

Shareholders' Agreement relating to Waikato Waters Limited

PARTIES

Hauraki District Council

Matamata-Piako District Council

Ōtorohanga District Council

South Waikato District Council

Taupō District Council

Waipā District Council

Waitomo District Council

Waikato Waters Limited

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AGREEMENT dated 23 July 2025

PARTIES

Hauraki District Council

Matamata-Piako District Council

Ōtorohanga District Council

South Waikato District Council

Taupō District Council

Waipā District Council

Waitomo District Council

(collectively referred to as the "**Shareholding Councils**")

Waikato Waters Limited

("Waikato Waters" or "**the Company**")

BACKGROUND

- A. Under the implementing legislation for Local Water Done Well, all councils in New Zealand have been mandated to develop a financially sustainable and regulatory-compliant model for delivering water services to their communities.
- B. The aim of the Local Water Done Well water services system is to ensure water services are safe, reliable, environmentally resilient, customer responsive and delivered at the least cost to customers. Councils have been encouraged to consider how to do local water well and whether creating a jointly owned water organisation is the optimal structure for their communities.
- C. The Waikato is known nationally for its leadership in managing water to help ensure better long-term outcomes for the Waikato and Waipā rivers, Hauraki Coromandel rivers and Tīkapa Moana/Hauraki Gulf. Guided by the vision of Te Mana o Te Wai, Te Mana o Te Tangata | Healthy Water, Healthy People, the Shareholding Councils have worked together to identify and co-design a water services delivery option that best leverages their respective strengths, addresses their common challenges and can achieve the following strategic outcomes ("**Strategic Outcomes**"):
 - (a) **Financial sustainability:** create scale and change (including through further Company expansion opportunities) to enable the significant investment required to deliver efficient and financially sustainable water services that comply with regulatory requirements and enable urban and commercial development.
 - (b) **Leading workforce:** create the conditions to build and sustain a highly skilled, adaptable and world-leading water workforce that can innovate and collaborate to drive outcomes for the part of the Waikato region serviced by the Company (and in collaboration (where practicable) with other service providers in the wider region).

- (c) **Customer focus:** be customer-focused, leveraging new technologies, while also building customer awareness of their role in the water system and the value of water.
 - (d) **Local influence:** ensure local voice is represented in critical decision-making around water investment and management across the region, including decisions in relation to water takes and water discharges.
 - (e) **Delivering on expectations:** meet the expectations of key partners and stakeholders including those represented in Treaty settlements and applicable joint management agreements.
 - (f) **Health and the environment:** protecting public health and the environment.
- D. Following public consultation, each of the Transferring Shareholding Councils has formally resolved to jointly establish Waikato Waters for the purpose of providing drinking water and wastewater services across their respective service area and to each enter into a Transfer Agreement based on the Agreed Form Transfer Agreement set out in Schedule 12. In order to ensure that their communities receive the water services they deserve, the Shareholding Councils will be responsible for monitoring the performance of Waikato Waters in performing those services and holding it accountable for any non-performance.
- E. To manage the risk of multiple council businesses coming together in Waikato Waters, the Transferring Shareholding Councils have agreed that they will transfer their respective water services business into Waikato Waters in a staggered manner. Each of these Shareholding Council enters into this agreement to record (amongst other matters) its commitment to transfer its water services business to the Company on the Agreed Transfer Date under the terms of a transfer agreement (which will be based on the terms of the Agreed Form Transfer Agreement and completed in accordance with the Transfer Principles).
- F. **Taupō District Council:** Taupō DC has identified a stand-alone business unit as its preferred water services delivery model and therefore does not have an Agreed Transfer Date. However, as a founding council in Waikato Water Done Well, it wishes to remain involved in the Company as a Stage 1 Shareholder on the terms set out in this agreement (and certain provisions will not apply to Taupō DC due to the limited nature of its involvement).
- G. Each Shareholding Council also acknowledges that the success of Waikato Waters rests on each complying with their commitments to Waikato Waters and each other (including in the development and delivery of their respective water delivery plans).
- H. Waikato Waters must meet all relevant Treaty settlement obligations and other agreements, including joint management agreements, that apply across the service area. This does not change any existing commitments to Iwi from any council. As part of the transition into Waikato Waters, there is an opportunity for Waikato Waters (and its Shareholding Councils) to:
- (a) benefit from strategic relationships with Iwi partners to deliver on its purpose (and identify cost effective solutions to resource consents); and
 - (b) build upon existing co-governance entities / authorities of the region.

- I. The parties now enter into this agreement to record their respective relationships with each other and how the Shareholding Councils will manage their shareholdings in Waikato Waters. The agreement also sets out the process that will apply to reach agreement on the role of Iwi in ongoing Shareholder decision making.
- J. Once Waikato Waters accedes to this agreement following incorporation, Waikato Waters will be a party to this agreement and will have certain obligations owed to it by, and owed by it to, the Shareholding Councils.
- K. The terms and conditions of this agreement are set out in Schedule 1 (Agreement Details) and Schedule 2 (Terms and Conditions) together with the further Schedules that are referred to in Schedule 2.

