|  |
| --- |
|  |
| Shareholders' Agreement relating to [Water Organisation] Limited |
|  |
|  |
| PARTIES[insert Council name][Council][insert Council name][Council][insert Council name][Council][insert Trust name][Trust][insert Water Organisation name]Company |

**Notes for using this template:**

* This template is a contract between multiple shareholders of a water organisation ("**Water Organisation**"), setting out each shareholding councils' rights and obligation in respect of that Water Organisation.
* Have a go at preparing a first draft of the Agreement by completing Schedule 1 (Agreement Details), using the drafting notes highlighted in yellow to assist you. Please note that this Agreement will create legally binding obligations between the parties, so it is important to ensure that all parties can comply with any obligations included in the Agreement.
* For further guidance in preparing this template, please refer to the *Guidance Material – Shareholders' Agreement* for more information.

Contents

Schedule 1 1

AGREEMENT DETAILS 1

Schedule 2 1

TERMS AND CONDITIONS 1

1. Definitions and interpretation 1

2. Establishment of COMPANY 4

3. PURPOSE of Company 4

4. Board and Directors 4

5. shareholderS' obligations 5

6. Shareholders council 5

7. Loans and Guarantees by SHareholders 6

8. Statement Of Expectations 6

9. Share Sale, Issue, Amalgamation And Valuation 7

10. Term and Termination 7

11. consequences of termination 7

12. SUSPENSION OF RIGHTS 8

13. Dispute resolution 9

14. Confidential Information And Public Announcements 10

15. Notices 11

16. General 11

Schedule 3 14

Matters requiring Shareholder approval 14

Schedule 4 15

Form of Shareholders Council Terms of Reference 15

**Agreement** dated 2025

**PARTIES**

[insert Council name]

("[Council]")

[insert Council name]

("[Council]")

[insert Council name]

("[Council]")

[insert Trust name]

("[Trust]")

[insert Water Organisation name]

("Company")

BACKGROUND

A. [Council], [Council], [Council] and [Trust] are Shareholders in the Company and have entered into this agreement to record how the parties will manage their shareholdings in the Company and their respective relationships with each other.

B. The Company is party to this agreement to record certain obligations to it by, and owed by it to, the Shareholders.

C. The terms and conditions of this agreement are set out in Schedule 1 (Agreement Details) and Schedule 2 (Terms and Conditions).

SIGNATURES

|  |  |
| --- | --- |
| **[INSERT Council NAME]**By: |  |
|  |  |  |
| Signature of Authorised Signatory |  | Signature of Authorised Signatory |
|  |  |  |
| Name of Authorised Signatory |  | Name of Authorised Signatory |

|  |  |
| --- | --- |
| **[INSERT Council NAME]**By: |  |
|  |  |  |
| Signature of Authorised Signatory |  | Signature of Authorised Signatory |
|  |  |  |
| Name of Authorised Signatory |  | Name of Authorised Signatory |

|  |  |
| --- | --- |
| **[INSERT Council NAME]**By: |  |
|  |  |  |
| Signature of Authorised Signatory |  | Signature of Authorised Signatory |
|  |  |  |
| Name of Authorised Signatory |  | Name of Authorised Signatory |

|  |  |
| --- | --- |
| **[INSERT TRUST NAME]**By: |  |
|  |  |  |
| Signature of Trustee |  | Signature of Trustee |
|  |  |  |
| Name of Trustee |  | Name of Trustee |
|  |  |  |
|  |  |  |
| Signature of Trustee |  | Signature of Trustee |
|  |  |  |
| Name of Trustee |  | Name of Trustee |

|  |  |
| --- | --- |
| **[INSERT Water Organisation NAME]**By: |  |
|  |  |  |
| Signature of Authorised Signatory |  | Signature of Authorised Signatory |
|  |  |  |
| Name of Authorised Signatory |  | Name of Authorised Signatory |

1.

