14.1, the Shareholders must, without delay, take all necessary steps to appoint a liquidator to the Company.
- (b) Any liquidator must be agreed by the Shareholders within 10 Business Days of the terminating event under clause 13.1(a), 13.1(c) or 14.1, or failing agreement, shall be chosen on the application of any Shareholder by the President for the time being of the New Zealand Law Society or his or her nominee.
- (c) The following principles will apply to the distribution of assets and liabilities of the Company upon a liquidation:
  - (i) each Shareholder will be entitled to, and will, take a transfer of all of the assets (including reserves) and associated contractual arrangements from the Company that relate to its Service Area, along with the relevant debt apportioned to those assets, in each case on the basis of an independent valuation of those assets;
  - (ii) where an asset and/or associated contractual arrangement relates to more than one Service Area, or where an asset has been funded by more than one Shareholder, an apportionment will be made as between the relevant Shareholders to ensure an appropriate allocation of the benefit and the burden of each asset or arrangement, which may include a

contractual arrangement between those Councils in respect of those assets or arrangements; and

- (iii) the basis on which the allocations and valuations will be made for the purposes of this clause 13.3(c) will be determined by the SRG, with any disputes referred to Expert Determination.

13.4 **Survival:** Termination of this agreement will not affect the rights and obligations of the Shareholders set out in clauses 15, 16 and 17, together with this clause 13.4, which are intended to survive the termination of this agreement.

## 14. SUSPENSION OF RIGHTS

14.1 **Consequences:** If an Event of Default occurs in respect of a Shareholder (the "**Defaulting Shareholder**") any other Shareholder may, while that Event of Default continues, by notice in writing to the Defaulting Shareholder and each other Shareholder, require that the Defaulting Shareholder is suspended as follows:

- (a) all rights of the Defaulting Shareholder under this agreement (including the right to vote on a Reserved Matter) and all rights attaching to the Defaulting Shareholder's Shares ("**Default Shares**") (including voting) are suspended and the Default Shares are not to be counted for the purpose of determining the required level of support for a Reserved Matter or a quorum for a Shareholders' meeting; and
- (b) all voting rights of that Shareholder's members of the SRG will be suspended,

provided that any suspension of rights set out in this clause will automatically cease to have effect upon that Event of Default having been cured by the Defaulting Shareholder.

14.2 **Voting During Suspension Period:** The parties agree that, where a Shareholder's rights have been suspended pursuant to clause 14.1, any vote on a Reserved Matter can only be undertaken after the next Business Day which is at least 30 days after the suspension takes effect (or the next Business Day after the date on which the suspension is lifted, if earlier).

14.3 **Default interest:** If either party does not pay any amount payable under this agreement on the due date for payment ("**Due Date**") that party shall pay to the other party interest (both before and after judgment) on that amount. That interest:

- (a) shall be paid at a default rate of the then current Official Cash Rate plus 5% per annum;
- (b) shall be paid by instalments at intervals of ten Business Days from the Due Date; and
- (c) shall be calculated on a daily basis from and including the Due Date until the unpaid amount is paid in full.

The right of a party to require payment of interest under this clause does not limit any other right or remedy of that party.

14.4 **Other remedies:** Clauses 14.1 and 14.3 are without prejudice to any other right, power or remedy under this agreement, at law, or otherwise, that any Shareholder has in respect of a default by any other Shareholder.

## 15. DISPUTE RESOLUTION

15.1 **Notice in writing:** If a party claims that a dispute has arisen, that party must give written notice to the other parties. The written notice must specify the nature of the dispute.

### 15.2 **Negotiation:**

- (a) On receipt of a notice delivered in accordance with clause 15.1 and before any party may refer a dispute to mediation, the Representatives must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
- (b) If any Representative considers that the dispute is not being resolved in a timely manner, such Representative may serve written notice on the other parties' Representatives to escalate the dispute to the Chief Executives or equivalent (where the Representatives are not the Chief Executive or equivalent) of the applicable Shareholders for resolution.
- (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 15.2, any party may submit the dispute to mediation.

### 15.3 **Mediation:**

- (a) If the parties do not resolve the dispute by negotiation, the parties must, in good faith and acting reasonably, do their best to resolve the dispute by participating in mediation with an independent mediator.
- (b) If the parties do not agree on a mediator, then the mediator will be appointed by the New Zealand Dispute Resolution Centre.
- (c) The parties must mediate the dispute in accordance with principles agreed between them or, if no agreement can be reached, the New Zealand Dispute Resolution Centre Mediation Rules.
- (d) Unless the parties agree otherwise, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) will be shared equally between the parties, but the parties will each pay their own costs of preparing for and participating in the mediation (such as for travel and legal representation).

### 15.4 **Arbitration**

- (a) If the dispute has not been resolved within 40 Business Days (or within such other period as agreed by the parties) of the dispute being referred to mediation, any party (the "**Initiating Party**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other Party or Parties (together with the Initiating Party, the "**Disputing Parties**") for final resolution in accordance with the provisions of this clause 15.4 and in accordance with the

provisions of the Rules of Arbitration of the New Zealand Dispute Resolution Centre, as amended or modified from time to time ("**NZDRC Rules**").