SIGNATURES

1. Hauraki District Council

By:



Signed by: David Speirs

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

2. Matamata-Piako District Council

By:



Signature of Authorised Signatory

Adrienne Wilcock

Name of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

3. Ōtorohanga District Council

By:



Signature of Authorised Signatory

Max Baxter

Name of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

4. South Waikato District Council

By:



Signature of Authorised Signatory

Susan Mary Law

Name of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

5. Taupō District Council

By:



Signature of Authorised Signatory

Julie Ann Gardyne

Name of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

6. Waipā District Council

By:



Signature of Authorised Signatory

Susan O'Regan

Name of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

7. Waitomo District Council

By:



Signature of Authorised Signatory

John Robertson

Name of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

8. Waikato Waters Limited

By:

Signature of Authorised Signatory

Name of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

SCHEDULE 1 – AGREEMENT DETAILS

Service Area(s) for provision of "Water Services" <i>(Clause 1.1, Schedule 2, and Schedule 6)</i>	At any time, the applicable Service Area of each current Stage 2 Shareholding Council																
Initial share issue and shareholding <i>(Clause 2.3, Schedule 2)</i>	Stage 1 Shares Total Shares to be issued on the Incorporation Date: 700 Stage 1 Shares. Initial Shareholding Councils: <table border="1"> <thead> <tr> <th>Shareholder</th><th>Number of Stage 1 Shares</th></tr> </thead> <tbody> <tr> <td>Hauraki District Council</td><td>100</td></tr> <tr> <td>Matamata-Piako District Council</td><td>100</td></tr> <tr> <td>Ōtorohanga District Council</td><td>100</td></tr> <tr> <td>South Waikato District Council</td><td>100</td></tr> <tr> <td>Taupō District Council</td><td>100</td></tr> <tr> <td>Waipā District Council</td><td>100</td></tr> <tr> <td>Waitomo District Council</td><td>100</td></tr> </tbody> </table> Stage 2 Shares Further Shares to be issued: The Company commits to issue Stage 2 Shares to Shareholding Councils on the terms set out in this agreement.	Shareholder	Number of Stage 1 Shares	Hauraki District Council	100	Matamata-Piako District Council	100	Ōtorohanga District Council	100	South Waikato District Council	100	Taupō District Council	100	Waipā District Council	100	Waitomo District Council	100
Shareholder	Number of Stage 1 Shares																
Hauraki District Council	100																
Matamata-Piako District Council	100																
Ōtorohanga District Council	100																
South Waikato District Council	100																
Taupō District Council	100																
Waipā District Council	100																
Waitomo District Council	100																
Price payable for each share issued <i>(Clause 2.4, Schedule 2)</i>	\$1.00																
Name of Company <i>(Clause 2.5, Schedule 2)</i>	Waikato Waters Limited																

<p>Registered office and address for service of Company</p> <p><i>(Clause 2.5, Schedule 2)</i></p>	<p>c/- Co-Lab Company Secretary, 6/34d Lake Street, Cambridge, Cambridge, 3434, New Zealand</p>
<p>Initial business set up activities</p> <p><i>(Clause 3.3, Schedule 2)</i></p>	<p>Refer to the Establishment Strategy included at Schedule 3.</p>
<p>Directors</p> <p><i>(Clause 4, Schedule 2)</i></p>	<p>Initial Directors: The Initial Directors to be listed in the application for registration of the Company and pending appointment of the Establishment Board are:</p> <p>Initial Director(s) – appointed in accordance with the terms included in Schedule 4:</p> <p>David Alexander Spiers</p> <p>Manaia Dean Te Wiata</p> <p>Tanya Lee Winter</p> <p>Susan Mary Law</p> <p>Stephanie Jane O'Sullivan</p> <p>Benjamin Eric Smit</p> <p>Directors on Establishment Board: The directors on the Establishment Board (one chair and at least two other directors) will be appointed by the Shareholder Representative Forum after the Company's Incorporation Date in accordance with the Board Matrix of Skills and from the date of the first appointment, will replace the Initial Directors.</p> <p>Operational Directors: Further directors (up to a maximum of seven directors in total appointed at any one time) will be appointed by the Shareholder Representative Forum by no later than the Operational Date in accordance with the Board Matrix of Skills.</p>
<p>Establishment of Shareholder Representative Forum</p> <p><i>(Clause 6.1, Schedule 2)</i></p>	<p>Yes</p> <p>The Shareholding Councils have confirmed the Shareholder Representative Forum will be established and will operate in accordance</p>

	with the SRF Terms of Reference included at Schedule 7 (as amended by time to time in accordance with those terms)
Failure to attend Shareholder Representative Forum meeting <i>(Clause 4.5, Schedule 7)</i>	2
Major Decisions <i>(Clause 6.1(j), Schedule 9)</i>	From the date of this agreement until its Completion Date, each Shareholding Council will comply with the major decisions framework set out in Schedule 9 and engage with the Company in relation to any Major Decisions.
Other matters to be included in the Statement of Expectations <i>(Clause 11.5, Schedule 2)</i>	As set out in Schedule 11.
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 Shareholder Representative Forum <i>(Clause 11.6, Schedule 2)</i>	Two weeks.
Principles for share issue of Stage 2 Shares <i>(Clause 14.3, Schedule 2)</i>	Stage 2 Shares are issued in accordance with clause 12 of Schedule 2, based on the principle of allocation proportional to the number of Total Water Connections within the Service Area of the relevant Council. The allocation of shares will be reviewed periodically, and on the admission of any new Shareholder to ensure this principle is adhered to.
Interest rate payable on payment default <i>(Clause 17.3(a), Schedule 2)</i>	Bill Rate plus 3% per annum.

