|  |  |
| --- | --- |
| Transfer Agreement | |
|  |
|  |
| **Parties**  [Water Organisation]  **Water Organisation**  [Council]  **Council**  **Notes for using this template:**   * This template is a contract between the Council and the Water Organisation, which covers:   + Schedule 2: the transfer of various water assets or liabilities from the Council to the Water Organisation.   + Schedule 3: Interface matters, including Shared interests and Water Charges.   + Schedule 4: Other ad hoc services.   + Schedule 5: General terms and conditions.   + Schedule 6: Definitions. * Have a go at preparing a first draft of this agreement by completing Schedule 1 (Agreement Details), using the drafting notes highlighted in yellow to assist you. * For further guidance in preparing this template, please refer to the *Guidance Material –Transfer Agreement Template* for more information. | |

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1. interpretation AND DEFINITIONS 50

**AGREEMENT** dated 2025

**PARTIES**

[Water Services Organisation]

("**Water Organisation**")

[Council]

("**Council**")

**INTRODUCTION**

1. The Water Organisation is established to provide water services for the Council and for [insert other councils under joint model].
2. The Council is responsible for providing Water Services and is the owner of various drinking water, stormwater, wastewater and other infrastructure and assets, as well as various associated liabilities.
3. The Council enters into this transfer, interface and services agreement with the Water Organisation, pursuant to sections [11] and [12], and Schedule 2, of the LG(WS) Act, to transfer to the Water Organisation:
4. specified responsibility for providing Water Services; and
5. specified infrastructure, related assets and other matters that are necessary for the Water Organisation to carry out, and be responsible for, providing Water Services in the Service Area.

# agreement

## The parties enter into this agreement to record their agreement on the following matters:

### Schedule 2: The Council has agreed to transfer to the Water Organisation, and the Water Organisation has agreed to receive the Assets and assume the Responsibilities and Obligations, for the consideration and on the terms and conditions set out in this agreement.

### Schedule 3: How the parties will work together to effectively and efficiently manage matters of shared interest, and what arrangements will apply for charging and revenue collection for the Water Services that will be performed by the Water Organisation.

### Schedule 4: The terms on which one party will provide the other party with other ad hoc services and deliverables.

### Schedule 5: The general terms and conditions which apply to this agreement.

### Schedule 6: The definitions which apply to this agreement.

SIGNATURES

|  |  |  |  |
| --- | --- | --- | --- |
| **[INSERT Council NAME**]  By: | |  | |
|  | |  | |
|  |  | |  |
| Name of Authorised Signatory |  | | Signature of Authorised Signatory |
| In the presence of: |  | |  |
|  |  | |  |
| Signature of witness |  | |  |
|  |  | |  |
| Name of witness |  | |  |
|  |  | |  |
| Occupation |  | |  |
|  |  | |  |
| City/town of residence |  | |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **[INSERT WATER ORGANISATION NAME]**  By: | |  | |
|  |  | |  |
| Signature of Director |  | | Signature of Director |
|  |  | |  |
| Name of Director |  | | Name of Director |

SCHEDULE 1

AGREEMENT DETAILS

**Transfer Terms under Schedule 2**

|  |  |
| --- | --- |
| Completion Date  (*Clause 7.1, Schedule 2*) | [Insert the date on which the transfer is intended to take effect] |
| Purchase Price and limitation of liability  (*Clauses 3.1 and 11.2, Schedule 2*) | $[insert] |
| List or description of Assets to be transferred (or expressly not to be transferred) under this agreement  *(Appendices 1 and 2 of Schedule 2)* | **See Appendices 1 and 2 of Schedule 2.** |
| List or description of contracts to be transferred (or expressly not to be transferred) under this agreement  *(Appendices 1 and 2 of Schedule 2)* | **See Appendices 1 and 2 of Schedule 2.** |
| List or description of Responsibilities to be transferred (or expressly not to be transferred) under this agreement  *(Appendices 1 and 2 of Schedule 2)* | **See Appendices 1 and 2 of Schedule 2.** |

**Shared Interests and Charging and Revenue Collection Arrangements Terms under Schedule 3**

|  |  |  |
| --- | --- | --- |
| Shared Interest Arrangements  *(clause 2.2, Schedule 3)* | The parties will work together in relation to the following Shared Interest Arrangements set out at the Appendices 1 and [2] to Schedule 3:   * when the Council is performing and exercising its functions, duties, and powers under the Building Act 2004; * land use planning and resource management planning (including consent processes); and * the performance or exercise of any statutory functions in respect of emergency management; and * [insert any other statutory functions, duties, and powers of the parties that are relevant] | |
| Party to collect Water Charges  *(clause 3, Schedule 3)* | **[**specify whether the Council will continue to collect the Water Charges, or whether Water Charges will be collected by the Water Organisation.**]** | |
| Representatives  *(clause 4.2, Schedule 3)* | **Council**: **[**Insert the respective party representative identified in clause 4.2(b) of Schedule 3 of the agreement – note that if more than one Council is part of a Water Organisation, consider each Council appointing the same person**]** | **Water Organisation**: **[**Insert the respective party representative identified in clause 4.2(b) of Schedule 3 of the agreement**]** |
| Interface Governance Group Members  *(clause 4.3, Schedule 3)* | **Chair**: **[**Insert Interface Governance Group Chair**]** | |
| **Council representative(s)**: **[**Insert Council Interface Governance Group representative(s)**]** | **Water Organisation representative(s)**: **[**Insert Water Organisation Interface Governance Group representative(s)**]** |

**Ad hoc Services and Deliverables Terms under Schedule 4**

|  |  |  |
| --- | --- | --- |
| Summary of Council's provision of Services and Deliverables  (*Services and Deliverables are provided in full detail in* c*lauses 2 and 4, Schedule 4 and any Service Order*) | As at the Commencement Date of this agreement, the summary of Services and Deliverables that Council will provide to the Water Organisation under this agreement and Service Orders are:  [insert brief description of Services and Deliverables, noting detailed services and deliverables need to be described in the Service Order if not covered under this agreement] | |
| Summary of the Water Organisation's provision of Services and Deliverables  (*Services and Deliverables are provided in full detail in* c*lauses 2 and 4, Schedule 4 and any Service Order*) | As at the Commencement Date of this agreement, the summary of Services and Deliverables that the Water Organisation will provide to Council under this agreement and Service Orders are:  [insert brief description of Services and Deliverables, noting detailed services and deliverables need to be described in the Service Order if not covered under this agreement] | |
| Invoice details  *(clause 3, Schedule 4)* | **Council** | **Water Organisation** |
| **[**Insert payment contact details, this may be the party representative contact**]**  Email: **[**Insert email address to be used for invoicing**]** | **[**Insert payment contact details, this may be the party representative contact**]**  Email: **[**Insert email address to be used for invoicing**]** |

**General Terms and Conditions under Schedule 5**

|  |  |  |
| --- | --- | --- |
| Commencement Date  (*Clause 1.1,Schedule 5*) | [Insert Commencement Date of this agreement] | |
| Service Area(s) for determination of "Business Day"  (*Clause 1.1, Schedule 6*) | [Insert Service Area(s) for both the Council and Water Organisation] | |
| Service Area  (*Background A*) | **[**Insert details of service area covered] | |
| Place of arbitration  (*Clause 10.4(c), Schedule 5*) | [insert] | |
| Address for notices  *(clause13.1, Schedule 5)* | **Council** | **Water Organisation** |
| **[**insert physical and postal address details of the Council's office**]**  Email: **[**Insert details**]**  Attention: **[**Insert details**]** | **[**insert physical and postal address details of the Water Organisation's office**]**  Email: **[**Insert details**]**  Attention: **[**Insert details**]** |

SCHEDULE 2

TRANSFER TERMS AND CONDITIONS

## **Purpose of Schedule 2**: This Schedule 2 provides for the terms of the Transfer of the Assets, Responsibilities, and Obligations from the Council to the Water Organisation.

# Matters to Be TransferRED

## **Agreement to transfer**:

### **Assets and Obligations**:The Council shall transfer the Assets and Obligations to the Water Organisation, and the Water Organisation shall:

#### receive the Assets free of any Encumbrances; and

#### assume the Obligations (including by taking an assignment/novation of the Assumed Contracts under clause 9 of Schedule 2),

## from the Council, in accordance with this agreement.

### **Statutory responsibilities, functions, duties and powers**: The Council shall transfer the Statutory Responsibilities to the Water Organisation, and the Water Organisation shall comply with the Statutory Responsibilities as required by this agreement, and the relevant legislation.

### **Operational Responsibilities and Management Responsibilities**: The Council shall transfer the Operational Responsibilities and Management Responsibilities to the Water Organisation, and the Water Organisation shall comply with the Operational Responsibilities and Management Responsibilities as required by this agreement, and the relevant legislation.

### **Resource Consents Responsibilities**: The Council shall transfer the Resource Consents Responsibilities to the Water Organisation, and the Water Organisation shall comply with the Resource Consents Responsibilities as required by this agreement, and the relevant legislation.

# Matters not Transferred

## **No transfer**: The Council does not transfer any of the Excluded Matters or any other matters not specified in this agreement as transferring to the Water Organisation, and those matters shall continue to be owned, retained and/or performed and exercised by the Council.

## **No assumption of Liabilities**: Except as expressly provided in this agreement, the Water Organisation only assumes the Obligations and the Responsibilities, and does not assume any other Liabilities of the Council in relation to the Assets or otherwise.

# PURCHASE PRICE

## **Purchase price**: The Purchase Price is as set out in Schedule 1, as adjusted in accordance with clause 8.1 of Schedule 2.

# TAX

## The parties agree and acknowledge that, pursuant to section [214] of the LG(WS) Act, they are treated as the same person for the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994) and therefore no tax consequences arise in respect of the Transaction contemplated by this agreement.

# EMPLOYEES/contractors

## **Identification of affected employees**: Pursuant to clause [2] of Schedule 1 of the LG(WS) Act, the Council will identify and notify the Water Organisation of the affected employees within [five] Business Days of this agreement. The Council will also notify the Water Organisation of any Contractors providing services relating to the Water Services.