- (b) The arbitral panel shall consist of one arbitrator. The arbitrator will be appointed by the agreement of the Disputing Parties or, failing agreement within 10 Business Days of the date of the Arbitration Notice, in accordance with the NZDRC Rules.
- (c) The seat of arbitration shall be Whangarei, and the arbitration shall be conducted in the English language.
- (d) The award of the arbitration shall be in writing and must include reasons for the decision.
- (e) The award of the arbitration shall be final and binding on the parties. No party may appeal to the High Court under Clause 5 of the Second Schedule of the Arbitration Act 1996 on any question of law arising out of an award.
- (f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.
- (g) Neither the existence of any dispute nor the fact that any arbitration is pending hereunder shall relieve any of the Parties of their respective obligations under this agreement.

15.5 **Expert Determination:** Where this agreement provides for a matter to be resolved through Expert Determination, this clause will apply. Any party may give written notice to the other parties referring the dispute for determination by a single person who is suitably qualified and experienced (**Expert**) to determine the matter in dispute (**Dispute Notice**). If the parties cannot agree on the person to be appointed as Expert within 5 Business Days after delivery of the Dispute Notice, the Expert will be nominated by the President for the time being of the New Zealand Law Society. In resolving the Dispute:

- (a) the Expert will be deemed to be acting as an expert, not as a mediator or an arbitrator;
- (b) nothing in this clause will constitute a submission to arbitration under the Arbitration Act 1996;
- (c) each party must give the Expert any information and assistance, and will ensure that its duly authorised representatives meet with the Expert, as the Expert may reasonably require in order to expedite the resolution of the Dispute;
- (d) the parties will be jointly and severally liable to the Expert for all costs incurred by the Expert, but the Expert may allocate, as between the parties, the responsibility for payment of those costs and that allocation will be binding on the parties; and
- (e) any determination of the Expert will, in the absence of obvious error or fraud on the part of the Expert, be final and binding on the parties.

15.6 **Implementation of agreement:** The parties must do whatever is reasonably necessary to put into effect any negotiated, determined or mediated agreement, arbitral award or other resolution. This includes exercising voting rights and other powers as required.

- 15.7 **Rights and obligations during a dispute:** During a dispute, each party must continue to perform its obligations under this agreement.
- 15.8 **Interlocutory relief and right to terminate:** This clause does not restrict or limit the right of a party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

## 16. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS

- 16.1 **Confidentiality:** Each party must keep confidential the Confidential Information, and must not disclose or permit the disclosure of such Confidential Information to any other person. If a party becomes aware of a breach of this obligation, that party will immediately notify the other parties.
- 16.2 **Further permitted use and disclosure:** This agreement does not prohibit the disclosure of Confidential Information by a party in the following circumstances:
- (a) the other parties have consented to the disclosure of the relevant Confidential Information;
  - (b) the disclosure is specifically contemplated and permitted by this agreement;
  - (c) the disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this agreement;
  - (d) the disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this agreement;
  - (e) the disclosure is required by a court or governmental or administrative authority; or
  - (f) the disclosure is required by applicable law or regulation, including under the Local Government Official Information and Meetings Act 1987.
- 16.3 **Public announcements and media releases:** Each party agrees that it will not make any public announcements or issue media releases in connection with, or on behalf of, the other Shareholders or the Company in relation to the Company or any of the Water Services, except with the written consent of the other Shareholders. Nothing in this provision shall prohibit or restrict a Shareholder from making a public announcements or media releases in connection with the Shareholder's own involvement with, or policies in relation to, the Company.

## 17. NOTICES

- 17.1 **Giving notices:** Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:
- (a) delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in Schedule 1; or
  - (b) emailed to that party at its email address and marked for the attention of the representative set out in Schedule 1.

- 17.2 **Change of details:** If a party gives the other party three Business Days' notice of a change of its physical address or email address, any notice or communication is only given by that other party if it is delivered or emailed to the latest physical address or email address.
- 17.3 **Time notice is given:** Any notice or communication is to be treated as given at the following time:
- (a) If it is delivered, when it is left at the relevant address.
  - (b) If it is sent by email, when it is received in readable form addressed in the manner specified above.

However, if any notice or communication is given, on a day that is not a Business Day or after 5pm on a Business Day, in the place of the party to whom it is sent, it is to be treated as having been given at the beginning of the next Business Day.