Place of arbitration <i>(Clause 18.6(c), Schedule 2)</i>	Cambridge (unless agreed otherwise in writing by the parties)	
Address for notices <i>(clause 16.1, Schedule 2)</i>	Hauraki District Council	Matamata-Piako District Council
	Physical address: 1 William Street, Paeroa 3600 Postal address: PO Box 17, Paeroa 3640 Email: david.speirs@hauraki-dc.govt.nz Attention: David Spiers	Physical address: 35 Kenrick Street, Te Aroha Postal address: PO Box 266, Te Aroha 3342 Email: mtewiata@mpdc.govt.nz Attention: Manaia Te Wiata
	Ōtorohanga District Council	South Waikato District Council
	Physical address: 17 Maniapoto Street, Ōtorohanga Postal address: PO Box 11, Ōtorohanga 3940 Email: tanya@otodc.govt.nz Attention: Tanya Winter	Physical address: 1-5 Torphin Cres, Tokoroa 3420 Postal address: Private Bag 7, Torphin Crescent, Tokoroa Email: susan.law@southwaikato.govt.nz Attention: Susan Law
	Taupō District Council	Waipā District Council
	Physical address: 30 Tongariro Street, Taupō 3330 Postal address: Private Bag 2005, Taupō Mail Centre, Taupō 3352 Email: jgardyne@taupo.govt.nz Attention: Julie Ann Gardyne	Physical address: 101 Bank Street, Te Awamutu Postal address: Private Bag 2402, Te Awamutu 3840 Email: steph.o'sullivan@waipadc.govt.nz Attention: Steph O'Sullivan

	Waitomo District Council	Waikato Waters Limited
	<p>Physical address: 15 Queen Street, Te Kūiti</p> <p>Postal address: PO Box 404, Te Kūiti 3941</p> <p>Email: ben.smit@waitomo.govt.nz</p> <p>Attention: Ben Smit</p>	<p>Physical address:</p> <p>Postal address:</p> <p>Email:</p> <p>Attention:</p>
<p>Shareholder Representative Forum membership</p> <p><i>(Schedule 7)</i></p>	<p>Each Shareholding Council will have one SRF Representative on the Shareholder Representative Forum. In the absence of the relevant Shareholding Council agreeing otherwise, the SRF Representative for each Shareholding Council will be that Shareholding Council's Mayor.</p> <p>Quorum for meetings of the Shareholder Representative Forum: 75% of the Transferring Shareholding Councils by number and by voting percentage.</p>	

SCHEDULE 2 – TERMS AND CONDITIONS

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

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

"Agreed Form Transfer Agreement" means the template transfer agreement at Schedule 12 agreed to by the parties

"Agreed Proportionate Amount" has the meaning set out in clause 8.3 of this agreement.

"Agreed Transfer Date" means the intended completion date agreed by a Transferring Shareholding Council for the transfer of its water services business to the Company, as set out in section 6 of the Establishment Strategy or, in the context of Taupō DC, as agreed between it and the Company while Taupō DC is still a Stage 1 Shareholder.

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

"Bill Rate" means, in respect of any rate of interest to be calculated pursuant to this agreement, the 90 day bank bill interest rate stated on the following page (or any successor page) <http://www.rbnz.govt.nz/statistics/b2> at or about 3.00 pm on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter at intervals of 90 days from that Business Day.

"Board" means the board of Directors of Waikato Waters.

"Board Matrix of Skills" means the Matrix of Skills included in Schedule 10 as amended by the Shareholder Representative Forum from time to time.

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

"Business Day" has the meaning given to the term "working day" in the LGA.

"CCO" means a Council Controlled Organisation within the meaning of section 6 of the Local Government Act 2002.

"Companies Act" means the Companies Act 1993.

"Completion Date" means the date specified as the completion date in the Transfer Agreement between a Shareholding Council and the Company and, at the time of entry into this agreement, is intended to be the Agreed Transfer Date.

"Confidential Information" means all 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 Waikato Waters, trade secrets, proprietary information and confidential information belonging to Waikato Waters 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 Waikato Waters treats as confidential, and any other information in respect of which Waikato Waters is bound by an obligation of confidence owed to a third party.

"Constitution" means the constitution of Waikato Waters as filed with the New Zealand Companies Office on the Incorporation Date, as amended from time to time.

"Council Water Infrastructure Debt" has the meaning set out in the relevant Shareholding Council's Transfer Agreement.

"Director" means a director of Waikato Waters.

"Drinking Water Supply" has the meaning in the LG(WS) Act.

"Establishment Board" means the Board of the Company appointed in accordance with clause 4.2.

"Establishment Budget" means the budget approved by the SRF in accordance with clause 6.1(b).

"Establishment Costs" means those costs that have been invoiced by Waikato Local Authority Shared Services Ltd t/a Co-Lab to the Shareholding Councils and are identified as being the costs for Phase II and / or Phase III of the Waikato Water Done Well mahi.

"Establishment Funding" means the funding required to meet the payments required under the Establishment Budget and which Transferring Shareholding Councils will (until such time as the Company is able to borrow directly from LGFA to meet the required payments) provide by way of paying their Establishment Funding Share to the Company.

"Establishment Funding Share" means the share of the Establishment Funding a Shareholding Council is required to pay to the Company, being that percentage of the Establishment Funding as equals the relevant Shareholding Council's expected proportion of the Stage 2 Shares on issue on the last Agreed Transfer Date, being:

Hauraki	16%
Matamata-Piako	25%
Ōtorohanga	4%
South Waikato	17%
Waipā	33%
Waitomo	5%

"Establishment Funding Payment Dates" means a date that is no later than five Business Days before 1 August 2025, 1 October 2025 and 1 January 2026 and 1 April 2026, provided that:

- (a) if any such date is less than five Business Days after the Establishment Budget is approved by the SRF, then that date will be replaced by the date that is five Business Days after the Establishment Budget is approved by the SRF; and

- (b) where the Company is able to borrow sufficient funding from the LGFA on or before any of these dates, the dates after which such funding is available will not apply.

"Establishment Period" means the period between the Incorporation Date of the Company and the Operational Date.