## **Offer of employment**: The Water Organisation shall, within twenty Business Days of the date of this agreement, consult with the Council as to the terms and conditions to be offered to the Employees and Contractors and, unless otherwise agreed with the Council, offer, so that such offer meets the requirements of clause [1(3)] and clause [2] of Schedule 1 of the LG(WS) Act in respect of Employees:

### employment to each Employee (other than the Contractors) on the same or similar terms and conditions enjoyed by the Employee on the date of this agreement, and will treat each Employee's service as continuous; and

### each Contractor a new independent contractor agreement on similar terms to their agreement with the Council,

## (the "**Offer**").

## **Acceptance**:Theparties shall use all reasonable endeavours to persuade each Employee and Contractor to accept the Offer.

## **Access to Employees and Contractors**: The Council will, at such times as reasonably requested by the Water Organisation, allow the Council access to:

### each Employee and Contractor to discuss the Offer; and

### subject to obtaining each Employee's and Contractor's consent to disclosure, if required, each Employee's employment records (or equivalent for Contractors).

## **Water Organisation's Assumed Accrued Employee Benefits**: The Water Organisation shall from Completion assume, and indemnify the Council against, all Liability of the Water Organisation for all Accrued Employee Benefits.

## **Return of Employee information**: Where any Employee does not accept an Offer, the Water Organisation will, at the option of the Council, return to the Council or destroy all personal information provided to the Water Organisation in relation to the relevant Employee (including but not limited to all employment records provided under clause 5.4(b) of Schedule 2).

# PRE-COMPLETION OBLIGATIONS

## **Positive obligations of Council**: Between the date of this agreement and Completion, the Council shall, subject to clause 6.3 of Schedule 2 (but without limiting the negative obligations of the Council in clause 6.2 of Schedule 2):

### operate and conduct the Business in the normal course in accordance with the business practices employed by the Council as at the date of this agreement;

### continue to make such payments and discharge such obligations in a manner consistent with the timing and method of payment or discharge employed by the Council in the 12 month period prior to the date of this agreement; and

### promptly notify the Water Organisation of any law suits, Claims, proceedings (other than normal debt collection proceedings), investigations or adverse events which may occur, be threatened, brought, asserted or commenced against it, its directors or employees, involving or affecting the Business, the Assets, the Obligations and/or the Responsibilities.

## **Negative obligations of Council**: Between the date of this agreement and Completion, the Council shall not, subject to clause 6.3 of Schedule 2 (but without limiting the positive obligations of the Council in clause 6.1 of Schedule 2):

### alter any of the conditions of employment of the Employees or Contractors;

### agree to amend any of the terms of any Assumed Contract; or

### acquire or dispose of any of the Assets other than in the ordinary course of conducting the Business.

## **Exceptions**: Clauses 6.1 and 6.2 of Schedule 2 do not prevent the Council from doing anything that:

### is expressly permitted by this agreement; or

### is approved in writing by the Water Organisation.

## **Novation and Counterparty Consents**:

### Prior to Completion, the Council shall use all reasonable endeavours to have each of the counterparties to any Assumed Contracts enter into a deed of novation, on terms acceptable to each of the Council and the Water Organisation, to novate the relevant Assumed Contract to the Water Organisation with effect from Completion.

### To the extent that a deed of novation is not able to be entered into pursuant to sub-clause (a), then the Council will use all reasonable endeavours to obtain the consent of the relevant counterparty to the Assumed Contracts marked as requiring consent in Appendix 1 of this Schedule 2, to the assignment of that Assumed Contract to the Water Organisation, on terms that are acceptable to both the Council and Water Organisation ("**Counterparty Consents**").

### The Water Organisation shall provide such assistance to the Council as it reasonably requests in relation to sub-clauses (a) and (b).

### If:

#### no deed of novation has been entered into in respect of that Assumed Contract; and

#### where a Counterparty Consent is required in respect of an Assumed Contract, and that Counterparty Consent has not been obtained

### on or before Completion, the Water Organisation shall not delay or fail to undertake Completion and clause 9 of Schedule 2 will apply.

## **Additional assets, responsibilities and liabilities**: If, before Completion, the Council or the Water Organisation identifies any asset, responsibility Liability or contract held by the Council that:

### is necessary for the Water Organisation to carry on the Business after Completion in a manner consistent with how the Business was carried on during the 12 months prior to Completion; and/or

### primarily relates to the provision of Water Services,

## other than an Excluded Asset ("**Additional Item**"), then the parties may agree to vary this agreement in accordance with clause 14.7 of Schedule 5, for the Additional Item to be added to Appendix 1 of Schedule 2 for consideration determined by the parties consistent with how the consideration was determined for the Assets and Obligations. If the parties cannot agree on such value, the expert determination process in clause 8.2(b) of Schedule 2 will apply, with appropriate changes to reflect the determination required by this clause.

# ComplETION

## **Time of Completion**: Completion of the transfer of the Assets, Obligations and Responsibilities ("**Completion**") shall take place electronically not later than 3pm on the Completion Date, or at such other time and place as may be agreed between the parties.

## **Council's obligations on Completion**: At Completion:

### the Water Organisation shall pay the Purchase Price to the Council in immediately available funds by electronic transfer to a bank account nominated by the Council;

### legal and beneficial title to, risk to, and possession of, the Assets shall be given by the Council and accepted by the Water Organisation, and the Council will deliver all Assets, title to which passes by delivery, at the places set out in Appendix 1 of Schedule 2 or as otherwise notified by the Council to the Water Organisation;

### the Council shall take such actions, and sign and deliver to the Water Organisation (together with all relevant documents of or evidencing ownership) such documents and other things necessary, to transfer to the Water Organisation full and unencumbered legal and beneficial title to, and possession of, the Assets as the Water Organisation may reasonably require; and

### the Water Organisation assumes the Obligations and shall take such actions, and sign and deliver to the Council such documents and other things necessary, for the Water Organisation to assume full responsibility for the Obligations (including as provided for in clauses 6.4 and 9 of Schedule 2), as the Council may reasonably require; and

### the Water Organisation assumes the Responsibilities and shall take such actions for the Water Organisation to assume full responsibility for the Responsibilities as the Council may reasonably require.

## **Assignment of rights**: With effect from Completion, the Council assigns to the Water Organisation all its property and contractual rights in the Assets.

## **Completion simultaneous**: The actions specified in clauses 7.2 and 7.3 of Schedule 2 must take place on the same day. If any of the documents required to be delivered, or actions required to be taken, pursuant to clause 7.2 of Schedule 2 are not delivered or taken for any reason, the Water Organisation is entitled, without prejudice to any of its other rights or remedies to:

### effect Completion so far as is practicable having regard to the defaults which have occurred and in so doing either to release, or without releasing (as the Water Organisation may elect), the Council from liability to comply as soon as possible with its obligations under that clause;

### fix a new date for Completion, which shall be treated for all purposes as the Completion Date; and/or

### sue for specific performance.

# ApportionMENT

## **Apportionment statement**: The Council must give the Water Organisation within five Business Days of the Calculation Time a written statement ("**Apportionment Statement**") setting out:

### the aggregate amount of all Accrued Employee Benefits at the Completion Date ("**Accrued Employee Benefits Amount**"); and

### the aggregate of all amounts payable to the Council pursuant to any of the Assumed Contracts or in relation to the Assets, which are yet to be received by the Council at the Completion Date in relation to the period up to and including the Completion Date ("**Outstanding Revenue**");

### the aggregate of all amounts received by the Council pursuant to any of the Assumed Contracts or in relation to the Assets, which have been received by the Council at the Completion Date in relation to the period after the Completion Date ("**Advance** **Revenue**");

### the amount of all Apportionable Outgoings:

#### unpaid by the Council at the Completion Date in respect of the period up to and including the Completion Date ("**Accruals**"); and

#### paid by the Council at the Completion Date in respect of the period after the Completion Date ("**Prepayments**").

## **Dispute resolution regarding transfer**: The Council shall, within five Business Days after receipt of the Apportionment Statement from the Water Organisation, give notice to the Water Organisation that the Council either:

### approves the Apportionment Statement; or

### does not approve the Apportionment Statement, such notice ("**Dispute Notice**") to specify the matters that the Council disputes or disagrees with ("**Matters in Dispute**"), in which case the Water Organisation and the Council must meet within five Business Days of the date of the Dispute Note and attempt to resolve the Matters in Dispute. If the Matters in Dispute are not resolved by the Water Organisation and the Council within five Business Days of such meeting then either the Water Organisation or the Council may give notice ("**Referral Notice**") to the other referring the Matters in Dispute to a single expert ("**Expert**") for determination in accordance with the following:

#### the Expert will be an accountant with relevant experience appointed by the Council and the Water Organisation by mutual agreement, provided that if agreement as to the Expert is not reached within five Business Days after the date of giving the Referral Notice, the Expert will be appointed at the request of a party by the New Zealand Dispute Resolution Centre;

#### the Council and the Water Organisation will together provide to the Expert copies of this agreement, the Dispute Notice and a copy of the Apportionment Statement; and

#### the Expert will be instructed to:

##### resolve the Matters in Dispute, in accordance with the accounting treatment used by the Council in their most recent financial statements ("**Accounting Treatment**"), and then, only to the extent necessary, in accordance with NZ GAAP (to the extent not inconsistent with the Accounting Treatment) as at the date of this agreement;

##### resolve the Matters in Dispute within 20 Business Days of the date of the Referral Notice and issue a decision to each of the Council and the Water Organisation; and

##### if required, adjust the Apportionment Statement and provide a copy to each of the Council and the Water Organisation;

#### the decision will be final and binding on the parties;

#### referral of the Matter to the Expert will not be an arbitration agreement for the purposes of the Arbitration Act 1996 and the provisions of that Act will not apply to or govern that referral; and

#### the parties will bear their own costs (including legal costs) and an equal share of the costs and expenses of the Expert.