## 18. GENERAL

- 18.1 **No partnership, joint venture:** Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between any of the Shareholders, and a Shareholder may not make, or allow to be made, any representation that any such relationship exists between any of the Shareholders. A Shareholder shall not have authority to act for, or to incur any obligation on behalf of, any other Shareholder, except as expressly provided for in this agreement.
- 18.2 **No privity:** Other than as expressly provided for in this agreement, this agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.
- 18.3 **Board action:** Wherever this agreement requires the Board to do anything, each Shareholder shall take all steps available to it to ensure that the Director or Directors appointed by that Shareholder takes all necessary steps to do that thing.
- 18.4 **Counterparts:** This agreement is deemed to be signed by a party if that party has signed or attached that party's signatures to any of the following formats of this agreement:
- (a) an original; or
  - (b) a photocopy; or
  - (c) an electronic copy;

and if every party has signed or attached that party's signatures to any such format and delivered it in any such format to the other parties, the executed formats shall together constitute a binding agreement between the parties.

- 18.5 **Entire agreement:** This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written agreement or anything said or done by or on behalf of another party before this agreement was executed.
- 18.6 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.

- 18.7 **Further assurance:** Each party shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.
- 18.8 **Amendment:** Any amendment to this agreement will require the approval in writing of all of the Shareholders.
- 18.9 **Assignments and transfer:** A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties.
- 18.10 **Costs:** Except as otherwise set out in this agreement, each party must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.
- 18.11 **Inconsistency with Constitution:** If there is any inconsistency between this agreement and the Constitution then the parties agree to abide by this agreement and to do everything required to change the Constitution so that it is consistent with this agreement.
- 18.12 **Waivers:**
- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver only affects the particular right, obligation or breach for which it is given. It is not an implied waiver of any other right, obligation or breach or an implied waiver of that right, obligation or breach on any other occasion.
  - (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.
- 18.13 **Governing law:** This agreement is governed by the laws of New Zealand.

### SCHEDULE 3

#### Reserved Matters

Matter or transaction	Approval requirement
<b><i>Special Resolution Matters</i></b>	
Any amendment to, revocation of, or adoption of, the Constitution, including any change to clause 2.7 of the Constitution relating to financial ringfencing.	Unanimous Resolution
"Major transactions" as that term is defined in the Companies Act.	Special Resolution
Any resolution to put the Company into liquidation or to wind up to the Company.	Special Resolution
Any resolution to amalgamate the Company with one or more other companies.	Special Resolution
Any change to the Terms of Reference for the SRG.	Unanimous Resolution
<b><i>Statement of Expectations</i></b>	
A decision to approve and adopt the draft Statement of Expectations.	Unanimous Resolution
<b><i>Shareholdings/Shares</i></b>	
Any issue of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	Unanimous Resolution
Any alteration of rights, privileges or conditions attaching to the Shares.	Ordinary Resolution
Any transfer by the Company of Shares held by the Company or any purchase or other acquisition by the Company of its own Shares.	Unanimous Resolution
Any consolidation, division, or subdivision of Shares.	Ordinary Resolution
Any cancellation, buy-back or reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	Ordinary Resolution
The giving of any financial assistance for the purpose of, or in connection with, the purchase of Shares.	Ordinary Resolution
Making a material change in the nature of the Company's business or engaging in business activities other than the Business.	Unanimous Resolution
<b><i>Shareholder Changes</i></b>	
A decision to approve a new Shareholder, including the terms of admission.	Unanimous Resolution
A decision to approve the exit of an existing Shareholder, including the terms of exit.	Unanimous Resolution

## SCHEDULE 4

### Shareholders Representative Group (SRG) Terms of Reference

#### Shareholders Representative Group

##### Purpose

1. The Shareholders Representative Group ("**SRG**") is established to:
  - provide governance oversight of the Company which provides Water Services in the Service Areas; and
  - provide a forum for the representatives of the Shareholders to meet, discuss and co-ordinate decision-making on relevant issues and through their representatives exercise the Shareholders' powers make certain decisions relating to the Company.

##### Status

2. The SRG is a joint representative committee of the Shareholders.

##### Administration

3. One of the Shareholders will provide administrative and secretarial support to the SRG. As at the Incorporation Date this will be Whangarei District Council. All reasonable expenses incurred in providing such administrative support will be reimbursed by the Company.

##### Specific responsibilities

4. The SRG's responsibilities are:

##### Governance oversight responsibilities

Governance oversight of the Company, including by:

- Receiving and considering the half-yearly and annual reports of the Company;
- Reviewing and considering reporting from the Company as required under the Transition Agreement;
- Receiving and considering such other information from the Company as the SRG may request on behalf of the Shareholders and/or receive from time to time;
- Undertaking performance and other monitoring of the Company;
- Considering and providing recommendations to the Shareholders on proposals from the Company;
- Providing co-ordinated feedback, and recommendations as needed, on any matters requested by the Company or any Shareholder;
- Preparing the draft form of the Statement of Expectations, receiving feedback from the Shareholders on this and producing a final draft of the Statement of Expectations for approval by the Shareholders;

- Agreeing when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required, without prejudice to Shareholder and Board rights to call meetings under the Company's Constitution;
- Monitoring the performance of the Board, including by commissioning an independent assessment of the performance of the Board at not less than 3 yearly intervals; and
- Providing recommendations to the Shareholders regarding changes to these Terms of Reference, the Shareholders' Agreement and the Constitution of the Company.