"Establishment Strategy" means the strategic plan set out in Schedule 3 for operationalising Waikato Waters, including the Agreed Transfer Date in respect of each Shareholding Council who has committed to transfer its water services to the Company.

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

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

"Financial Year" means:

- (a) the period from the Incorporation Date to 30 June immediately following the Incorporation Date;
- (b) each subsequent period commencing on 1 July and ending on the next 30 June during the Term; and
- (c) 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 Waikato Waters is incorporated as a limited liability company as determined by the date recorded by the New Zealand Companies Office.

"Initial Director" means those persons named as Directors in the application for registration of the Company who will be the initial Directors of the Company.

"Iwi" means, for the purpose of this agreement (unless the SRF agree otherwise), those Iwi authorities who were members of the Waikato Joint Mayors and Chairs Forum at the inception of Waikato Water Done Well in August 2023 and whose partnering council is a Shareholder has an Agreed Transfer Date.

"LGA" means the Local Government Act 2002.

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

"LG(WS) Act" means the Local Government (Water Services) Act 2024.

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

"Major Decision" has the meaning set out in Schedule 9.

"Material" means material in the context of the Business and assets of Waikato Waters as a whole.

"New Debt" means debt incurred by the Company to the LGFA after the relevant Shareholding Council's Completion Date, which is not incurred in order to pay another Shareholding Council's Settlement Amount or Council Water Infrastructure Debt.

"Operational Date" means the first Completion Date reached under a Transfer Agreement(s) between the Company and a Shareholding Council in accordance with the terms of that Transfer Agreement.

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

"Post-Completion Transition Services" means the services that the Company engages a Shareholding Council to provide immediately from the Completion Date, as particularised in Schedule 3 of the relevant Transfer Agreement.

"Preliminary Arrangements Act" means the Local Government (Water Services Preliminary Arrangements) Act 2024.

"Related Company" has the meaning given to that term in the Companies Act.

"Reserved Matter Period" means the relevant of the following time periods:

- (a) from the Incorporation Date until the Operational Date ("**Reserved Matter Period 1**");
- (b) from the Operational Date until the termination or replacement of this agreement ("**Reserved Matter Period 2**").

"Reserved Matters" means matters of the nature listed in Schedule 8.

"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" in respect of the service areas identified in Schedule 1, has the meaning set out in the LG(WS) Act where such service area is within the boundary of a current Stage 2 Shareholding Council (as that boundary is constituted at any time in Part 2, Schedule 2, LGA).

"Settlement Amount" has the meaning set out in the relevant Shareholding Council's Transfer Agreement.

"Shares" means shares in Waikato Waters on issue from time to time.

"Shareholder Representative Forum" or **"SRF"** means the joint committee formed by the Shareholding Councils pursuant to clause 7.1.

"Shareholding Council" means each of the Councils who are listed as a party to this agreement.

"Special Majority Resolution" means a resolution that is approved by:

- (a) Special Resolution by Vote; and
- (b) Special Resolution by Number.

"Special Resolution by Number" means a resolution that is approved by the Shareholding Councils who:

- (a) have committed to an Agreed Transfer Date that is on or before 1 July 2028 and that are entitled to vote; or
- (b) are otherwise specifically permitted to vote pursuant to Schedule 8,

with no more than two such Shareholding Councils voting against the resolution or abstaining from voting.

"Special Resolution by Vote" means a resolution that is approved by a majority of 75% of the votes (with one vote per Share) of those Shareholding Councils entitled to vote and voting on the question.

"SRF Representative" has the meaning given to it in Schedule 7.

"SRF Terms of Reference" means the terms of reference of the Shareholder Representative Forum in the form set out in Schedule 7 as amended from time to time by agreement of the Shareholding Councils.

"Stage 1 Shareholder" means, at the relevant time, any, or the relevant, Shareholding Council(s) that hold Stage 1 Shares.

"Stage 2 Shareholder" means, at the relevant time, any, or the relevant, Shareholding Council(s) that hold Stage 2 Shares.

"Stage 1 Shares" means the shares issued by the Company in accordance with clause 2.3 on the terms set out in Schedule 5.

"Stage 2 Shares" means the shares issued by the Company in accordance with clause 12 on the terms set out in Schedule 6.

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

"Stormwater Services" has the meaning given to it in LG(WS) Act.

"Strategic Outcomes" has the meaning given to it in paragraph C of the Background to this agreement.

"Taupō DC" means Taupō District Council.

"Total Water Connections" means the sum of the number of connections to the wastewater network and the number of connections to the water network within the Service Area (excluding connections that are not serviced, whether or not such connections are serviceable).

"Transfer Agreement" means the agreement to be entered into between each Shareholding Council and the Company in accordance with the requirements of the LG(WS) Act, which will be in the form of the Agreed Form Transfer Agreement.

"Transfer Principles" means the principles set out in the clause 9 of this agreement which will inform the manner in which each Shareholding Council and the Company will complete the Agreed Form Transfer Agreement.

"Transferred Water Services" means, in respect of each Shareholding Council, that Shareholding Council's Drinking Water Supply and Wastewater Supply services that will transfer to the Company in accordance with the relevant Transfer Agreement.

"Transferring Shareholding Council" means a Shareholding Council with an Agreed Transfer Date.

"Treaty settlement obligation" means an obligation under a Treaty settlement Act or a Treaty settlement deed as those terms are defined in the LG(WS) Act.

"Waikato Water Done Well" means the programme of work the Shareholding Councils have collectively funded which has supported co-ordinated decision making across councils.

"Wastewater Supply" has the meaning set out in the LG(WS) Act.