AGREEMENT DETAILS

|  |  |
| --- | --- |
| Service Area(s) for determination of "Business Day"(*Clause 1.1, Schedule 2*) | [Insert the service area/regions of the Councils] |
| Service Area(s) for provision of "Water Services"(*Clause 1.1, Schedule 2, and Schedule 6*) | [Insert Service Area of the Councils of where the water services will be provided] |
| Initial share issue and shareholding(*Clause 2.2, Schedule 2*) | Total Shares to be issued on incorporation: [X]Initial Shareholders:

|  |  |
| --- | --- |
| **Shareholder** | **Number of Shares** |
| [Council] | [X] |
| [Council] | [X] |
| [Council][Trust] | [X][X] |

 |
| Price payable for each share issued(*Clause 2.3, Schedule 2*) | $[0.01] |
| Name of Company(*Clause 2.4, Schedule 2*) | [insert]  |
| Registered office and address for service of Company(*Clause 2.4, Schedule 2*) | [insert]. |
| Initial business set up activities(*Clause 3.2, Schedule 2*) | [Insert the initial business set up, operational steps and transactions to be undertaken. This will be specific to the relevant Councils, but could include: entering into the Transfer Agreement; novation of existing services agreements; financing planning arrangements etc. ]. |
| Initial Directors(*Clause 4.2, Schedule 2*) | Initial Directors:

|  |
| --- |
| **Director(s)** |
| [X] |
| [X] |
| [X] |
| [X] |

 |
| Establishment of Shareholders Council(*Clause 6.1, Schedule 2*) | [Yes/no][If yes, the Shareholders have confirmed the terms of the Shareholders Council Terms of Reference in the form of Schedule 5 will apply.] |
| Failure to attend Shareholders Council meeting (*Clause 6.6, Schedule 2*) | [Insert the number of consecutive meetings of the Shareholders Council which, if missed, require a new representative to be appointed to the Shareholders Council by that Shareholder.] |
| Other matters to be included in the Statement of Expectations(*Clause 8.1(b), Schedule 2*) | [insert any matters that should be specified in the Statement of Expectations, in addition to the matters included in the LG(WS) Act.] |
| Time period before publication to provide the agreed Statement of Expectations to the Chairperson of the Board, the Chief Executive of the Company and the Shareholders Council(*Clause 8.1(c), Schedule 2*) | [insert – this timeframe should not exceed one month, as once the Statement of Expectations is adopted, it must be published within one month in accordance with section [181] of the LG(WS) Act]  |
| Principles for share issue(*Clause 9.3, Schedule 2*) | [insert any principles which must be complied with when the Water Organisation issues shares] |
| Interest rate payable on payment default(*Clause 12.3(a), Schedule 2*) | [eg Bill Rate plus 3% per annum] |
| Place of arbitration(*Clause 13.4(c), Schedule 2*) | [insert] |
| Address for notices*(clause 15.1, Schedule 2)* | **[Council]** | **[Council]** |
| **[**insert physical and postal address details of Council]Email: **[**Insert details**]**Attention: **[**Insert details**]** | **[**insert physical and postal address details of Council]Email: **[**Insert details**]**Attention: **[**Insert details**]** |
| **[Council]** | **[Trust]** |
| **[**insert physical and postal address details of Council]Email: **[**Insert details**]**Attention: **[**Insert details**]** | **[**insert physical and postal address details of Trust]Email: **[**Insert details**]**Attention: **[**Insert details**]** |
| **[Company]** |  |
| **[**insert physical and postal address details of Company]Email: **[**Insert details**]**Attention: **[**Insert details**]** |  |
| Shareholders Council membership *(Schedule 4)* | Total number of members of the Shareholders Council: [   ]Initial members of the Shareholders Council:* [X] member appointed by [Shareholder name]
* [X] member appointed by [Shareholder name]; and
* [X] member appointed by [Shareholder name].

Quorum for meetings of the Shareholders Council: [   ] members |

1.

TERMS AND CONDITIONS

AGREEMENT

# Definitions and interpretation

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

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

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

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

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

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

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

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

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

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

### if that breach or failure is capable of remedy, does not remedy that breach or failure within 20 Business Days of notice from any other Shareholder specifying the breach or failure and requiring remedy;

### if that breach or failure is not capable of remedy; or

### that breach or failure is material in the context of the obligations of that Shareholder under this agreement.

"**Financial Year**" means:

### the period from the Incorporation Date to 30 June immediately following the Incorporation Date;

### each subsequent period commencing on 1 July and ending on the next 30 June during the Term; and

### the period from 1 July immediately preceding the end of the Term, to the end of the Term.

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

"**Independent Director**"means a Director who is neither a current elected member nor a current employee of any Local Authority.