#### SRG decision-making

- Developing and updating, and approving, the Board Skills Matrix in consultation with the Board;
- Seeking and interviewing candidates for the Company's Board as needed, with reference to the Board Skills Matrix, and approving Director appointments and/or removals;
- Appointing the Chair of the Company, taking into account the recommendation of the Board;
- Approving the remuneration of directors of the Company, which will be market-based and independently assessed; and
- Making any decision relating to the Transition Agreement, as contemplated by the Transition Agreement.

#### **Membership**

5. Each Shareholder shall appoint two SRG Representatives to the SRG by resolution in accordance with their respective council decision-making framework.
6. At least one of the appointed SRG Representatives of each Shareholder must be an elected member of the respective Shareholder.
7. For each appointed SRG Representative, the Shareholders shall also appoint an Alternate. If an Alternate is appointed for a SRG Representative who is an elected member, that Alternate must also be an elected member of the respective Shareholder.
8. Written notice of all appointments, including Alternates, must be provided to the SRG and to each Shareholder.
9. A Shareholder may replace any SRG Representative or Alternate at any time by providing written notice to the SRG and to other Shareholders.

#### **Alternates**

10. Each member appointed to the SRG must have an Alternate appointed by the relevant Shareholder. The Alternate may attend and vote at meetings of the SRG, but only in the event that the appointed representative is unable to do so.

#### **Attendance**

11. Each Shareholder will ensure that its appointed SRG Representatives or their Alternate attends each meeting of the SRG.

12. If a SRG Representative or their Alternate is not present at 2 consecutive SRG meetings, that Shareholder will be required, on notice by any other Shareholder, to replace that Representative and Alternate.

### **Quorum**

13. No business may be transacted at an SRG meeting if a quorum is not present.
14. For a meeting of the SRG to have a quorum, at least 1 SRG Member who is an elected member of that Shareholder must be present (or their Alternate) must be in attendance, whether in person or via an approved virtual platform.
15. If a quorum is not present within 30 minutes after the scheduled start time for the meeting:
  - a) the meeting is adjourned to:
    - (i) the same day in the following week at the same time and place, or
    - (ii) to another date, time and place to be fixed by all of the SRG Members which is not earlier than 5 Business Days after the date of the adjourned meeting; and
  - b) at the adjourned meeting, those SRG Members present shall constitute a quorum, regardless of the number of Shareholders represented.
16. Where the SRG is providing a forum for the Shareholders to meet and exercise their powers in relation to the Company, the requirements of the Company's Constitution and Shareholders' Agreement will prevail.

### **Meeting frequency**

17. The SRG may hold as many meetings as the SRG Representatives determine are necessary to enable it to carry out its functions and exercise its powers properly, provided that the SRG will meet not less than 4 times per year.
18. It is expected that during the Establishment Period, the SRG will meet more frequently to support establishment and transition activities.

### **Independent Chairperson**

19. The Independent Chairperson of the Shareholders' Representative Group shall be appointed by the SRG once all SRG Representatives have been appointed. The Chairperson will be an additional SRG Member, who must be independent of the Shareholders. The Chairperson shall have no right to vote on any matters. For the purposes of this Schedule, "appointing" means the formal selection and confirmation of a candidate through a structured and transparent recruitment process, which shall include:
  - (a) assessment of candidates against an agreed criteria for independence, skills, and experience;
  - (b) an interview and evaluation process conducted by the SRG; and
  - (c) approval of the successful candidate by a 75% majority vote of the SRG Members.

## **Decision-making**

20. The SRG will strive to make all decisions by consensus, provided that any decision as to the appointment or removal of any Director, the appointment of the Chair or any matter relating to the Transition Agreement must be by unanimous decision.
21. Subject to clause 20 and any other provision of these Terms of Reference, in the event that a consensus on a particular matter before the SRG is not able to be reached (as determined by the Chairperson), the decision on that matter will be by a majority vote and each member of the SRG (excluding the Chairperson) has a deliberative vote.
22. The SRG Members will ensure that no matters requiring decision by the SRG will be scheduled for decision-making during the period from the close of voting on election day for any Shareholder until the new elected members of that Shareholder come into office (being the day after the official declaration of results).

## **Remuneration and reimbursement of expenses**

23. The remuneration of the Chairperson will be paid by the Company, at a level determined by a unanimous decision of the SRG to reflect skills, experience, responsibility and time commitment of that role, in a manner which is consistent with any policy approved by each of the Shareholders for such remuneration.
24. When a Shareholder appoints an elected member as an SRG Representative, their SRG duties are deemed to be Council business for the purposes of that Shareholder's own policies. Any further remuneration for SRG duties may be set and funded by the appointing Shareholder.
25. Each non-elected SRG Representative:
  - a) will be remunerated by their appointing Shareholder for carrying out their SRG duties. The level of such remuneration will be set by unanimous agreement of the Shareholders and will be applied on a consistent basis by each Shareholder; and
  - b) will be indemnified by their appointing Shareholder in respect of all matters relating to their performance of their role as a SRG Representative, on a consistent basis by each Shareholder.
26. All SRG Representatives (elected and non-elected) are entitled to reimbursement of actual and reasonable expenses incurred in performing SRG duties, in accordance with each appointing Shareholder's policy.
27. Remuneration under this clause does not create any employment relationship with the Company or any of the Shareholders.