## **Difference between Accruals and Prepayments**: If:

### the Outstanding Revenue plus the Prepayments exceed the aggregate of the Accruals and the Advance Revenue and the Accrued Employee Benefits Amount, the Water Organisation must pay an amount equal to the difference to the Council; and

### the aggregate of the Accruals, the Advance Revenue and the Accrued Employee Benefits Amount exceed the Outstanding Revenue plus the Prepayments, the Council must pay an amount equal to the difference to the Water Organisation,

## as an adjustment of the Purchase Price within five Business Days of:

### the date on which the Water Organisation receives notice from the Council under clause 8.2(a) of Schedule 2; or

### receipt by the party required to make payment under clause 8.3(a) or 8.3(b) of Schedule 2 (as applicable) of the adjusted Apportionment Statement from the Expert pursuant to clause 8.2(b)(iii) of Schedule 2.

## Any such payment will be paid by electronic bank transfer of immediately available funds into the bank account nominated in writing by the party that is due to receive the payment, or in such other form as the parties may agree.

# Assumed Contracts

## **Assignment and Novation**:

### Subject to clause 6.4 of Schedule 2 and Completion, and on and with effect from the Completion Date, the Council assigns and the Water Organisation accepts an assignment of all of the Council's rights under, benefits of and interests in ("**Benefits**"), and assumes the burden of, the Assumed Contracts ("**Relevant Contract**"), in accordance with this clause 9 of Schedule 2.

### This agreement does not constitute an assignment or an attempted assignment, or novation or attempted novation as the case may be, of a Relevant Contract if an assignment or attempted assignment requires the consent of the counterparty to the Relevant Contract and would constitute a breach of that Relevant Contract if an assignment were made without that consent.

## **Consent to transfer of Relevant Contracts**:

### If the consent of a third party is to be requested for the assignment as marked in Appendix 1 of Schedule 2 (as applicable), and has not been obtained prior to Completion, the Council must continue to use all reasonable endeavours to obtain that consent by or as soon as reasonably practicable after Completion, on terms that are acceptable to both the Council and the Water Organisation.

### Pending the transfer of any Relevant Contract to the Water Organisation under clause 9.1 of Schedule 2, the Council must:

#### hold the Benefits of the Relevant Contract on trust for the Water Organisation and account to the Water Organisation promptly after receipt by it for the value of any Benefit of the Relevant Contract that arises (or relates to the period) after the Completion Date; and

#### not agree to any termination, amendment or variation of, or waiver of any of the Council's rights under, the Relevant Contract without the prior written approval of the Water Organisation.

## **Performance of Relevant Contracts**:

### The Council must perform and observe all obligations (other than any obligation to make any payment, where such payment is reflected in the Apportionment Statement) of the Council under any Relevant Contract which are due to be performed (or relate to the period) on or before the Completion Date.

### The Water Organisation must, to the extent it lawfully can, assume, perform and observe all obligations of the Council under any Relevant Contract which are due to be performed (or relate to the period) after Completion Date, as well as any obligation to make any payment in respect of the Relevant Contracts where such payment is reflected in the Apportionment Statement, whether arising before, on or after Completion.

## **Transfer of Relevant Contracts Unavailable**: If, despite their reasonable endeavours, the Council and the Water Organisation are unable to (including because any third party consent required cannot be obtained) transfer a Relevant Contract under clause 9.2(a) of Schedule 2 within six months from Completion, the Council must, if requested in writing by the Water Organisation, procure that the Relevant Contract is terminated with no additional Liability or cost to the Water Organisation. To avoid doubt, there will be no adjustment to the Purchase Price, and the Council will have no Liability to the Water Organisation, as a result of any such termination.

# POST-COMPLETION PROVISIONS

## **Trust for non-assigned Assets**: If any of the Assets are not able to be assigned to the Water Organisation at Completion, the Council shall as from Completion and until such time as those Assets are assigned to the Water Organisation (which must occur within five Business Days of those Assets becoming able to be assigned to the Water Organisation), hold such Assets on trust for the Water Organisation and the Water Organisation is entitled to enforce its rights in respect of such Assets in the name of the Council.

## **Additional assets and liabilities**: If, after Completion, the Council or the Water Organisation identifies any asset or contract held by the Council that:

### is necessary for the Water Organisation to carry on the Business after Completion in a manner consistent with how the Business was carried on during the 12 months prior to Completion; and/or

### primarily relates to the provision of Water Services,

## other than an Excluded Asset ("**Further Item**"), then the parties may agree to transfer the Further Item (subject to obtaining any applicable counterparty consent on terms satisfactory to both the Council and Water Organisation), for consideration determined by the parties consistent with how the consideration was determined for the Assets and Obligations. If the parties cannot agree on such value, the expert determination process in clause 8.2(b) of Schedule 2 will apply, with appropriate changes to reflect the determination required by this clause.

## **Receipt of post-Completion amounts**: On and from Completion, the Water Organisation shall be entitled to receive and retain all amounts payable in respect of the Assets and Assumed Contracts. The Council shall make such payments to the Water Organisation as are necessary to give effect to the preceding sentence and until such payments are made shall hold the relevant amounts on trust for the Water Organisation. The Council shall promptly provide to the Water Organisation such information as is necessary to enable the Water Organisation to calculate amounts payable under this clause. The Council shall use all reasonable endeavours to ensure that the amount of each payment to be made under this clause is determined, and paid, as quickly as possible.

## **Water Organisation to provide information**: Following Completion, the Water Organisation shall permit the Council such access to its records as shall be reasonably necessary to enable the Council to complete tax returns and to comply with other statutory obligations of the Council relating to the Business and/or the provision of Water Services.

## **Council to provide information**: Following Completion, the Council shall permit the Water Organisation to have access to its records, and to take copies thereof, for the purpose of conducting the Business or complying with other statutory obligations of the Water Organisation relating to the Business, the Responsibilities and/or the provision of Water Services.

# liability

## **Consequential loss**: No party will be liable to any other party for any loss of profits, loss of saving, loss of goodwill or any consequential, indirect or special loss or damages arising directly or indirectly from any breach of this agreement or from any negligence or other act or omission.

## **Maximum aggregate liability for Claims**: In no event will the Council's aggregate total liability for any Warranty Claims or any other Claims exceed the amount set out in Schedule 1.

## **Other limits**: The liability of the Council in respect of any Claim is reduced or extinguished (as the case may be) to the extent that:

### the breach giving rise to the Claim is capable of remedy and, within 30 Business Days after receiving notice of the Claim, the Council remedies the breach to the reasonable satisfaction of the Water Organisation; or

### the Claim is a contingent liability unless and until it becomes an actual liability.

# Warranties and indemnities

## **Warranties**: In consideration of the Water Organisation entering into this agreement, the Council warrants to the Water Organisation, as at the Completion Date, that:

### the Assets:

* + - 1. are the absolute property of, and under the control of, the Council; and
      2. are not subject to any Encumbrance;
    1. the Assumed Contracts are valid, binding and enforceable in accordance with their terms, and the Council is not, nor will at Completion be, in breach, in any material respect, of any such contracts; and
    2. the Council is not in breach, in any material respect, of any of the Responsibilities.

## **Qualifications**: The Warranties are given subject to:

### any exception or qualification fairly disclosed in any formal disclosure letter given by or on behalf of the Council to the Water Organisation before execution of this agreement by the Water Organisation; and

### any matter or thing done or omitted to be done in accordance with any provision of this agreement or at the request, or with the prior approval, of the Water Organisation.

## **Water Organisation Acknowledgement**: The Water Organisation acknowledges and agrees that:

### the Assets are sold on a strictly "as is where is" basis; and

### the Council has not made any statement, representation or warranty (express or implied) as to, and the Water Organisation has no claim against the Council in respect of, the fitness, quality, condition or state of repair of any of the Assets.

APPENDIX 1 – MATTERS TO BE TRANSFERRED

ASSETS

|  |  |  |
| --- | --- | --- |
|  | **Assets** | **Place of delivery and how delivery will occur** |
|  | [*eg all drinking water pipes located in [Service Area]*] | [*in situ*] |
|  |  |  |
|  |  |  |

OBLIGATIONS

1. ASSUMED CONTRACTS

|  |  |  |
| --- | --- | --- |
|  | **Contract name/description** | **Counterparty consent required?** |
|  |  |  |
|  |  |  |

RESPONSIBILITIES

1. STATUTORY RESPONSIBILITIES

|  |  |  |
| --- | --- | --- |
|  | **Statutory Responsibilities** | **Reference** |
|  |  |  |
|  |  |  |
|  |  |  |

1. OPERATIONAL RESPONSIBILITIES

|  |  |  |
| --- | --- | --- |
|  | **Operational Responsibilities** | **Reference** |
|  |  |  |
|  |  |  |
|  |  |  |

1. MANAGEMENT RESPONSIBILITIES

|  |  |  |
| --- | --- | --- |
|  | **Management Responsibilities** | **Reference** |
|  |  |  |
|  |  |  |
|  |  |  |

1. RESOURCE CONSENTS RESPONSIBILITIES

|  |  |  |
| --- | --- | --- |
|  | **Resource Consents Responsibilities** | **Reference** |
|  |  |  |
|  |  |  |
|  |  |  |

APPENDIX 2 – MATTERS TO NOT BE TRANSFERRED

**EXCLUDED ASSETS**

|  |  |
| --- | --- |
|  | **Excluded Assets** |
|  |  |
|  |  |
|  |  |

**EXCLUDED CONTRACTS**

|  |  |
| --- | --- |
|  | **Excluded Obligations** |
|  |  |
|  |  |
|  |  |

**EXCLUDED RESPONSIBILITIES**

|  |  |  |
| --- | --- | --- |
|  | **Excluded Responsibilities** | **Reference** |
|  |  |  |
|  |  |  |
|  |  |  |

SCHEDULE 3

SHARED INTEREST AND CHARGING ARRANGEMENTS TERMS AND CONDITIONS

## **Purpose of Schedule 3**: This Schedule 3 provides for how the parties will work together in relation to:

### ensuring that Shared Interests are managed effectively and efficiently; and

### the arrangements for Water Charges for the Water Services to be performed by the Water Organisation.

# Relationship management

## **Relationship principles**: The parties will engage and work with each other under this agreement in accordance with the following relationship principles:

### **Partnering approach**: The parties wish to build and maintain a strong, enduring, high‑trust relationship to enable effective and sustainable delivery of Water Services and Water Services infrastructure to consumers and the community over the long term. The parties will take a relationship-based, strategic partnering approach which incorporates working collaboratively together in good faith, while also acknowledging each other's independence and respective legislative functions and obligations.