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

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

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) words in this agreement have the same meaning as in the Companies Act unless inconsistent with the context;
- (e) a reference to a Shareholding Council, party, person or entity includes:
 - (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such Shareholding Council, party, person, entity;
- (f) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause or schedule is to a clause or schedule of this agreement;

- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) references to the word 'include' or 'including' are to be construed without limitation;
- (j) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (l) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (m) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
- (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

1.3 **Subsidiaries of the Company:** If at any time Waikato Waters has a subsidiary (as defined in the Companies Act) or subsidiaries, clauses 3.2 and 7.1 shall be read so as to relate to the group of companies consisting of Waikato Waters and its subsidiaries, rather than to Waikato Waters alone.

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

2. ESTABLISHMENT OF COMPANY

2.1 **Context:** The Company is being established jointly by the Transferring Shareholding Councils as the service delivery model for the provision of water services in their respective district from their respective Completion Date¹. Each of these six Transferring Shareholding Councils will include the model, and the implementation plan, in the water services delivery plan to be submitted by that Shareholding Council by 3 September 2025 under the Preliminary Arrangements Act 2024. The Preliminary Arrangements Act requires each such Transferring Shareholding Council to give effect to the undertakings made in its water services delivery plan relating to the future delivery of water services. Each such Transferring Shareholding Council's water services delivery plan will be consistent with the Establishment Strategy.

2.2 **Incorporation:** The Shareholding Councils shall immediately after signing this agreement take all steps necessary (including signing documents) to incorporate the Company as a New Zealand registered company and comply with any other requirements in this agreement, provided however that Taupō DC will not be required to comply with clauses 2.7, 3.3, 4.1, 6.1, 8 and 11 (though is still entitled to participate in, and receive all notices and

¹ Note: at the time of entry into this agreement, Taupō District Council has not committed to the Company providing services in its district other than through a service level agreement.

drafts in relation to, the Statement of Expectations process set out in that clause), Schedule 3, paragraphs 3.4(a), 4.4 and 5.4 of Schedule 7 (though may elect to comply with these paragraphs if it chooses to do so), and Schedule 11, until such time as Taupō DC provides a formal commitment to enter into a Transfer Agreement with the Company (and those clauses will only apply from that time to the extent those clauses have not been otherwise fulfilled).

- 2.3 **Initial Shares:** The Company shall immediately on the Incorporation Date have the number of initial Shares set out in Schedule 1 which, on issue, will be held by the Shareholding Council as set out in Schedule 1 and are held on the terms set out in Schedule 5.
- 2.4 **Payment for Initial Shares:** The sum set out in Schedule 1 shall be payable by each Shareholding Council on the Incorporation Date in respect of each Stage 1 Share held by that Shareholding Council, receipt of which is hereby acknowledged.
- 2.5 **Name and registered office:** Waikato Waters Limited is the name of the incorporated entity and the initial registered office and address for service shall be as set out in Schedule 1.
- 2.6 **Commitment to issue further Shares:** As soon as practicable after incorporation of the Company, the Company will ratify its commitment to issue Stage 2 Shares to each Transferring Shareholding Council in accordance with clause 12.1 of this agreement.
- 2.7 **Establishment Costs and Establishment Funding:**
 - (a) Each Transferring Shareholding Council agrees that the Establishment Costs paid by it are as agreed between the parties prior to the date of this agreement and are payable on the due date for the relevant invoices issued to it.
 - (b) The Establishment Funding Share payable by a Transferring Shareholding Council under this agreement will be paid to the Company on the relevant Establishment Funding Payment Date (provided that no further Establishment Funding is payable on any Establishment Funding Payment Date which falls after the date on which the Company is able to finance such costs by way of borrowing in its own name from LGFA).
 - (c) The Company will repay all Establishment Costs and Establishment Funding received by it from a Shareholding Council, including any interest incurred by that Shareholding Council on Establishment Funding, on the date on which the Company obtains sufficient financing through the LGFA to meet the payments required under the Establishment Budget.

3. VISION AND PURPOSE OF COMPANY

- 3.1 **Vision:** The vision for establishing the Company is Te Mana o Te Wai Te Mana o Te Tangata | Healthy Water Healthy People.
- 3.2 **Purpose:** The overarching purpose of the Company is to deliver the Transferred Water Services to customers across the relevant Service Area(s) in a manner that:
 - (a) achieves the objectives of the Shareholding Councils, both commercial and non-commercial, as provided in the Statement of Expectations;

- (b) enables Shareholding Councils to collectively achieve the Strategic Outcomes for water services in their Service Area(s) in the long term; and
- (c) provides consistent and improving service levels and resilience across the whole of the Service Area serviced by the Company.

3.3 **Establishment Period:** The Transferring Shareholding Councils will work together to procure the initial business set up and implementation of the Establishment Strategy by the applicable timeframes set out in the Establishment Strategy.

4. BOARD AND DIRECTORS

4.1 **Initial Board:** It is agreed that the Chief Executive of each Transferring Shareholding Council will be named as a Director on the application for registration for the Company and will be Directors pending the appointment of the Establishment Board. Each Initial Director will be appointed as a Director in accordance with the terms of appointment set out in Schedule 4.

4.2 **Establishment Board:** As soon as practicable after the Incorporation Date:

- (a) the Shareholder Representative Forum will appoint the Chair of the Board of Directors, having regard to the Board Matrix of Skills;
- (b) the Chair will support the Shareholder Representative Forum in the appointment of at least two further Directors having regard to the Board Matrix of Skills; and
- (c) the Chair, together with the two further Directors, will be referred to as the Establishment Board.

4.3 **Board:** By the Operational Date, the Shareholder Representative Forum will appoint further Directors to the Board so that the Company will have the number of Directors required by the Constitution from the time it is operational.