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

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

"**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 v11*].

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

"**Material**" means material in the context of the Business and assets of the Company as a whole.

"**Ordinary Resolution**" has the meaning given to it in the Constitution.

"**Reserved Matters**" means matters of the nature listed in Schedule 3.

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

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

"**Shares**"means shares in the Company on issue from time to time.

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

"**Shareholders Council**"means the joint committee formed by the Shareholders pursuant to clause 6.1.

"**Shareholders Council Representative**"means a member of the Shareholders Council.

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

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

"**Terms of Reference**"means the terms of reference of the Shareholders Council in the form set out in Schedule 4 as amended from time to time by agreement of the Shareholders.

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

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

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

"**Water Services**"has the meaning set out in the LG(WS) Act, which shall be the water services transferred to the Water Organisation in accordance with the Transfer Agreement between the Water Organisation and each Shareholder.

## **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 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 or schedule is to a clause or schedule 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;

### "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.

## **Subsidiaries of the Company**: If at any time the Company has a subsidiary (as defined in the Companies Act) or subsidiaries, clauses 3.1, 5.1 and 6.1 shall be read so as to relate to the group of companies consisting of the Company and its subsidiaries, rather than to the Company alone.

# Establishment of COMPANY

## **Incorporation**: The Shareholders shall immediately after signing this agreement take all steps necessary (including signing documents) to incorporate the Company as a New Zealand registered company.

## **Shares**: The Company shall immediately upon incorporation have the number of shares set out in Schedule 1 which, on issue, will be held by the Shareholders set out in Schedule 1.

## **Payment for Shares**: The sum set out in Schedule 1 shall be payable by each Shareholder in respect of each Share held by that Shareholder, receipt of which is hereby acknowledged.

## **Name and registered office**: The name of the Company shall be as set out in Schedule 1 and the initial registered office and address for service of the Company shall be as set out in Schedule 1.

# PURPOSE of Company

## **Purpose**: It is the intention of the Shareholders that the Company is to carry on the Business.

## **Initial business set up**: The Shareholders will work together to procure the initial business set up, operational steps and transactions described and summarised in Schedule 1.

# Board and Directors

## **Board**:

### The Company will have the number of Directors that comply with in the Constitution.

### The Directors will be appointed and removed in accordance with the Constitution.

## **Existing Directors**: As at the date of this agreement, the Directors named in Schedule 1 are deemed to have been nominated by the Shareholders to be the Directors.

## **Performance evaluation**: The Board will undertake a self-evaluation of its performance on an annual basis, in line with accepted good governance principles and practices, and the results will be reported directly to the Shareholders Council and to the Chief Executives (or equivalent) of each of the Shareholders.

# shareholderS' obligations

## **Voting and Shareholder reserved matters**:

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

### The Company will not enter into any transaction or matter which is a Reserved Matter unless the entry into of that transaction or matter is approved in writing by:

#### the Shareholders who together hold more than the required percentage of all Shares held by the Shareholders, as listed in Schedule 3; or

#### if such a percentage is not listed in Schedule 3, by Special Resolution.

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

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

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

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

# Shareholders council

## **Establishment and Terms of Reference**: If the Shareholders select the option to establish a Shareholders Council in Schedule 1, then:

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

#### in relation to the appointment of Directors to the Board of the Company;

#### to assist the Shareholders to fulfil their obligations under this agreement; and

#### where the Company has any obligation to consult with the Shareholders under the LG(WS) Act or other applicable law, to allow the Company to meet such obligation by consulting with the Shareholders Council.

### Each Shareholder will:

#### hereby confirm the Terms of Reference for the Shareholders Council are on the terms attached at Schedule 4 to this agreement;

#### appoint a Shareholders Council Representative; and

#### appoint an Alternate.

## **Replacing a Shareholders Council Representative**: Each Shareholder's appointed Shareholders Council Representative and/or Alternate may be replaced from time to time by that Shareholder providing written notice to the Shareholders Council and the other Shareholders.