### **Have regard to consumers and communities**: The parties acknowledge that the delivery of safe, reliable, resilient, accessible, affordable and efficient Water Services is of significant importance to the consumers and community within the Service Area. While the delivery of Water Services and Water Services infrastructure remains the statutory responsibility of the Water Organisation, the parties will at all times have regard to the needs of the consumers and communities in the Service Area where services are delivered, and to the local cultural or environmental factors of the consumers and communities in that Service Area.

### **Engaging with each other**: The parties will engage with each other in the spirit of cooperation, respectful and honest behaviour, and take a 'no surprises' approach to preserve and strengthen the integrity of the relationship.

### **Cooperation**: The parties will act reasonably at all times and consult with each other as early as practicable about anything that may materially affect a party's performance under this agreement or a Service Order, or about any possible or actual breach of the same.

# Matters of Shared Interest

## **General**: The parties will interact and work together in respect of the Shared Interests to ensure that:

### matters of Shared Interests are managed effectively and efficiently; and

### each party can meet its statutory and contractual obligations.

## **Arrangements**:Accordingly, in respect of the Shared Interests, the parties will comply with their obligations under the detailed arrangements for each of the Shared Interests as set out in Appendices 1 to [X] of this Schedule 3 ("**Shared Interest Arrangements**").

## **Minimum requirements**: The Shared Interest Arrangements must meet the following minimum requirements:

### the functions, roles, responsibilities and accountabilities of each party are defined;

### each party can meet their statutory functions, power and duties;

### any additional services that one party to the other when carrying out its functions, powers and duties will be detailed in a Service Order; and

### the costs for each party to perform their obligations in respect of the arrangements will lie as they fall, unless otherwise agreed under the arrangement, or a related Service Order.

## **Changes to Shared Interest Arrangements**: The Shared Interest Arrangements and any related Service Orders agreed under this clause 2 of Schedule 3 may need to be further developed and amended as the relationship between the parties develops. Either party may make a recommendation to the Interface Governance Group to amend the Shared Interest Arrangements or Service Order, provided that:

### any change to the Shared Interest Arrangements or Service Order must be agreed in writing between the parties; and

### a change to the Shared Interest Arrangements or Service Order will be effective from the date the parties agree to implement the changes.

# [*OPTION 1 –* COuncil CONTINUES TO collect] Charging and Revenue Collection Arrangements

## *Option 1:* **Collection by Council**: The parties agree that, in accordance with clause [6(b)] of Schedule 2 of the LG(WS) Act, the rates, fees and other charges in relation to Water Services will be collected by the Council ("**Water Charges**").

## *Option 1:* **Water Charges Arrangements**: In respect of the Council continuing to collect the Water Charges, the parties will agree Water Charges arrangements that specify:

### how and when the territorial authority will pass revenue collected on to the Water Organisation, including details of transitional arrangements and the duration of those arrangements;

### any associated fees and expenses that will be charged and retained by the Council; and

### a confirmation that the Council will provide the Water Organisation with sufficient revenue each financial year to enable the organisation to undertake the capital and operating investment programme in the Water Organisation's water services strategy for that year.

## *Option 1:* **Final decision responsibility**: The:

### Water Organisation's capital expenditure and operating expenditure for the Water Services provided by the Water Organisation; and

### Water Organisation's level of Water Charges for the Water Services,

## will be as set out in the Water Organisation's annual water services budget, and the final decision-maker in respect of such matters will be as set out in the Constitution of the Water Organisation.

# [*OPTION 2 –* WAter Organisation collection] Charging and Revenue Collection Arrangements

## *Option 2:* **Collection by Water Organisation**: The parties agree that, in accordance with clause [6(b)] of Schedule 2 of the LG(WS) Act, the rates, fees and other charges in relation to Water Services will be collected by the Water Organisation ("**Water Charges**"), in which case the Water Organisation will collect Water Charges in accordance with its powers and statutory obligations under the LG(WS) Act.

## *Option 2:* **Final decision responsibility**: The:

### Water Organisation's capital expenditure and operating expenditure for the Water Services provided by the Water Organisation; and

### Water Organisation's level of Water Charges for the Water Services,

## will be as set out in the Water Organisation's annual water services budget, and the final decision-maker in respect of such matters will be as set out in the Constitution of the Water Organisation.

# Governance FOR MANAGING SHARED INTERESTS

## **Purpose of Interface Governance Group**: The parties will establish an Interface Governance Group comprising the parties' Representatives to be the first point of contact in relation to any issues concerning their nominated subject area in respect of the Shared Interest Arrangements, Service Order or other matter under this Agreement.

## **Appointment of Representatives**:

### Each party appoints the respective person(s) identified in clause 4.2(b) of Schedule 3 to be that party's representative and point of contact who is responsible for management of the relationship between the parties ("**Representative**"). There may be additional Representatives named by one party for different subject areas.

### As at the Commencement Date of this agreement, each party's Representative is set out in the Agreement Details.

### Each party shall ensure that its Representative(s) are reasonably available during normal business hours.

### Each party may replace a Representative by giving notice to the other party. Both parties will ensure that any replacement is a person with similar experience and seniority as the previous named Representative and will provide the contact details of the replacement to the other party.

## **Interface Governance Group Members**

### Each party appoints the respective person(s) identified in this clause 4.3(a) of Schedule 3 to be that party's member(s) of the Interface Governance Group.

### As at the Commencement Date of this agreement, the Interface Governance Group members are as set out in the Agreement Details.

### There shall be no more than [x] Interface Governance Group members per party at any one time.

### Each party shall ensure that its member(s) are committed and reasonably available to carry out their role in relation to the Interface Governance Group, including attending governance meetings.

### Each party may nominate another person or member to be its alternate and may remove that alternate appointed by them at anytime.

### Each party may replace its member by giving notice to the other party. Both parties will ensure that any replacement is a person with similar experience and seniority as the previous named member and will provide the contact details of the replacement to the other party.

## **Role of Interface Governance Group**: The purpose of the Interface Governance Group is to:

### consider any Compliance Reports submitted to it and propose any recommendations to address any non-compliance identified;

### consider any information sharing issues as referred to at clause 2 of Schedule 5;

### consider and attempt to resolve any issues or disputes referred to it by a party under clause 10 of Schedule 5;

### carry out the review of this agreement under clause 3 of Schedule 5;

### consider and provide a recommendation to each party of any proposed change to this agreement, including any Service Orders; and

### consider such other matters as the parties may agree.

## **Governance reporting**: The Representatives are to report to the Interface Governance Group on each party's compliance with this agreement including in respect of the Shared Interest Arrangements and Service Orders, on an annual basis from the Commencement Date ("**Compliance Report**"):

### The purpose of the Compliance Report is to ensure that there is transparency as to how the parties are meeting their respective obligations under this agreement. Prior meeting minutes to identify issues can be used to form the basis of the Compliance Report.

### The Representatives must agree on the content of the Compliance Report before delivering to the Interface Governance Group for consideration, however if agreement is not possible, then each Representative may submit its own Compliance Report to the Interface Governance Group.

### The Representatives will determine a process for ensuring that they can meet their obligations under this clause 4.5 of Schedule 3 at least three months before the Compliance Report is due.

## **Meetings of the Interface Governance Group**

### The first chair of the Interface Governance Group is the member named in the Agreement Details and is appointed for the first [x] years after the Commencement Date. At the end of the first chair's term, the next chair (who shall hold office for a similar term) shall be a member nominated from the other party and so on, so that the chair rotates between the parties.

### The Interface Governance Group shall meet at least once every [6] months and more frequently if required or agreed.

### At the first Interface Governance Group meeting of each year, the location and dates of each meeting for the following calendar year will be set.

### The Water Organisation will be responsible for administrative tasks in relation to the Interface Governance Group, such as issuing reminders and an agenda, distributing any material and taking minutes at the meeting.

### Decisions and recommendations of the Interface Governance Group shall be unanimous.

### A quorum of the Interface Governance Group shall be at least one member from each party.

### Where a matter to be discussed by the Interface Governance Group affects the interests of another shareholding council of the Water Organisation, the Representatives may agree to meet with the representatives of that shareholding council.

APPENDIX 1 – SHARED INTEREST ARRANGEMENTS FOR [X]

**[***The matters of shared interest under section 5(2) of the LG(WS) Act include (but are not limited to):*

*(a) when the territorial authority is performing and exercising its functions, duties, and powers under the Building Act 2004; and*

*(b) land use planning and resource management planning (including consent processes); and*

*(c) the performance or exercise of any other statutory functions, duties, and powers of the parties that are relevant to both parties (for example, emergency management).*

***Example****:**By way of example, for item (b) above (land use planning and resource management planning) the parties will need to provide for:*

1. *how the parties will engage and work together in relation to land use planning and the provision of and planning for water services;*
2. *how the Council will work with the Water Organisation in relation to its planning process under the Resource Management Act 1991;*
3. *sharing information for the purposes of each party carrying out its statutory and contractual functions;*
4. *engaging with the community in relation to planning for growth;*
5. *how the parties will engage in relation to the Water Organisation performing its functions under the Building Act; and*
6. *how the parties will work together in relation the processes, principles, and scope of assessment to be adopted by Council Resource Consent Planners, Regulatory Engineering in relation to the assessment of resource consents and engineering approvals.***]**

APPENDIX 2 – SHARED INTEREST ARRANGEMENTS FOR [Y]

**[**Placeholder for inserting any other Shared Interest Arrangements.**]**

SCHEDULE 4

AD HOC SERVICES AND DELIVERABLES

**PURPOSE OF SCHEDULE 4**: Schedule 4 provides the terms and conditions that apply to the Water Organisation providing ad hoc services to the Council, or the Council providing ad hoc services to the Water Organisation. Ad hoc services may include services required during a transitional period or on an ongoing basis, and as an example, could include human resources or payroll services, IT services or other back-office services. The parties will enter into a Service Order for the provision of any ad hoc services, or for any services required in relation to a Shared Interest Arrangement under Schedule 3.