## **Policies**

28. The SRG will develop and agree:
  - a) a process to manage actual, potential and perceived conflicts of interest of SRG Representatives and Shareholders;
  - b) a code of conduct for all SRG Members;
  - c) confidentiality protocols and disclosure policies;

- d) standing orders relating to the operation of SRG meetings; and
- e) such other policies as the SRG determines.

#### **Administration**

- 29. There must be an agenda for each meeting that sets out the items that will be considered at the meeting.
- 30. Any agenda item for decision must be supported by a report and any associated material.
- 31. Reports to be considered by the SRG may be submitted by any of the Shareholders or the Company.

#### **Manner of calling meetings**

- 32. The Independent Chairperson calls meetings.
- 33. Notice of a meeting:
  - a) must be written, and state the time and place of the meeting;
  - b) may be given by post, delivery, or electronic communication; and
  - c) must be given or sent to each member's current postal or electronic address.
- 34. Notice must be given to SRG Representatives (and their Alternates) at least 14 days before the meeting unless the SRG has adopted a schedule of meetings, in which case notice must be given at least 14 days before the first meeting on the schedule.
- 35. The Independent Chairperson may call a meeting on a shorter period of notice, with the approval of a majority of the SRG Representatives.

#### **Electronic attendance and voting**

- 36. A meeting of the SRG may be held either:
  - a) by a number of the SRG Representatives (or their Alternates) who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - b) by means of electronic link by which all SRG Representatives (or their Alternates) participating and constituting a quorum can simultaneously hear each other throughout the meeting; or
  - c) a combination of a) and b).
- 37. For the avoidance of doubt, SRG Representatives (or their Alternates) who attend meetings by electronic link will be counted as present for the purposes of a quorum.
- 38. SRG Representatives (or their Alternates) can vote by electronic means.

#### **Other**

39. The SRG may regulate its own procedure for a matter that is not expressly covered by these Terms of Reference or if any relevant Act and this Shareholders' Agreement does not specify a procedure for the matter.

#### **Minor amendment**

40. These Terms of Reference may be amended at any time by consensus of the SRG, provided that the amendment is:

- a) of a formal or technical nature
- b) made to correct a manifest error or inconsistency; or
- c) necessary to comply with the provisions of any law and:
  - (i) The SRG has notified the Shareholders of the proposed change at least 20 Business Days before the effective date of the amendment; and
  - (ii) No Shareholder has objected to the amendment by notice in writing within that 20 Business Day period.

#### **Review**

41. The SRG will review these Terms of Reference annually (or at such other intervals as determined by the SRG) and may recommend any amendments to the Shareholders, who may amend these Terms of Reference as a Reserved Matter.

#### **Common delegations**

##### Governance oversight responsibilities

1. Each Shareholder will delegate to the SRG the responsibilities and powers necessary to participate in and carry out the SRG governance oversight responsibilities.

##### Shareholders' responsibilities

2. Each Shareholder will delegate to its appointed SRG Representative and, in accordance with these terms of reference, that person's Alternate, all responsibilities and powers in relation to the agreement of:

- a) when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required (without prejudice to Shareholder and Board rights to call meetings under the Company's Constitution); and
- b) the appointment, removal and remuneration of directors.

## SCHEDULE 5

### Major Decisions during the Establishment Period

#### 1. Purpose

- 1.1. To set out the framework that applies to Shareholders' decision-making during the Establishment Period.

#### 2. Scope of this Framework

- 2.1. Each Shareholder must continue to operate its Water Services during the Establishment Period in a manner that ensures:
  - a) a no-harm approach to staff, customers, and other stakeholders; and
  - b) the future success and operational readiness of the Company.
- 2.2. Pragmatic steps need to be taken to ensure existing operations continue as seamlessly as possible and relationships are effectively managed and maintained as Shareholders prepare to transfer their Water Services business to the Company, and the Company prepares to receive that transfer.
- 2.3. This Major Decisions Framework applies to major decisions by each Shareholder during the Establishment Period. To the extent of any inconsistency between this Framework and the terms of an executed Transfer Agreement, the Transfer Agreement prevails.