## **Delegations to a Shareholders Council Representative**: Each Shareholder agrees to delegate to its appointed Shareholders Council Representative, and their Alternate, those responsibilities and powers set out in the Appendix to the Terms of Reference.

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

## **Attendance of Shareholders Council Representatives at meetings**: Each Shareholder shall ensure that its appointed Shareholders Council Representative or their Alternate attends each meeting of the Shareholders Council.

## **Failure to attend**: If a Shareholder's appointed Shareholders Council Representative or their Alternate is not present at the number of consecutive meetings of the Shareholders Council set out in Schedule 1, then that Shareholder will be required, on notice by any other Shareholder, to replace that Shareholder's appointed Shareholders Council Representative and Alternate.

# Loans and Guarantees by SHareholders

## **Loans and guarantees**: No Shareholder will be required to make any loans to the Company or guarantee the obligations of the Company, to any creditor or other party except with the express prior agreement of such Shareholder.

# Statement Of Expectations

## **Preparation**: The Shareholders will be responsible for jointly preparing the Statement of Expectations in accordance with the LG(WS) Act, within the time periods required by the LG(WS) Act:

### Unless the Shareholders otherwise agree, or an alternative process is provided for in the LG(WS) Act (in which case that alternative process will be followed), the Shareholders will meet eight months before the date on which the Company is required to prepare a Water Services Strategy under the LG(WS) Act, to discuss and agree to the process for preparing the next Statement of Expectations, which will be consistent with the Constitution and include consulting with the Company, and will publish that process on the website of one or more of the Shareholders in accordance with the LG(WS) Act.

### In addition to the requirements specified in the LG(WS) Act, the Statement of Expectations shall also include the matters set out in Schedule 1.

### No later than period set out in Schedule 1 before the publication date, or an alternative date agreed by the Shareholders, the agreed Statement of Expectations will be circulated to the Chairperson of the Board, the Chief Executive of the Company and the Shareholders Council.

## **Compliance**: The Shareholders will ensure that the business of the Company is conducted in accordance with its Statement of Expectations.

# Share Sale, Issue, Amalgamation And Valuation

## **No sale**: No Shareholder shall directly or indirectly sell, transfer, or dispose of the legal or beneficial ownership of, or the control of, any of its Shares otherwise than in compliance with the Constitution and LG(WS) Act.

## **No Security Interest**: A Shareholder must not grant a Security Interest over any of its Shares.

## **Share issue**: Subject to approval of the Shareholders in accordance with clause 5.1, the Board may issue Shares in accordance with the Constitution and the principles set out in Schedule 1.

## **Amalgamation of Local Authorities**: In the event of an amalgamation or any other change in the governance structure of a Shareholder, the Shareholders will meet and discuss the effect of the amalgamation on the shareholding structure of the Company and will exercise their voting rights to ensure that the shareholding percentages for the Shares remain reasonable as agreed by all Shareholders.

# Term and Termination

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

### only one Shareholder owns all Shares;

### none of the Shareholders hold Shares; or

### the date on which the Company is liquidated.

# consequences of termination

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

## **Liquidation**:

### Where this agreement terminates under clause 10.1(a), 10.1(b) or 12.1, the Shareholders must, without delay, take all necessary steps to appoint a liquidator to the Company.

### Any liquidator must be agreed by the Shareholders within 10 Business Days of the terminating event under clause 10.1(a), 10.1(b) or 12.1, or failing agreement, shall be chosen on the application of any Shareholder by the President for the time being of the New Zealand Law Society or his or her nominee.

## **Survival**: Termination of this agreement will not affect the rights and obligations of the Shareholders set out in clauses [1, 11, 13, 14, 15 and 16] which are intended to survive the termination of this agreement.

# SUSPENSION OF RIGHTS

## **Consequences**: If an Event of Default occurs in respect of a Shareholder (the "**Defaulting Shareholder**") the Non-Defaulting Shareholders may, while that Event of Default continues, by notice in writing to the Defaulting Shareholder require that the Defaulting Shareholder is suspended as follows:

### all rights of the Defaulting Shareholder under this agreement (including the right to vote on a Reserved Matter) and all rights attaching to the Defaulting Shareholder's Shares ("**Default Shares**") (including voting) are suspended and the Default Shares are not to be counted for the purpose of determining a quorum for a Shareholders' meeting; and

### all Director appointment rights of the Defaulting Shareholder are suspended.

## **Non-Defaulting Shareholder**: For the purposes of clause 12.1:

### "Non-Defaulting Shareholders" means all Shareholders which are not the Defaulting Shareholder, other than any such Shareholder which is a Related Party of the Defaulting Shareholder; and

### any notice which may be given by the Non-Defaulting Shareholders may be given by a Shareholder or Shareholders which holds or hold more than half of the Shares held by all Non-Defaulting Shareholders.