# Ad Hoc Services

## **Ad Hoc Services**: From time to time, the parties may enter into a Service Order where a party ("**Service Recipient**") requires the other party ("**Service Provider**") to provide a particular Service for a fixed term or on an enduring basis for the benefit of the Service Recipient.

## **Service request process**: The Service Recipient may request the Service Provider to submit to the Service Recipient a draft Service Order in respect of providing certain Services and Deliverables to the Service Recipient. Within a reasonable period after receiving the draft Service Order, the Service Recipient will notify the Service Provider either:

### that the Service Recipient accepts the proposal, in which case clause 1.3 of this Schedule 4 will apply;

### that the Service Recipient wishes to negotiate the proposal, in which case the parties will promptly negotiate the proposal and, once agreement is reached, clause 1.3 of this Schedule 4 will apply; or

### that the Service Recipient rejects the proposal, in which case the parties will have no further obligation to each other with respect to the proposal or its subject matter.

## **Implementation**: If the Service Recipient accepts the Service Provider's proposal to provide Services and Deliverables as contemplated in clause 1.1 of this Schedule 4, then they will jointly finalise a Service Order relating to such Services or Deliverables. Once executed by both parties, the Service Order will form part of this agreement. Until such time as the Service Order is executed, the Service Provider will not be required to provide any Services or Deliverables, and the Service Recipient will have no obligation to pay any amount, in respect of that proposed Service Order.

# General obligations

## **General**: In performing its obligations under this agreement and any Service Order, the Service Provider will:

### provide all Personnel, processes and resources required to perform its obligations under this agreement, including to provide the Services and Deliverables;

### comply with the reasonable directions of the Service Recipient;

### as applicable, provide and implement the Services and Deliverables in accordance with the terms of this agreement and each relevant Service Order;

### provide all equipment, tools, materials and other resources necessary for the provision of the Services and Deliverables;

### take full responsibility for the performance of all tasks and activities necessary to provide the Services and Deliverables in accordance with each Service Order, other than tasks or activities specifically identified as being out of scope;

### without limiting the Service Provider's other obligations, keep the Service Recipient advised of the progress of the provision of the Services and Deliverables and changes or possible changes to the scope or timing;

### not damage or adversely affect the property, operations, reputation or goodwill of the Service Recipient or any related entity;

### not disrupt the Service Recipient's operations and other activities, except to the extent reasonably required in order to provide the Services and Deliverables;

### work co-operatively and collaboratively in good faith with the Service Recipient and all other contractors and service providers to the Service Recipient (including third party suppliers) at all times to ensure the Services and Deliverables are delivered to the Service Recipient efficiently, seamlessly and as required by the Service Recipient;

### comply with all its obligations under law and maintain all licences, approvals, consents and permits required in order to provide the Services and Deliverables and otherwise to perform its other obligations under this agreement;

### without limiting the Service Provider's other obligations, promptly notify the Service Recipient in writing of:

#### any breach or likely breach of the Service Provider's obligations under this agreement; and

#### any matter that may impact on the Service Provider's ability to perform its obligations in accordance with this agreement; and

### without limiting subclauses 2.1(a) to (k) of this Schedule 4 above, exercise that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, reasonable and experienced operator in the same or similar circumstances, with reference to Best Industry Practice.

## **Remedies for failure**: If any of the Services and Deliverables are not, in the Service Recipient's reasonable opinion, provided in accordance with this agreement, the Service Recipient may, without limiting its other remedies:

### give the Service Provider notice to immediately remedy the deficiency at the Service Provider's cost;

### withhold any payment due to the Service Provider until the deficiency is satisfactorily remedied; and/or

### if the Service Provider does not remedy the deficiency to the Service Recipient's reasonable satisfaction within a reasonable period after the Service Recipient giving notice under clause 2.2(a) of this Schedule 4, deduct a reasonable amount from any payment due to the Service Provider to reflect the cost to the Service Recipient to correct the deficiency.

## **Personnel**: The Service Provider must:

### ensure the Services and Deliverables are provided using appropriately experienced, skilled and qualified Personnel who are capable of providing the Services and Deliverables to the standards required under this agreement;

### be responsibility for all acts and omissions of its Personnel as if they were the acts or omissions of the Service Provider;

### ensure that all of its Personnel comply with the terms of this agreement and with any of the Service Recipient's relevant policies, procedures and reasonable directions as notified by the Service Recipient; and

### ensure that each Service Provider Personnel is willing to, and does, undergo security and other probity and clearance checks (including a check for criminal convictions) if required by the Service Recipient.

## **Statutory or regulatory functions**

### Notwithstanding any provision in this agreement, the statutory obligations of either party are always paramount and not affected or varied by this agreement. Nothing in, or contemplated by, this agreement will be construed or interpreted as restricting or otherwise affecting the discretion of a party to exercise any of its powers or functions under any law, or to require a party to interfere with or influence the exercise of any power or discretion by any other person.

### Any exercise of (or failure to exercise) a regulatory or statutory function by a party shall not, of itself, constitute an act, omission or breach by that party under this agreement.

## **Protection of information systems**: Where a party is given access to the other party’s information technology system to enable it to provide the Services and Deliverables, it must:

### only use the system to provide the Services and Deliverables;

### take all reasonable care in using the system, including all hardware, software and applications and observe all relevant license agreements, the other party's policies, security procedures and work practices;

### not interfere with or dispute or cause any damage to the system;

### ensure that the system is protected from unauthorised access or use or misuse, damage or destruction by any person;

### not allow the integrity of data and information held on the system to be compromised; and

### follow the policies and procedures of the other party to maintain the accuracy of data and information held within the system.

# Payment And Invoicing

## **Charges**: The Charges payable by the Service Recipient to the Service Provider for the provision of the Services or Deliverables will be as set out in the applicable Service Order.

## **Rates Card**: The Service Provider agrees that the labour rate used to calculate the Charges shall be no more than the amounts set out in the Rates Card, for the corresponding Service Provider Personnel of the relevant role.

## **No other amounts payable**: The Charges are the only amounts payable by the Service Recipient for the Services and Deliverables and all other related matters.

## **GST**: Unless otherwise agreed on a case by case basis, all Charges are exclusive of GST, which shall (if applicable) be additionally payable by the Service Recipient at the same time as payment of the Charges.

## **Withholding tax**: If the Service Recipient is required by law to make a deduction or withholding from any payment made to the Service Provider on account of withholding taxes, payment by the Service Recipient to the Service Provider of the net amount after such deduction or withholding will be a complete and final discharge by the Service Recipient of its obligation to make the relevant payment.

## **Expenses**: The Service Provider is responsible for all expenses incurred by it under this agreement, unless otherwise expressly specified in the relevant Service Order or the Service Recipient has given its prior written approval to reimbursement of such expenditure.

## **Invoice**: The Service Provider will invoice the Service Recipient for the Charges in respect of the Services and Deliverables, within 90 days of the Service Provider having the right to issue such invoices under the relevant Service Order. Each invoice must be:

### a valid tax invoice for the purposes of the Goods and Services Tax Act 1985;

### be sent directly to the Service Recipient via email to the email address set out in the Agreement Details; and

### include all information reasonably required to enable the Service Recipient to validate the claim for payment including:

#### any purchase number, Service Order number or contract number applicable to the invoice;

#### reference to this agreement (under which the invoice is issued); and

#### the Charges for and description of each Service and/or Deliverable being invoiced,

### ("**Valid Tax Invoice**").

## **Payment**: The Service Recipient shall pay each invoice by the 20th day of the month following the month of receipt of the invoice by Service Recipient.

## **Disputed invoices**: If the Service Recipient raises any Dispute in relation to an invoice submitted under this clause 3, then the Service Recipient must pay the undisputed portion of the Valid Tax Invoice on or before the due date for payment of that invoice, but may withhold payment of the disputed portion until the dispute is resolved.

# Disengagement Services

## **Commencement**: Commencing at any time before or from the termination or expiry of all or any part of a Service Order for any reason (including due to termination or expiry of this agreement), the Service Provider shall, at the request of the Service Recipient in writing, provide disengagement services in respect of the Services and/or Deliverables in that Service Order.

## **Duration**: The Service Provider shall provide the required disengagement services for up to 12 months after termination or expiry of the relevant Service Order, as agreed by the parties.

## **Disengagement Services**:

### The disengagement services may include the Service Provider:

#### continuing performance of the Services and Deliverables to the extent required by the Service Recipient (and the relevant terms of this agreement and the relevant Service Order continue to apply to the performance of the Services and Deliverables in accordance with this clause);

#### promptly assisting the Service Recipient to prepare a disengagement plan specifying the key tasks to be performed by each party to enable the smooth and orderly end or transition of the provision of the Services and Deliverables and the timeframes for the performance of such tasks;

#### actioning the disengagement plan within the required timeframes;

#### delivering to the Service Recipient any documentation or other materials relating to the Services and Deliverables as they exist as at the date of termination;

#### answering questions and providing information relevant to the Services and Deliverables as requested by the Service Recipient;

#### providing reasonable assistance for the Service Recipient to acquire rights to access and use facilities, equipment, documentation and other resources used by the Service Provider to provide the Services and Deliverables;

#### arranging or procuring the secondment of suitably qualified Personnel as may be reasonably required by the Service Recipient;

#### transferring, relocating or disposing of tangible property owned by the Service Recipient from the Service Provider's sites to locations designated by the Service Recipient;

#### returning to the Service Recipient intellectual property and other intangible property of the Service Recipient;

#### providing training reasonably required by the Service Recipient; and

#### providing any additional Disengagement Services specified in the relevant Service Order.

## **Charges**: If the Service Provider is required to provide disengagement services, the Service Recipient shall pay a fee for such services, which will be such amount as agreed in the relevant Service Order or, where such fee has not been agreed, the Service Provider may charge a reasonable fee for the performance of the disengagement services, consistent with the Rates Card. The Service Provider must do all things reasonably practical to minimise any such fee.

## **Other rights and remedies**: Nothing in this clause 4 limits the Service Provider's or the Service Recipient's rights to recover damages from the other party under this agreement or to pursue any additional or alternative remedies provided by law.