4.4 **Appointment:** All Directors will be appointed and removed in accordance with the Constitution.

4.5 **Performance evaluation:**

- (a) The Board will undertake a self-evaluation of its performance on an annual basis at the end of each Financial Year, in line with accepted good governance principles and practices ("**Performance Evaluation**"), and the results of the Performance Evaluation will be reported directly to the Shareholder Representative Forum and to the Chief Executives (or equivalent) of each of the Shareholding Councils.
- (b) If the Board is in place for less than six months at the date on which the first Performance Evaluation is to occur, the Shareholding Councils may waive the requirement for that Performance Evaluation. If the first Performance Evaluation is not waived, then it will relate solely to the performance of the Establishment Board members for the partial year from the date of appointment of the Establishment Board under clause 4.2(c) to 30 June 2026.

5. ROLE OF IWI PARTNERS

5.1 **Strategic:** Prior to the Incorporation Date, each Shareholding Council has been responsible for engaging with Iwi within their respective rohe. An expectation of Shareholding Councils is that, as part of the transition into Waikato Waters, and future long-term transformation of water services, the Company will:

- (a) benefit from strategic relationships with Iwi partners to deliver on Waikato Waters' purpose and realise cost effective solutions to resource consents where practicable; and
- (b) establish positive relationships with co-governance entities of the region which arise from treaty-based settlement legislation enabling environmental and catchment-based outcomes including, but not limited to, Waikato River Authority, Hauraki Gulf Forum and Waihou, Piako, Coromandel Catchment Authority.

5.2 **Decision making:** In relation to the role of Iwi in shareholder decision making, the Shareholder Representative Forum shall, promptly after its establishment:

- (a) convene and agree a process for engaging with Iwi for the purposes of this clause 5;
- (b) engage with Iwi to consider and prepare a proposal for how Shareholding Councils can effectively partner with Iwi and with existing co-governance entities across the Shareholding Councils' Service Areas to achieve the agreed outcomes; and
- (c) present the proposal to each of the Shareholding Councils for consideration and approval.

In accordance with the above process, the Shareholding Councils will use their best endeavours to reach agreement on Iwi involvement in the Company.

5.3 **Te Ao Māori and Tikanga Māori:** The Board Skills Matrix must require that, on the Operational Date, the Board includes experience of integrating Te Ao Māori and Tikanga Māori in a professional board environment.

6. SHAREHOLDERS' OBLIGATIONS

6.1 **Shareholding Council obligations:** By entering into this agreement, each Transferring Shareholding Council agrees that:

- (a) each Transferring Shareholding Council will be a Stage 1 Shareholder on the terms set out in Part A of Schedule 5 and will take all necessary steps to become a Stage 1 Shareholder on the Incorporation Date (including subscribing for Stage 1 Shares);
- (b) it delegates authority to the SRF to set and approve a budget, in accordance with the Establishment Strategy, in respect of Reserved Matter Period 1 which will provide for the Company to reach operational readiness by the end of that period, provided that the establishment budget will be set by 31 July 2025, and:

- (i) expenditure included in the establishment budget as at 31 July 2025 will not exceed \$16.5 million subject to sub-clause (ii) below); and
 - (ii) to provide a contingency, the SRF may approve further expenditure up to 20% of the capped amount in sub-clause (i) on the application of the Board and the SRF being satisfied the additional expenditure is necessary to achieve operational readiness;
- (c) it will pay its Establishment Funding Share on each Establishment Funding Payment Date to the Company, provided however that this sub-clause 6.1(c) will not apply once the Company is able to obtain sufficient financing through the LGFA to meet the payments required under the Establishment Budget;
- (d) it will enter into a deed of guarantee with LGFA in accordance with clause 8.2 below, or subscribe for the relevant amount of Stage 2 Shares in accordance with clause 12 with an associated amount of uncalled capital determined in accordance with clause 8.2 below;
- (e) it is committed to entering into a Transfer Agreement to transfer responsibility for Transferred Water Services to the Company, such that the Completion Date of the transfer (as defined in each Shareholding Council's Transfer Agreement) occurs on or before the Agreed Transfer Date and the Company will only issue the Shareholding Council with Stage 2 Shares in the manner and in accordance with clause 12 on the Completion Date;
- (f) any decision in relation to an Agreed Transfer Date being earlier than that set out in the Establishment Strategy is a Reserved Matter;
- (g) it will agree the Transfer Agreement with the Company consistent with the Transfer Principles by a date no later than 4 months before its Agreed Transfer Date;
- (h) the Completion Date for the Transfer Agreement is intended to be the same date as its Agreed Transfer Date;
- (i) the Establishment Strategy will inform the Shareholding Council's transition planning and the steps necessary to ensure the Company's operating model equips it to provide the Transferred Water Services in a seamless manner from the Operational Date and each applicable Completion Date thereafter;
- (j) in respect of any Major Decisions made by the Shareholding Council from the date of this Agreement until the Shareholding Council's Completion Date, it will comply with the requirements set out in Schedule 9;
- (k) it will continue to operate its water services from the date of this agreement until its Completion Date in a manner that complies with its statutory obligations and ensures a no-harm approach to staff, customers, lwi partners, other stakeholders and the Company;
- (l) it will provide the Post-Completion Establishment Services to the Company from the Completion Date in accordance with the terms set out in Schedule 3 of the Agreed Form Transfer Agreement; and

- (m) it will work together with the other Shareholding Councils in accordance with the engagement and decision-making principles set out below, to ensure:
 - (i) there is clarity on each Shareholder Council's expectations;
 - (ii) that the expectations are captured in the Statement of Expectations; and
 - (iii) the Company is well-positioned to fulfil its purpose, Statutory Objectives and the Strategic Outcomes.