#### 3. Business-as-Usual Decisions (Not Major Decisions)

- 3.1. A proposed decision is not a Major Decision for the purpose of this Framework to the extent it relates to the Shareholders' obligation to:
  - a) Operate and conduct its Water Services in the normal course consistent with established business practices in place as at the Incorporation Date;
  - b) Make payments and discharge obligations in a manner consistent with timing/methods used in the 12 months prior to the Shareholders' Agreement;
  - c) Undertake all steps necessary to negotiate, finalise and enter into its Transfer Agreement with the Company prior to the Operational Date; and
  - d) Complete an annual plan, long-term plan, or LTP amendment during the Establishment Period where the decision does not reduce the forecast price increases for water charges set out in the Relevant Long-Term Plan (or in any submitted Water Services delivery plan where that plan projects higher price increases than the Relevant Long-Term Plan).

#### 4. Major Decisions

- 4.1. A proposed decision by a Shareholder is a "Major Decision" if it relates to any of the following:

- a) Rates/charges trajectory: a decision described in clause 4.1(d) that would not align with the forecast price increases for water charges set out in the Relevant Long-Term Plan (or applicable Water Services delivery plan where higher).
- b) Policy adoption/amendment: adoption or amendment of a policy required under the Local Government Act 2002 that relates to Water Services to be transferred to the Company.
- c) By-laws: adoption or amendment of any by-law that relates to water services.
- d) Strategic assets: any purchase or disposal of a strategic asset relevant to Water Services (including interests in land used for treatment, storage, reticulation, wastewater, or access to operational facilities), other than in accordance with the Relevant Long-Term Plan.
- e) Capital works: undertaking any capital works programme or committing to material capital expenditure other than in accordance with the Relevant Long-Term Plan.
- f) Employment cost changes: any material increase in employment costs for employees who primarily work in Water Services and are anticipated to transfer to the Company under the Transfer Agreement (excluding the Council Chief Executive and executive-level roles).
- g) Financing: entry into any loan or other financial arrangement in relation to Water Services other than in accordance with the Relevant Long-Term Plan.
- h) Contracts: entry into or renewal of any contract (other than capital works contracts) that exceeds a period beyond six (6) months after the Operational Date.

## 5. Process for Major Decisions

### 5.1. Where a proposed decision is a Major Decision:

- a) The Chief Executive of each Shareholder must engage with the Chief Executive of the Company (or, if pending appointment, the person nominated by the Company's Directors) ("**Company Representative**") before the Shareholder initiates formal decision-making.
- b) The Shareholders must provide sufficient information and analysis to enable the Company Representative to understand the proposal and its potential impacts.
- c) The Company Representative may provide recommendations, mitigations, or alternatives (including any adverse impacts the decision may have on the ability of the Company to carry on the Water Services business from the Operational Date in the manner contemplated by the Water Services Delivery Plan).
- d) Each Shareholder must have regard to (and respond to) the Company's recommendations, mitigations or alternatives before a formal decision is made.
- e) Following the decision, the Shareholder must provide one-off or periodic reporting (as appropriate) to the Company on the decision taken and the outcomes of that decision.

### 5.2. This Framework does not waive or alter any rights or obligations of the Company and the relevant Council under a Transfer Agreement or otherwise.

## SCHEDULE 6

### Statement of Expectations

#### Legislatively required content

1. As required under the LG(WS) Act, the Statement of Expectations must include:
  - a) the outcomes that the Shareholders expect the water organisation to achieve by providing water services; and
  - b) requirements relating to the territorial authority's resource management planning and land use planning that are relevant to the water organisation's Service Area; and
  - c) a requirement that the water organisation must act in accordance with any relevant statutory obligation that applies to a Shareholder that is a territorial authority; and
  - d) the information that the water organisation must include in its Water Services half-yearly report.

#### Agreed additional content

2. How the Shareholders require the water organisation to conduct its relationships with:
    - a) the Shareholders
    - b) the Shareholders' communities or any specified stakeholders within those communities
    - c) hapū, iwi, and other Māori organisations
    - d) consumers in the water organisation's Service Area
  3. Performance indicators and measures
  4. Expectations relating to the strategic priorities to be included in the water organisation's Water Services strategy
  5. A requirement that the water organisation act in accordance with an obligation that a Shareholder that is a territorial authority may have with a third party (including with hapū, iwi, or other Māori organisations) under a contract or other agreement
  6. A requirement to undertake community or consumer engagement, and the contents of that engagement
  7. Expectations in relation to collaborating with the Shareholders and other parties when providing water services
  8. A requirement that part or all of the water organisation's Water Services Strategy be independently reviewed or audited
  9. An obligation on the Company to consider and report on potential options for moving towards a price harmonisation model for water charges across all Service Areas, within 3½ years after the incorporation of the Company.
-

10. A matter that applies:

- a) to all or a specified part of the Water Services provided by the water organisation (for example, a matter that applies only to wastewater):
- b) to all or a specified part of the water organisation's Service Area (for example, a matter that applies only to a territorial authority's district).