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

### shall be paid at the rate set out in Schedule 1;

### shall be paid by instalments at intervals of ten Business Days from the Due Date; and

### shall be calculated on a daily basis from and including the Due Date until the unpaid amount is paid in full.

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

## **Other remedies**: Clauses 12.1 and 12.3 are without prejudice to any other right, power or remedy under this agreement, at law, or otherwise, that any Shareholder has in respect of a default by any other Shareholder.

# 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 13.1 and before any party may refer a dispute to mediation, the Representatives must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.

### If any Representative considers that the dispute is not being resolved in a timely manner, such Representative may serve written notice on the other parties' Representatives to escalate the dispute to the Chief Executives or equivalent (where the Representatives are not the Chief Executive or equivalent) of the applicable Shareholders for resolution.

### 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 13.2, 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 13.4 and in accordance with the provisions of the Rules of Arbitration of the New Zealand Dispute Resolution Centre, as amended or modified from time to time ("**NZDRC Rules**").

### 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. This includes exercising voting rights and other powers as required.

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

## **Interlocutory relief and right to terminate**: This clause does not restrict or limit the right of a party to obtain interlocutory relief, or to immediately terminate this agreement where this agreement provides such a right.

# 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 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 by applicable law or regulation, including under the Local Government Official Information and Meetings Act 1987.

## **Public announcements and media releases**: Each Shareholder agrees that it will not make any public announcements or issue media releases in connection with, or on behalf of, the other Shareholders or the Company in relation to the Company or Water Services, except with the written consent of the other Shareholders. Nothing in this provision shall prohibit or restrict a Shareholder from making a public announcements or media releases in connection with the Shareholder's own involvement with, or policies in relation to, the Company.

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

## **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.

## **Board action**: Wherever this agreement requires the Board to do anything, each Shareholder shall take all steps available to it to ensure that the Director or Directors appointed by that Shareholder takes all necessary steps to do that thing.

## **Counterparts**: This agreement is deemed to be signed by a Shareholder if that Shareholder has signed or attached that Shareholder's signatures to any of the following formats of this agreement:

### an original; or

### a photocopy; or

### an electronic copy;

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

## **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 Shareholder 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.

## **Inconsistency with Constitution**: If there is any inconsistency between this agreement and the Constitution then the parties agree to abide by this agreement and to do everything required to change the Constitution so that it is consistent with this agreement.

## **Waivers**:

### A waiver of any right, power or remedy under this agreement must be in writing signed by the Council 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.

1.

Matters requiring Shareholder approval

|  |  |
| --- | --- |
| **Matter or transaction** | **Shareholders who hold more than the percentage of all Shares held by the Shareholders (%)** |
| ***Material transactions*** |
| "Major transactions" as that term is defined in the Companies Act. |  |
| Adoption of the Water Services Annual Budget |  |
| ***Changes to structure*** |
| Any alteration to, or revocation of, the Constitution. |  |
| Any issue of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares. |  |
| Any alteration of rights, privileges or conditions attaching to the Shares |  |
| Any arrangement, dissolution, reorganisation, liquidation, merger or amalgamation of the Company |  |
| Any transfer by the Company of Shares held by the Company or any purchase or other acquisition by the Company of its own Shares; |  |
| Any consolidation, division, or subdivision of Shares. |  |
| Any cancellation, buy-back or reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares. |  |
| The giving of any financial assistance for the purpose of, or in connection with, the purchase of Shares. |  |
| Making a material change in the nature of the Company's business or engaging in business activities other than the Business. |  |
| Starting or settling any legal or arbitration proceedings, except in the ordinary course of business. |  |

1.