6.2 **Taupō DC as Stage 1 Shareholder:** Taupō DC agrees that it will be a Stage 1 Shareholder on the terms set out in Part B of Schedule 5 and Taupō DC will take all necessary steps to become a Stage 1 Shareholder on the Incorporation Date (including subscribing for Stage 1 Shares). In becoming a Stage 1 Shareholder, Taupō DC is not required to pay an Establishment Funding Share.

6.3 Engagement and decision-making principles

- (a) When engaging with each other on all reporting and planning documentation pertaining to the Company, and making decisions on Reserved Matters and Major Decisions, the Shareholding Councils will adhere to the following:
 - (i) **Strategic Outcomes:** decisions are collectively taken with a focus on the Strategic Outcomes and supporting the Company to be successful in achieving these for the benefit of communities now and into the future;
 - (ii) **Spirit of collaborative working:** 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;
 - (iii) **No surprises:** 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; and
 - (iv) **Consensus:** use best endeavours to make decisions on Reserved Matters and pass resolutions by consensus. Where agreement by consensus cannot be achieved, clause 6.4 will apply.

6.4 Voting and Shareholder Reserved Matters:

- (a) Subject to clause 6.4(b), and any resolution that is required by the Companies Act or the Constitution to be passed as a Special Majority Resolution, a Special Resolution by Vote or a Special Resolution by Number, all resolutions of meetings of the Shareholding Councils may be passed by Ordinary Resolution.
- (b) The Company will not enter into any transaction or matter which is a Reserved Matter unless the entry into that transaction or matter is approved in accordance with the applicable decision-making thresholds for the Reserved Matter set out in Schedule 8.

6.5 **Duty to comply with Constitution:** Each Shareholding Council shall comply with the Company's Constitution.

- 6.6 **Compliance with laws:** The Shareholding Councils will each ensure they comply with their, and the Company complies with its, obligations under any applicable law, including the LGA, Preliminary Arrangements Act, the LG(WS) Act and the Companies Act.

7. SHAREHOLDER REPRESENTATIVE FORUM

- 7.1 **Establishment and SRF Terms of Reference:** The Shareholding Councils will establish a Shareholder Representative Forum in the manner set out below. To this end:

- (a) promptly after the date of this agreement, the Shareholding Councils will jointly establish, maintain and operate a Shareholder Representative Forum in accordance with the SRF Terms of Reference to provide overarching governance of the Company, including:
 - (i) in relation to the appointment of Directors to the Board of the Company;
 - (ii) to assist the Shareholding Councils to fulfil their obligations under this agreement and the Constitution; and
 - (iii) where the Company has any obligation to consult with the Shareholding Councils under the LG(WS) Act or other applicable law, to allow the Company to meet such obligation by consulting with the Shareholder Representative Forum; and
- (b) each Shareholding Council confirms the SRF Terms of Reference for the Shareholder Representative Forum are the terms attached at Schedule 7 to this agreement.

- 7.2 **Delegations to a SRF Representative:** Each Shareholding Council agrees to delegate to its appointed SRF Representative, and their Alternate, the responsibilities and powers set out in paragraph 7.1 of the SRF Terms of Reference.

- 7.3 **Authority of SRF Representatives:** Subject to the delegations under clause 7.2 above, the Shareholding Councils agree that any matter for a Shareholding Council under this agreement may be exercised by that Shareholding Council's SRF Representative, and (in the absence of that SRF Representative) their Alternate.

8. LOANS AND GUARANTEES BY SHAREHOLDING COUNCILS

- 8.1 **Loans and guarantees:** Subject to clause 8.2, no Shareholding Council 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 Shareholding Council.

- 8.2 **LGFA:** The Shareholding Councils agree that for the Company to achieve the Strategic Outcomes, it must be able to borrow from LGFA. In accordance with LGFA Foundation Policies, the Company (as a CCO) must have financial support from its shareholders. To this end, it is agreed that each Transferring Shareholding Council will:

- (a) support the Company in taking all steps necessary for it to:
 - (i) be approved by the LGFA Board; and

- (ii) accede to LGFA's Multi Issuer Deed and Notes Subscription Agreement; and
- (b) either:
 - (i) enter into, in a timely manner, a deed of guarantee (or such other documentation as required by LGFA) for the Company's debt liabilities to LGFA; or
 - (ii) commit to provide uncalled capital,

based on the following principles:

- (iii) no Shareholding Council will ultimately be required to guarantee, or pay, more than that Shareholding Council's Agreed Proportionate Amount; and
- (iv) the guarantee/amount of uncalled capital will be reviewed periodically to ensure it reflects the above principle.

8.3 **"Agreed Proportionate Amount"** means, in respect of a Shareholding Council, the aggregate of:

- (a) that Shareholding Council's Settlement Amount;
- (b) any of that Shareholding Council's Council Water Infrastructure Debt not included in that Shareholding Council's Settlement Amount but which is later repaid by the Company in accordance with the Transfer Agreement or otherwise by agreement between the Company and the Shareholding Council; and
- (c) that Shareholding Council's proportion (based on its proportionate holding of Stage 2 Shares at the time the New Debt is incurred) of any New Debt.