DRAFT

## SCHEDULE 7

### Transfer Principles

#### **Principles relating to the identification of all relevant responsibilities, assets and liabilities (including water debt) to be included in the Transfer Agreement by each Shareholder**

1. All statutory obligations relating to the provision of Water Services will transfer from the Shareholder to the Company.
2. Assets to be transferred must relate to, or primarily to, the Water Services (including the drinking water network and wastewater network), and will include all work in progress as at the Operational Date.
3. If any assets currently used by a Shareholder to provide Water Services are not owned by the Shareholder, the Shareholder will use reasonable endeavours to transfer the rights that Shareholder has to those assets to the Company.
4. All assets will be transferred on an 'as is, where is' basis.
5. The Shareholder will provide the Company with such information as it has as to the condition of the assets, the liabilities (including water debt), and the transferring obligations, and any financial and legal risks relating to these matters.
6. Freehold land required for the provision of Water Services will generally be transferred to the Company. However, if transfer is legally prohibited, impractical, or inconsistent with other statutory obligations, the Shareholder may retain ownership. In such cases, the Shareholder is responsible for ensuring the Company has secure, long-term access rights to the land for Water Services operations.
7. Lease or access arrangements will be put in place for shared land use between the Shareholder and the Company.
8. The Shareholder will transfer to the Company, or otherwise ensure that the Company has the benefit of, all resource consents.
9. The Shareholder will transfer to the Company, or otherwise ensure that the Company has the benefit of, all discharge consents.
10. The treatment of land use consents will be determined on a case by case basis.
11. Existing abatement notices and infringement notices will transfer to the Company along with the remediation plans.
12. Capital works projects in flight will transfer to the Company, taking into account costs incurred to date, the debt associated with those projects, and the remaining approved budgets.
13. Any retentions relating to capital works projects held by the Shareholder will transfer to the Company.
14. All contracts which have an end date post 1 July 2027 will be assigned or novated to the Company.
15. All existing access rights that have been formalised will be assigned to the Company.

16. Development contributions, financial contributions, and levies collected for Water Services will transfer to the Company along with all supporting records. During a transitional period, Shareholders will continue to collect contributions on behalf of the Company until the Company assumes direct collection responsibility.
17. The agreed amount of water debt for each Shareholder will be determined using a consistent methodology agreed across all three Shareholders and will be transferred to the Company.
18. The transfer of employees and contractors will be determined in accordance with applicable employment legislation and a framework agreed by all three Shareholders and the Company during the Establishment Period.
19. The NAV being transferred by the Shareholder will be determined by an independent valuation using a consistent methodology agreed across all three Shareholders, with asset condition assessment, verified by an external auditor.
20. The Purchase Price (being the NAV) will be satisfied by the issue of fully paid Class B Shares in the Company, subject to the Company taking over any existing debt.
21. Certain specified assets will not transfer but will be provided to the Company on a transitional basis.
22. Responsibility for monitoring and enforcing the Shareholder's bylaws related to Water Services will be transferred to the Company.
23. Where a Shareholder is required by a regulator to take responsibility for a private water scheme, the Company will provide services to that Shareholder, on commercial terms, to enable that Shareholder to meet these obligations.

## SCHEDULE 8

### Shareholder Entry Principles

#### 1. Process for admission of a new Shareholder

A Territorial Authority (as defined in the LG(WS)Act) who is not an existing Shareholder (**Proposed Shareholder**) may be admitted as an additional Shareholder (**Admission**) in accordance with the following process:

- (a) a Proposed Shareholder must submit a proposal to the Board setting out the Proposed Shareholders' credentials and the rationale for its proposed shareholding (a **Proposal**);
- (b) following receipt of a Proposal, the Board will assess the merits of the Proposal, consider the implications of it for the Company, its then current Water Services Strategy under the LG(WS) Act, the Statement of Expectations, and any other matters considered relevant by the Board, and make a recommendation to the SRG as to whether or not the Shareholders should approve the Admission (a **Recommendation**), which should include:
  - (i) any suggested terms and conditions of Admission;
  - (ii) any proposed changes to this agreement and/or the Constitution to give effect to the Proposed Shareholder becoming a shareholder in the Company;
- (c) following receipt of a Recommendation:
  - (i) the SRG will consider the Proposal and the Shareholders will determine if the Recommendation should proceed to be consulted on as a change proposal in accordance with the requirements of the LG(WS)Act;
  - (ii) the Shareholders must comply with any required consultation in respect of the change proposal under the LG(WS)Act;
  - (iii) following completion of the change proposal requirements under the LG(WS)Act, the Shareholders may, at their discretion, approve the Admission as a Reserved Matter. The Proposed Shareholder will not be admitted if the Shareholders consider that its Admission would be likely to:
    - (aa) materially worsen the Company's financial position or forecast financial position; or
    - (bb) result in the Company failing to meet its regulatory obligations to be financially sustainable; and
- (d) in carrying out the process set out above, the parties must comply with all applicable legislative requirements.