Form of Shareholders Council Terms of Reference

**Shareholders Council**

**Purpose**

The Shareholders Council ("**Shareholders Council**") is established to:

* Provide governance oversight of the Company which provides Water Services in the Service Area set out in Schedule 1; and
* Provide a forum for the representatives of the Company's shareholders ("**Shareholders**") to meet, discuss and co-ordinate on relevant issues and, through their representatives, exercise their powers in respect of the Company.

**Status**

The Shareholders Council is a joint committee of the Shareholders.

**Specific responsibilities**

The Shareholders Council's responsibilities are:

Governance oversight responsibilities

Governance oversight of the Company, including by:

* Receiving and considering the half-yearly and annual reports of the Company;
* Receiving and considering such other information from the Company as the Shareholders Council may request on behalf of the Shareholders and/or receive from time to time;
* Undertaking performance and other monitoring of the Company;
* Considering and providing recommendations to the Shareholders on proposals from the Company;
* Providing co-ordinated feedback, and recommendations as needed, on any matters requested by the Company or any Shareholder;
* Providing recommendations to the Shareholders regarding the relevant network infrastructure owned by each Shareholder and/or the Company;
* Providing recommendations to the Shareholders regarding water conservation;
* Agreeing the three yearly Statement of Expectations;
* Receiving, considering and providing agreed feedback and recommendations to the Company on its draft Statement of Expectations;
* Receiving, considering and providing recommendations to the Shareholders regarding the final Statement of Expectations;
* Agreeing when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required, without prejudice to Shareholder and board rights to call meetings under the Company's constitution;
* Seeking and interviewing candidates for the Company's board as needed and approving director appointments and/or removals;
* Approving the remuneration of directors of the Company;
* Monitoring the performance of the board of the Company; and
* Providing recommendations to the Shareholders regarding changes to these terms of reference, the Shareholders' Agreement and the constitution of the Company.

Shareholders' responsibilities

To the extent that each Shareholder delegates its relevant powers to the Shareholders Council member it appoints, the Shareholders Council will provide a forum for the Shareholders to meet and exercise their powers in relation to the Company.

**Membership**

The membership of the Shareholders Council will total the number of persons set out in Schedule 1, with the initial members being as set out in Schedule 1.

An appointee may be an elected member of the appointing Shareholder.

**Chairperson**

The Chairperson and Deputy Chairperson will be elected by the Shareholders Council once all Shareholders Council Representatives have been appointed.

**Quorum**

For a meeting of the Shareholders Council to have a quorum, the number of members, or their appointed alternates, must be present.

Where the Shareholders Council is providing a forum for the Shareholders to meet and exercise their powers in relation to the Company, the requirements of the Company's constitution and shareholders' agreement will prevail.

**Alternates**

Each member appointed to the Shareholders Council must have an alternate appointed by the relevant Shareholder. The alternate may attend and vote at meetings of the Shareholders Council, but only in the event that the primary member is unable to do so.

**Decision-making**

The Shareholders Council will strive to make all decisions by consensus.

In the event that a consensus on a particular matter before the Shareholders Council is not able to be reached, each member of the Shareholders Council has a deliberative vote. In the situation where there is an equality of votes cast on a matter, the Chairperson does not have a casting vote and therefore the matter subject to the vote is defeated and the status quo is preserved.

Other than for those matters for which the Shareholders Council has effective decision-making capacity through these terms of reference, each Shareholder retains its full powers to make its own decisions on matters referred to it by the Shareholders Council.

**Remuneration**

Each Shareholder will be responsible for remunerating its representative on the Shareholders Council for any costs associated with that person's membership of the Shareholders Council.

**Administration**

Reports to be considered by the Shareholders Council may be submitted by any of the Shareholders or the Company.

**Appendix to Schedule 4**

**Common delegations**

Governance oversight responsibilities

* Each Shareholder will delegate to the Shareholders Council the responsibilities and powers necessary to participate in and carry out the Shareholders Council governance oversight responsibilities.

Shareholders' responsibilities

* Each Shareholder will delegate to its appointed Shareholders Council Representative and, in accordance with these terms of reference, that person's alternate, all responsibilities and powers in relation to the agreement of:
* when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required (without prejudice to Shareholder and Board rights to call meetings under the Company's constitution); and
* the appointment, removal and remuneration of directors.