APPENDIX 1 – SERVICE ORDER TEMPLATE

**SERVICE ORDER – [SUBJECT NAME]**

This Service Order is issued under the transfer agreement between [insert Water Organisation] ("**Water Organisation**") and [insert Council] (**Council**) dated [insert date] ("**Transfer Agreement**").

By signing this Service Order, the parties agree to comply with the terms as set out in this Service Order and the terms of the Transfer Agreement apply to this Service Order, except as amended expressly in this Service Order.

Defined terms used in this Service Order have the meanings given to them in the Transfer Agreement, unless they are defined differently in this Service Order.

**Background**

|  |  |
| --- | --- |
| Service Order number | [Insert] |
| Scope of Services | [Insert a short description of this Service Order] |
| Commencement | [Insert commencement date of this Service Order] |
| Service Recipient | [Insert relevant party] |
| Service Provider | [Insert relevant party] |

**Term and Services**

|  |  |  |
| --- | --- | --- |
| Topic | Details | |
| Term of Service Order | This Service Order will remain in effect for [*select one* [the duration of the Interface and Services Agreement] or [insert term]], unless terminated earlier by agreement or in accordance with the terms of the Transfer Agreement | |
| Services description/service levels/roles and responsibilities | Refer to Attachment 1 of Schedule 4 - Services description/level of service | |
| Key Personnel | Name | Role |
| Service Recipient |  |  |
|  |  |
|  |  |
| Service Provider |  |  |
|  |  |
|  |  |

**Pricing and Payment**

|  |
| --- |
| **Pricing** |
| [Insert] OR  [Refer to Attachment 2 – Pricing Terms] OR  [Not applicable] |
| **Due date for payment** |
| [Insert]  [As per the Transfer Agreement, unless the Pricing Terms included in Attachment 2 to this Service Order provide otherwise] OR  [Not applicable] |

**Special conditions**

***Drafting note:*** *This section sets out any amendments to the terms of the Transfer Agreement. Seek legal advice before agreeing any special conditions.*

|  |  |
| --- | --- |
| Topic | Special Conditions |
| Insurances | [Insert insurance requirements to apply to this Service Order pursuant to clause 6 of Schedule 5. For example: The Service Provider must the following insurance policies for the term of this Service Order and for 3 years following termination or expiry]   |  |  | | --- | --- | | Insurance type | Cover | | Public liability insurance | [$X] | | Professional indemnity insurance | [$X] | | [Other] | [$X] | |
| [Insert] | [Insert any terms that the parties have agreed to that are not reflected in the Interface and Services Agreement or are to amend the Transfer Agreement. For example:   * specific payment terms * amended Liability Cap] |

**Attachments**

|  |
| --- |
| **Attachments** |
| * Attachment 1 - Services description/level of service * Attachment 2 - Pricing terms * [Insert any other attachments] |

|  |  |  |
| --- | --- | --- |
| SIGNED by [Water Organisation name] |  |  |
|  |  | Signature of authorised signatory |
|  |  | Name of authorised signatory |

|  |  |  |
| --- | --- | --- |
| SIGNED by [Council] |  |  |
|  |  | Signature of authorised signatory |
|  |  | Name of authorised signatory |

**ATTACHMENT 1 TO SERVICE ORDER**

**Detailed Services descriptions and Service levels**

[This will include details of the Services to be provided, for example, Services descriptions (and any exclusions), responsibility of the parties, timeframes for delivery of Services, objectives, priorities, performance targets and measures, monitoring and compliance, key contacts, information sharing, meeting schedules, risks].

**ATTACHMENT 2 TO SERVICE ORDER**

**Pricing terms**

[This will include the Fee for the provision of Services by the Service Provider]

APPENDIX 2 – RATES CARD AND SERVICES CATALOGUE

[Placeholder for parties to agree a rates that will apply for services being provided by the council or water organisation in respect of the Ad Hoc Services.

The parties could also specify the types of services which may be provided by one party from time to time.]

SCHEDULE 5

GENERAL TERMS AND CONDITIONS

**PURPOSE OF SCHEDULE 5**: The general terms and conditions that apply to all parts of this agreement are set out under this Schedule 5.

# Term

## **Term**: This agreement commences on the Commencement Date and continues until terminated in accordance with clause 12 of this Schedule 5.

# Information Sharing, Confidentiality And Co-Operation

## **Information sharing**: The parties agree that, in respect of information shared between the parties under this agreement:

### subject at all times to a party's obligations at law, both parties will use all reasonable endeavours to share information with each other where that information assists a party to carry out its statutory functions, powers and duties;

### where information is shared, the party receiving the information will adhere to any conditions imposed by the other concerning the release and storage of that information;

### the parties will act in good faith and in accordance with the relationship principles set out at clause 1.1 of Schedule 3 when a party reasonably makes a request for information to be shared; and

### where information is in the public domain (other than as a result of an unpermitted act or omission of a party that obtained that information), then any conditions imposed in relation to the release and storage of that information, no longer apply.

## **Managing issues**: Any concern or dispute in relation to a party not sharing information, conditions imposed in relation to the storage or use of that information or the use by a party of information that has been shared, will be referred to the Interface Governance Group and if not resolved will be dealt with under the dispute resolution process at clause 10 of this Schedule 5.

## **Confidentiality**: Each party shall:

### use its reasonable endeavours to identify Confidential Information relating to that party at the time it is supplied to the other party; and

### deal with all Confidential Information in accordance with clause 11 of this Schedule 5.

# Review Of Agreement

## **Periodic review**: This agreement must be reviewed within 5 years of the date the agreement is made and subsequently at intervals of not more than 5 years after the first review.

## **First review**: The parties have agreed that the first review must occur within [x] years of the date of this agreement so that any learnings from that initial period are captured. As part of the first review the parties will agree the subsequent period of review, and if this is not agreed then the subsequent review will be 5 years after the initial review.

## **Content of review**: A review of this agreement may include a review of:

### the relationship principles;

### whether the provisions of this agreement and any Service Orders are being complied with and are functioning adequately from a practical perspective;

### the roles and responsibilities of each party set out in the Service Orders to ensure that the objectives of this agreement are being met and that the statutory functions, powers and duties of each party are not being unduly impacted;

### whether additional or amended Services and Deliverables are required under any Service Order; and

### residual issues from the Compliance Reports and any actions from the Interface Governance Group.

# Health and Safety

## **Avoidance of accidents**: In performing its obligations under this agreement, the Service Provider must provide all Services and Deliverables with the health and safety of the Service Provider's Personnel and the Service Recipient's Personnel in mind, and take all necessary steps to ensure that its performance of this agreement will not cause physical injury or damage to:

### the Service Provider's Personnel, the Service Recipient's Personnel or their respective property; and

### the Service Recipient's clients and their property.

## **Health and Safety**: Without limiting any other obligations under this agreement:

### the Service Provider must:

#### consult, cooperate and coordinate with the Service Recipient to the extent reasonably required by the Service Recipient to ensure that the Service Recipient and the Service Provider will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this agreement;

#### perform its, and ensure that its Personnel perform their, obligations under this agreement in compliance with its and their obligations under the Health and Safety at Work Act 2015;

#### comply with all reasonable directions of the Service Recipient relating to health, safety and security; and

#### report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Service Recipient to the extent that it relates to, or affects, this agreement.

### The Service Recipient must, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with the Service Provider to the extent required by the Service Recipient to ensure that the Service Recipient and the Service Provider will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this agreement.

# INTELLECTUAL PROPERTY

## **Pre-Existing Intellectual Property**

### All Pre-Existing Intellectual Property remains the property of the original owner.

### In relation to any Service:

#### the Service Provider grants or agrees to procure the grant to the Service Recipient of a royalty free, unrestricted, perpetual, non-exclusive, transferable, sub-licensable, irrevocable licence to enable the Service Recipient to make use of the Services and Deliverables including to adapt, update or amend any works; and

#### the Service Recipient grants to the Service Provider a royalty free, unrestricted, perpetual, non-exclusive, transferable, sub-licensable, irrevocable licence to use and copy the Service Recipient’s Intellectual Property Rights to the extent required to enable the performance of the Services or Deliverables.

## **New** **Intellectual Property**

### Unless otherwise agreed, any New Intellectual Property created as a result of, or in connection with, the provision of the Services and Deliverables shall be owned by the Service Recipient on creation, and the Service Provider shall perform all necessary acts to vest such New Intellectual Property in the Service Recipient.

### Where ownership in New Intellectual Property cannot be vested or the parties agree otherwise, the Service Provider grants or agrees to procure the grant to the Service Recipient of a royalty free, unrestricted, perpetual, non-exclusive, transferable, sub-licensable, irrevocable licence to enable the Service Recipient to make use of the New Intellectual Property Right.

### The Service Provider is not liable for the use of the New Intellectual Property or Pre-existing Intellectual Property other than to the extent reasonably required for the intended purpose relating to the Services and Deliverables.

## **Know how**:Either party may use any generic ideas, know-how, concepts and techniques developed under this agreement or a Service Order or learnt from the other party provided that such use does not infringe the other party’s (or its supplier’s) copyrights, trademarks, patents or other Intellectual Property Rights and is not in breach of clause 2 of this Schedule 5.

## **Indemnity**:Each party indemnifies the other party ("**Indemnified Party**") against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses (including all legal costs and expenses on a solicitor and own client basis) suffered or incurred by the Indemnified Party arising out of or in connection with any claim relating to the use of that party’s Intellectual Property in accordance with this agreement or a Service Order infringes the Intellectual Property Rights of a third party.

# LIABILITY and insurance

## **Insurances**:Any insurances required to be affected and maintained in relation to the Services and Deliverables, will be set out in a specific Service Order and subject to the terms of that Service Order.

# Force Majuere Event

## **Events of Force Majeure**: If any party is delayed in or prevented from carrying out any of its obligations or Services and Deliverables under this agreement or any Service Order (other than a payment of money) due to any circumstances beyond its reasonable control, including:

### changes to legislation;

### interference by a third party; or

### natural disaster,

## ("**Force Majeure Event**") the party affected is to be excused from performance of those obligations or Services and Deliverables for as long as and to the extent that the prevention or delay lasts.