## 2. Terms of admission of new Shareholder

Unless otherwise agreed by all Shareholders in writing, if the Shareholders approve the Admission of a new Shareholder under paragraph 18.13(c) of this schedule:

- (a) the Proposed Shareholder (and any existing Shareholder, as relevant) will be issued such number of Class A Shares in the Company as is required to achieve the proportionate voting rights of each Shareholder (including the Proposed Shareholder) as set out in the Approved Recommendation;
- (b) on or shortly after Admission, the Proposed Shareholder will be required to transfer its relevant assets to the Company pursuant to a Transfer Agreement, with the terms of such transfer to be no more favourable to the Proposed Shareholder than the terms of transfer applying to the initial Shareholders under their respective Transfer Agreements and otherwise on terms that the Board is satisfied are fair and reasonable in the circumstances;
- (c) prior to (but conditional on) Admission, the parties will negotiate, agree and implement any changes to this agreement and the Constitution that may be necessary or desirable as a result of Admission, including to maintain the intended balance of rights, powers and obligations of Shareholders and SRG Members, with each party to bear its own costs and expenses of negotiating, agreeing and implementing any changes, including legal costs and expenses;
- (d) prior to (and with effect on and from) Admission, the Proposed Shareholder must accede to this agreement (as amended in accordance with paragraph 2(c) of this schedule);
- (e) the Admission will be given effect by the issue of new Class A Shares to the Proposed Shareholder, with the existing Shareholders to take all steps necessary to issue those Shares, with at least one year's lead time between the approval of Admission under paragraph 1(c)(iii), and the giving effect to of the Admission under this paragraph 2(e) (or such other period as the Parties may agree with the Proposed Shareholder); and
- (f) promptly after the approval of Admission under paragraph 1(c)(iii), the Board and the SRG will develop and agree a transition plan which sets out the process and timeframes for giving effect to Admission, including the steps set out above.

## SCHEDULE 9

### Shareholder Exit Principles

#### 1. Process for Exit

A Shareholder who wishes to exit from its shareholding in the Company (**Exit**) (**Exiting Shareholder**) may do so in accordance with the following process:

- (a) the Exiting Shareholder must give at least 12 months' prior written notice to the Board and the SRG stating its intention to Exit (**Exit Notice**);
- (b) following receipt of an Exit Notice:
  - (i) the SRG will consider the proposal set out in the Exit Notice and the Shareholders will determine if the Exit should proceed to be consulted on as a change proposal in accordance with the requirements of the LG(WS)Act;
  - (ii) the Shareholders must comply with any required consultation in respect of the change proposal under the LG(WS)Act; and
  - (iii) following completion of the change proposal requirements under the LG(WS)Act, the Board and the SRG will work collaboratively to develop a detailed exit plan (**Exit Plan**) setting out a proposed process and timeline for Exit, including to address the treatment of assets and joint assets, consideration, stranded assets and liabilities and transactions costs, and reflecting the terms of exit set out in paragraph 2 of this schedule;
- (c) a finalised Exit Plan will be presented to the SRG who will consider the Exit Plan and the Shareholders may, at their discretion, approve the Exit as a Reserved Matter. The Exit will not be approved if the Shareholders consider that the Exit would be likely to:
  - (i) materially worsen the Company's financial position or forecast financial position; or
  - (ii) result in the Company failing to meet its regulatory obligations to be financially sustainable; and
- (d) the parties must comply with all applicable legislative requirements, including in respect of consultation, in respect of considering, approving, and giving effect to any proposed Exit.

#### 2. Terms of Exit

Unless otherwise agreed by all Shareholders in writing, if the Shareholders approve the Exit under paragraph 1(c) of this schedule:

- (a) the Exiting Shareholder will take a transfer of the relevant assets (excluding any assets which have been funded by other Shareholders), contracts, debts and related arrangements from the Company in respect of that Exiting Shareholder's Service Area (as agreed between the Company and that Exiting Shareholder) at a value determined by an independent valuer, provided that any dispute as to such assets or valuation will be determined by Expert Determination;

- (b) all of the Exiting Shareholder's Class B Shares will be transferred to the Company by the Exiting Shareholder at Exit as consideration for the transfer, and will be cancelled by the Company upon such transfer completing;
- (c) all of the Existing Shareholder's Class A Shares will be transferred to the Company by the Exiting Shareholder at Exit for no consideration, and will be cancelled by the Company upon such transfer completing;
- (d) prior to (but conditional on) Exit, the parties will negotiate, agree and implement any changes to this agreement and the Constitution that may be necessary or desirable as a result of the Exit, including to maintain the intended balance of rights powers and liabilities of Shareholders and SRG Members, with each party to bear its own costs and expenses of negotiating, agreeing and implementing any changes, including legal costs and expenses;
- (e) on and from the date the Exit takes effect, the Exiting Shareholder will be released from its obligations under this agreement (except in respect of any breaches up to the date of Exit); and
- (f) the Exit will be given effect by the transfer of the Exiting Shareholder's Shares to the remaining Shareholders or by the Company acquiring and cancelling the Exiting Shareholder's Shares, with the remaining Shareholders to take all steps necessary to give effect to this step, with at least two years lead time between the giving of an Exit Notice under paragraph 1(a) and the giving effect to of the Exit under this paragraph 1(d).

DRAFT