## **Notice to the other party**: The party seeking to rely on a Force Majeure Event to excuse its non-performance is to give written notice to the other party of the circumstances and the way in which and the extent to which its obligations are prevented or impeded by the event within 10 Business Days of it first becoming aware of that event.

## **Mitigation and co-operation**: Following notice of a Force Majeure Event, the parties are to:

### take all reasonably practicable steps to limit the effects of the Force Majeure Event on the performance of the Services and Deliverables under this agreement and any Service Order;

### work together to determine how the Services and Deliverables may safely continue to be provided during the Force Majeure Event; and

### continue to carry out all obligations under this agreement and any Service Order to the extent possible despite the Force Majeure Event.

## **No** **liability**:A party is not liable for failure to perform or for delay in performance of any obligations or Services and Deliverables under this agreement or any Service Order where it is prevented from performance during the Force Majeure Event**.**

# Records

## **Records**: Both parties must keep and maintain full records and documentation in relation to this agreement and any Service Orders in accordance with the Public Records Act 2005, the Local Government Official Information and Meetings Act 1987, the Building Act 2004, the Local Government Act 2002, the LG(WS) Act and any applicable standards or policies.

## **Period**: Both parties must comply with clause 8.1 of this Schedule 5 during the term of this agreement and for 7 years after this agreement ends.

# Conflicts

## **Conflicts of interest**:

### Both parties shall use best endeavours to ensure that conflicts of interest do not arise during the Term. If a party thinks that a conflict of interest may arise or has arisen, it shall notify the other party immediately in writing of this conflict and the structures and practices it has put in place to:

#### ensure that the conflict is avoided in practice; or

#### if avoidance is not practicable, ensure that the effects of the conflict are minimised.

### The Service Provider must maintain a high standard of honesty and integrity at all in times in the performance of this agreement and must not enter into any agreement or arrangement that will, or is likely to:

#### prejudice the Service Provider's ability to meet its obligations under this agreement; or

#### create a conflict of interest for the Service Provider.

## **Resolve conflict**: Without limiting clause 9.1 of this Schedule 5, the Service Provider must:

### immediately notify the Service Recipient in writing if the Service Provider is, or is likely to be, conflicted in the performance of its obligations under this agreement; and

### take all actions reasonably required by Service Recipient to resolve any such conflict.

## **Managing conflicts**: If the Service Provider does not take the actions required by the Service Recipient under clause 9.2(b) of this Schedule 5, or the Service Recipient considers that it cannot satisfactorily manage the conflict of interest, the Service Recipient, at its sole election, may terminate the relevant Service Order or, if applicable, this agreement, immediately upon written notice to the Service Provider.

# Dispute resolution

## **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.

## **Negotiation**:

### On receipt of a notice delivered in accordance with clause 10.1 of this Schedule 5 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.

### 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 parties for resolution.

### 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 10.2 of this Schedule 5, any party may submit the dispute to mediation.

## **Mediation**:

### 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.

### If the parties do not agree on a mediator, then the mediator will be appointed by the New Zealand Dispute Resolution Centre.

### 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.

### 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).

## **Arbitration**

### 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 10.4 of this Schedule 5 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**").

### 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.

### The seat of arbitration shall be as set out in Schedule 1 and the arbitration shall be conducted in the English language.

### The award of the arbitration shall be in writing and must include reasons for the decision.

### 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.

### The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.

### 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.

## **Implementation of agreement**: The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement, arbitral award or other resolution.

## **Rights and obligations during a dispute**: During a dispute, each party must continue to perform its obligations under this agreement.

## **Interlocutory relief**: This clause does not restrict or limit the right of a party to obtain interlocutory relief.

# Confidential Information And Public Announcements

## **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.

## **Further permitted use and disclosure**: This agreement does not prohibit the disclosure of Confidential Information by a party in the following circumstances:

### the other parties have consented to the disclosure of the relevant Confidential Information;

### the disclosure is specifically contemplated and permitted by this agreement;

### the disclosure of Confidential Information is to a shareholder of a party, an elected official of such shareholder, a regulatory authority (including to The Water Services Authority – Taumata Arowai) or the Department of Internal Affairs;

### the disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this agreement;

### 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;

### the disclosure is required by a court or governmental or administrative authority; or

### the disclosure is required in accordance with clause 11.4 of this Schedule 5.

## To the extent disclosure is required to be made in accordance with sub-clauses (f) or (g), the disclosing party must, as far as reasonably possible, consult with the other parties as to the content of such disclosure and only disclose such information as is reasonably.

## **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 parties or the Water Organisation in relation to the Water Organisation or Water Services, except with the written consent of the other parties. Nothing in this provision shall prohibit or restrict a party from making a public announcements or media releases in connection with the party's own involvement with, or policies in relation to, the Water Organisation.

## **Official Information Act 1982 and Local Government Official Information and Meetings Act 1987**: The parties acknowledge that the use or disclosure of information relating to the other party may be required by law (including under the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987), Ministers or through parliamentary convention so that a party may be obliged to disclose Confidential Information or other information of the other party.

# Termination

## **Termination**: This agreement may only be terminated by mutual agreement between the parties, subject to the parties complying with their obligations under the LG(WS) Act, including to ensure that the Water Organisation and Council enter into a new transfer agreement pursuant to section [13] of the LG(WS) Act.

## **Effect of termination**:

### **Termination of this agreement**: Any termination of this agreement or any Service Order is without prejudice to and will not affect any rights, powers, remedies or obligations of a party that have and before termination or expiry, or limit either party's rights to recover damages from the other party under this agreement or pursue any additional or alternative remedies provided by law.

### **Service Orders continue**: Each Service Order entered into prior to the expiry of this agreement will remain in full force and effect in accordance with its provisions, and the provisions of this agreement will continue to apply in respect of each such Service Order until the expiry date of such Service Order, unless such Service Order is terminated earlier in accordance with the terms of the relevant Service Order or by mutual agreement between the parties.

### **Other consequences of termination of Service Order**: On termination or expiry of one or more Service Order:

#### the Service Provider must refund to the Service Recipient all amounts paid by the Service Recipient for Services or Deliverables not provided;

#### the Service Provider shall return to the Service Recipient all of the Service Recipient's property;

#### where one or more Service Order are terminated or expire, the Service Provider shall, on receipt of a written request from the Service Recipient and at the Service Recipient's option, return, destroy, and/or permanently delete from any media in or on which Confidential Information is stored, all Confidential Information in the possession or control of the Service Provider or any Personnel relating to those Service Orders; and

#### the Service Provider will provide any Disengagement Services as set out in the relevant Service Orders and in accordance with clause 4 of this Schedule 5. Where this applies, the term of this agreement and the relevant Service Orders shall be extended to such time as the Service Provider completes performance of the Services, Deliverables and obligations.

## **Partial termination**:

### Either party may, to the extent practicable, instead of termination of this agreement in full, terminate any affected Service, Deliverable or Service Order in whole or in part. From the relevant termination date, no Charges are payable for the terminated Services, Deliverables or Service Order (as applicable).

### Without limiting any other rights or remedies that either party may have, if at any time a party that has exercised its rights to terminate under clause 12.3(a) of this Schedule 5, considers that any aspect of the partial termination is not proceeding to its satisfaction, it may by notice to the other party to convert the partial termination to a full termination.

### If a party terminates this agreement without terminating all of the then current Service Orders, then the provisions of this agreement that are necessary for the performance or enforcement of those Service Orders shall survive as necessary to perform or enforce those Service Orders.

# Notices

## **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:

### 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.

### Emailed to that party at its email address and marked for the attention of the representative set out in Schedule 1.

## **Change of details**: If a party gives the other party three Business Days' notice of a change of its postal address or email address, any notice or communication is only given by that other party if it is delivered, posted or emailed to the latest postal address or email address.

## **Time notice is given**: Any notice or communication is to be treated as given at the following time:

### If it is delivered, when it is left at the relevant address.

### If it is sent by post, five Business Days after it is posted.

### 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.

# general

## **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 parties, and a party may not make, or allow to be made, any representation that any such relationship exists between any of the parties. A party shall not have authority to act for, or to incur any obligation on behalf of, any other party, except as expressly provided for in this agreement.

## **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.

## **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:

### an original; or

### a photocopy; or

### 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.

## **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.

## **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.

## **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.

## **Variation**: No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

## **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.

## **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.

## **No merger**: The provisions of this agreement and anything done under, or in connection with this agreement shall not operate as a merger of any of the rights, powers or remedies of either party under or in connection with this agreement or at law, and those rights, powers and remedies shall survive and continue in full force and effect to the extent that they are unfulfilled.

## **Survival**: Following termination of this agreement, the provisions of clauses 2 of Schedule 5 (Information Sharing, Confidentiality and Co-operation), 10 of Schedule 5 (Dispute Process), 12 of Schedule 5 (Termination), 4 of Schedule 4 (Disengagement Services), 5 of Schedule 5 (Intellectual Property), 6 of Schedule 5 (Liability and Insurance), 7 of Schedule 5 (Force Majeure) and 14 of Schedule 5 (General), together with any provisions that by their nature are intended to survive, will remain in full force and effect.

## **Waivers**:

### 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.

### 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.

## **Governing law**: This agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any proceedings arising out of or relating to this agreement.

SCHEDULE 6

INTERPRETATION AND DEFINITIONS

# interpretation AND DEFINITIONS

## **Definitions**: In this agreement, unless the context otherwise requires:

"**Accounting Treatment**" has the meaning given to that term in clause 8.2(b)(iii)(aa) of Schedule 2.

"**Accruals**" has the meaning given to that term in clause 8.1(d)(i) of Schedule 2.

"**Accrued Employee Benefits**" means all wages, salary, annual leave, long service leave, incentive payments and other employee related benefits and entitlements (but excluding sick leave entitlements) accrued to and unpaid at the Completion Date in respect of the Employees, including any redundancy compensation, severance payments or other amounts payable to the Employees which are referable to their employment with the Transferor or the termination of that employment.

"**Accrued Employee Benefits Amount**" has the meaning given to that term in clause 8.1(a) of Schedule 2.

"**Additional Item**" has the meaning given to that term in clause 6.5 of Schedule 2.

"**Advance Revenue**" has the meaning given to that term in clause 8.1(c) of Schedule 2.

"**Agreement Details**" means the details set out in Schedule 1 of this agreement.

“**Apportionable Outgoings**” means the amounts payable by the Council in relation to:

### the Assumed Contracts; and

### agreements with the Contractors.

### "**Apportionment Statement**" has the meaning given to that term in clause 8.1 of Schedule 2.

### "**Arbitration Notice**" has the meaning given to that term in clause 10.4(a) of Schedule 5.

### "**Assets**" means the assets owned by the Council directly and primarily relating to the provision of Water Services and includes those assets set out in Appendix 1 of Schedule 2, but excluding those assets set out in Appendix 2 of Schedule 2.

## "**Assumed Contracts**" means the agreements described in Appendix 1 of Schedule 2.

"**Benefits**" has the meaning given to that term in clause 9.1(a) of Schedule 2.

"**Best Industry Practice**" means that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, reasonable and experienced operator in the information technology industry in the same or similar circumstances, with reference to best international standards and practices.

"**Business**" means the Water Services carried on by the Council at Completion using the Assets, Employees, Contractors and Assumed Contracts.

## "**Business Day**" means any day other than a Saturday, Sunday or statutory public holiday in the Service Area set out in Schedule 1.

## “**Calculation Time**” means 5pm on the last Business Day before the Completion Date, or any other time and date that the Council and the Water Organisation agree in writing.

## "**Charges**" means any amounts payable by the Service Recipient to the Service Provider in respect of Services and Deliverables, and otherwise for the performance by the Service Provider of its obligations under this agreement, in each case including as specified in the relevant Service Order.

## "**Claim**" includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment or Liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or otherwise and whether involving a third party or a party to this agreement.

## "**Commencement Date"** means the date this agreement commences, as set out in the Agreement Details.

## "**Completion**" means completion of the transfer of the Assets in accordance with clause 7 of Schedule 2.

## "**Completion Date**" means the date specified in Schedule 1 or agreed in writing by the Council and the Water Organisation.

## "**Compliance Report**" has the meaning given to that term in clause 4.5 of Schedule 3.

## "**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.

## "**Contractors**" means those people identified by the Council under clause 5.1 of Schedule 2, who are offered and accept a new independent contractor agreement under clause 5.2 of Schedule 2.

## "**Counterparty consents**" has the meaning given to that term in clause 6.4(b) of Schedule 2.

## "**Deliverables**" means any or the relevant deliverable to be provided by the Service Provider to the Service Recipient under any or the relevant Service Order, or any other thing to be provided, created or developed by the Service Provider to meet the Service Recipient's requirements in accordance with this agreement, including any documentation.

## "**Dispute Notice**" has the meaning given to that term in clause 8.2(b) of Schedule 2.

## "**Disputing Parties**" has the meaning given to that term in clause 10.4(a) of Schedule 5.

## "**Employees**" means those employees identified by the Council under clause 5.1 of Schedule 2 who are offered a new employment agreement under clause 5.2 of Schedule 2.

## "**Encumbrance**" means:

## a mortgage, debenture, charge, lien, pledge, hypothecation, security interest (as that term is defined in the Personal Property Securities Act 1999), title retention, preferential right or other similar instrument, device or power; or

## an interest by way of security for the payment of a debt or any monetary obligation,

## and includes any agreement or arrangement to grant or create any of the above.

## "**Excluded Matters**" means the excluded assets, excluded obligations and excluded responsibilities that are not transferred by the Council to the Water Organisation under this agreement, as set out in Appendix 2 to Schedule 2.

## "**Expert**" has the meaning given to that term in clause 8.2(b) of Schedule 2.

## "**Force Majeure Event**"has the meaning given to that term in clause 7.1 of Schedule 5.

## "**Indemnified Party**" has the meaning given to that term in clause 5.4 of Schedule 5.

## "**Initiating Party**" has the meaning given to that term in clause 10.4(a) of Schedule 5.

## "**Intellectual Property Rights**" means all intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.

## "**Interface Governance Group**" means the governance group established under this agreement in accordance with clause 4 of Schedule 3.

## "**LG(WS) Act**" means the [insert legislation name as enacted, which is to be titled the Local Government (Water Services) Act 2024 under clause 1 of the Local Government (Water Services) Bill 11.0].

## "**Liability**" means any loss, liability, obligation, overhead, debt, cost, expense or damage (in each case whether known or unknown, actual, continent or prospective) of any kind and however arising, including penalties, fines and interest, irrespective of when the acts, events or things which give rise to the liability occurred.

## "**Management Responsibilities**" means the responsibilities for the management of the Water Services that are transferred by the Council to the Water Organisation as set out in Appendix 1 of Schedule 2, but excluding those management responsibilities set out in Appendix 2 of Schedule 2.

## "**Matters in Dispute**" has the meaning given to that term in clause 8.2(b) of Schedule 2.

## "**New Intellectual Property**" means all Intellectual Property Rights, prepared or created in any medium by the Service Provider (or persons on behalf of the Service Provider) in carrying out the Services and Deliverables and provided to the Service Recipient under this agreement but not including Pre-existing Intellectual Property.

## "**NZDRC Rules**" has the meaning given to that term in clause 10.4(a) of Schedule 5.

## "**Obligations**" means:

## any Liabilities in respect of the period after Completion which relate to the Employees and Contractors (provided that such Liabilities are assumed by the Transferee under clause 2.2 of Schedule 2); and

## any Liabilities in respect of the period after Completion under the Assumed Contracts.

## "**Offer**" has the meaning given to that term in clause 5.2 of Schedule 2.

## "**Operational Responsibilities**" means the responsibilities for the operation of the Water Services that are transferred by the Council to the Water Organisation as set out in Appendix 1 of Schedule 2, but excluding those operational responsibilities set out in Appendix 2 of Schedule 2.

## "**Outstanding Revenue**" has the meaning given to that term in clause 8.1(b) of Schedule 2.

## "**Personnel**" means, in respect of a party, any employee, independent contractor, subcontractor, agent or representative engaged by that party, who provides any part of a Service.

## "**Pre-existing Intellectual Property**"means all Intellectual Property Rights owned by the Service Provider or any third party and provided or used by the Service Provider in carrying out the Services and Deliverables.

## "**Prepayments**" has the meaning given to that term in clause 8.1(d)(ii) of Schedule 2.

## "**Purchase Price**" means the purchase price for the Business as set out in Schedule 1.

## "**Rates Card**" means the rate card set out at Appendix 2 of Schedule 4.

## "**Referral Notice**" has the meaning given to that term in clause 8.2(b) of Schedule 2.

## "**Relationship Principles**" has the meaning given to that term in clause 1.1 of Schedule 3.

## "**Relevant Contract**" has the meaning given to that term in clause 9.1(a) of Schedule 2.

## "**Representative**" has the meaning given to that term in clause 4.2(a) of Schedule 3.

## "**Responsibilities**" means the Statutory Responsibilities, Management Responsibilities, Operational Responsibilities and Resource Consent Responsibilities.

## "**Resource Consents Responsibilities**" means the responsibilities for complying with the resource consents, and for exercising the associated rights and functions, that are relevant to the Water Services that are transferred by the Council to the Water Organisation as set out in Appendix 1 of Schedule 2, but excluding those resource consent responsibilities set out in Appendix 2 of Schedule 2.

## "**Service Area**" has the meaning set out in the LG(WS) Act.

## "**Service Provider**" means the party that is providing Services and Deliverables to the other party in accordance with this agreement (including under a Service Order).

## "**Service Recipient**" means the party that is receiving Services and Deliverables from the other party in accordance with this agreement (including under a Service Order).

## "**Services**" means:

## (a) the services and deliverables described in this agreement and/or in any relevant Service Order to be provided by either party, including any associated deliverable and as detailed in the Agreement Details;

## (b) all services reasonably incidental to, or required for the proper performance of, the services described in sub-clause (a) above; and

## (d) all other services agreed in writing by the parties from time to time.

## "**Service Order**" means the relevant document setting out the details of particular Services and Deliverables to be provided by one party to the other, using the template form attached at Appendix 1 to Schedule 4 (Service Order Template), including any applicable appendix or attachment.

## "**Shared Interests**" means the shared interests set out in Schedule 1, which are further described under any Shared Interest Arrangement.

## "**Shared Interest Arrangement**" has the meaning given to that term in clause 2.2 of Schedule 3.

## "**Statutory Responsibilities**" means the statutory responsibilities, functions, duties, and powers concerning the provision of Water Services that are transferred by the Council to the Water Organisation, as set out in Appendix 1 of Schedule 2, but excluding those statutory responsibilities set out in Appendix 2 of Schedule 2.

## "**Transaction**" means the transaction recorded in this agreement.

## "**Valid Tax Invoice**" has the meaning given to that term in clause 3.7 of Schedule 4.

## "**Warranties**" means the warranties and undertakings in clause 12.1(a) of Schedule 2.

## “**Warranty Claim**” means a Claim under any of the Warranties.

## "**Water Charges**" has the meaning given to that term in clause 3.1 of Schedule 3.

## "**Water Services**" has the meaning given to that term in the LG(WS) Act.

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

### headings are for convenience only and do not affect interpretation;

### the singular includes the plural and vice versa, and a gender includes other genders;

### another grammatical form of a defined word or expression has a corresponding meaning;

### words in this agreement have the same meaning as in the Companies Act 1993 unless inconsistent with the context;

### a reference to a party, person or entity includes:

#### 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

#### an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;

### a reference to dollars or $ is to New Zealand currency and excludes every tax and duty;

### a reference to a clause, schedule, appendix or attachment is to a clause, schedule, appendix or attachment of this agreement;

### a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

### references to the word 'include' or 'including' are to be construed without limitation;

### references to any form of law is to New Zealand law, including as amended or re-enacted;

### a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

### an obligation not to do something includes an obligation not to allow or cause that thing to be done;

### "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;

### 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

### an obligation not to do something includes an obligation not to allow or cause that thing to be done.