9. TRANSFER

9.1 Without limiting any of the provisions in the Agreed Form Transfer Agreement, Transferring Shareholding Councils agree to complete the Agreed Form Transfer Agreement based on the following Transfer Principles:

- (a) Assets to be transferred must be owned or controlled by a Transferring Shareholding Council and relate primarily to the Transferred Water Services.
- (b) Liabilities or any other obligation to be transferred must be owed by a Transferring Shareholding Council and relate wholly to the Transferred Water Services.
- (c) Where an asset is not owned or controlled by a Transferring Shareholding Council, but still relates primarily to the Transferred Water Services, the Transferring Shareholding Council will use all reasonable endeavours to transfer to the Company the right to use or have the benefit of that asset to the same degree as the Transferring Shareholding Council prior to the relevant Completion Date.
- (d) Transferring Shareholding Councils will take all steps necessary to ensure that the Company has the benefit of any resource consents that relate primarily to the

Transferred Water Services (including, where applicable, transferring those resource consents to the Company). Particulars of any non-compliance with this sub-clause (d) are to be disclosed at the time of entry into the Transfer Agreement.

- (e) Transferring Shareholding Councils remain responsible for the provision of the Transferred Water Services until the relevant Completion Date and will discharge all obligations under legislation, this agreement and the Transfer Agreement.
- (f) Transferring Shareholding Councils will co-operate fully and openly with the Company in relation to any critical risk assessment the Company may request prior to entering into the Transfer Agreement in relation to financial; health and safety risk and / or legal issues.
- (g) A settlement statement will be prepared under the Transfer Agreement confirming any amount payable by the Company to a Transferring Shareholding Council on Completion. This will include the process for identifying the value of water services liabilities the Company is assuming responsibility for.
- (h) The amount of water services debt that a Transferring Shareholding Council will transfer to the Company will be based on a consistent methodology. This will be based on historical actual two water activity statements / ringfencing (and be classified as a loan in the financial impact statement) to determine debt outstanding, but may also include costs incurred by the relevant Transferring Shareholding Council in undertaking a transitional activity agreed by the Board (as set out in that Transferring Shareholding Council's Transfer Agreement).
- (i) The Transfer Agreement will particularise the Post-Completion Establishment Services to be provided by a Transferring Shareholding Council to the Company including:
 - (i) the timeframe the services are to be provided for, or the time from which the scope of services will be reviewed by, the Company. The Company must work with the Transferring Shareholding Council to provide certainty on the scope of services the Transferring Shareholding Council will be requested to provide, taking into account the cost to the Transferring Shareholding Council of retaining capability to provide the service and the potential impact on staff; and
 - (ii) notwithstanding the above, the scope of all Post-Completion Establishment Services will be reviewed no later than six months after the last Agreed Transfer Date of the Transferring Shareholding Councils. The review must confirm to each Transferring Shareholding Council the scope of future services and the notice period that will apply to any change in scope.
- (j) Third-party rights will be protected and unaltered by the transfer of assets, liabilities, and other matters to the extent reasonably possible.
- (k) The monitoring and enforcement of each Transferring Shareholding Council's trade waste by-laws will be transferred to the Company.

10. STORMWATER SERVICES

- 10.1 **Stormwater Services to be agreed:** Shareholding Councils will retain legal responsibility for the management of Stormwater Services. The Company will offer Stormwater Services to each Shareholding Council based on an agreed form Stormwater Management Services agreement.
- 10.2 The agreed Stormwater Management Services agreement will be prepared during the Establishment Period (and approved by the Chief Executive of each Shareholding Council and the Chief Executive of the Company) based on the following principles:
- (a) **Scope of services:** the scope of services will be agreed between each Shareholding Council with the Company on a risks basis at the time of entry into the Stormwater Management Services Agreement;
 - (b) **Effective date:** the effective date for the Company to provide any Stormwater Management Services will be determined based on the Company having the capability (whether to be created prior to the effective date or otherwise) to provide the requisite services. This date will be negotiated as between the Chief Executive of the Company and the Chief Executive of the Shareholding Council wishing to enter into such an agreement with the Company;
 - (c) **Costs:** the Company will be entitled to charge for services based on:
 - (i) direct costs incurred in providing the service (including in respect of expenditure needed to ensure the Company has the capability to provide the services);
 - (ii) apportionment of indirect costs in providing the service; and
 - (iii) a risk margin of no more than 8%. The same margin will be applied across all Stormwater Management Services Agreements; and
 - (d) **Payment terms:** the relevant payment terms must ensure the Company is in funds to deliver the requisite services.

11. STATEMENT OF EXPECTATIONS

- 11.1 **Preparation:** The Shareholding Councils 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.
- 11.2 **Timing:** The Shareholding Councils agree all Statements of Expectations will be agreed and provided to the Company by the date ("**SoE Due Date**") which is no later than six months before the due date for the Company's Water Services Strategy.
- 11.3 **Process:** Unless the Shareholding Councils otherwise agree, or an alternative process is provided for in the LG(WS) Act (in which case that alternative process will be followed), the Shareholder Representative Forum will take the following steps to ensure clause 11.2 is complied with:

- (a) **Agreement with Board:** Within 6 months of the Company being incorporated, the Establishment Board will confirm the date on which its first Water Services Strategy will be prepared, being no later than 1 July 2027 (as required under the transitional provisions of the LG(WS) Act).
- (b) **Initial Discussion and Engagement:**
 - (i) No later than 11 months before the SoE Due Date, the Chair of the Shareholder Representative Forum will ensure that a meeting of the Shareholder Representative Forum is scheduled on a date that is no later than 9 months before the SoE Due Date. At least 8 weeks' notice of this meeting will be given. The Board Chair should also be issued with an invite to this meeting and have access to all papers shared with the SRF in preparation for the same.
 - (ii) Each Shareholder Representative Forum member (supported by the Chief Executive of their respective organisation) will be responsible for engaging with their appointing council in advance of the meeting and preparing a summary of expectations on the strategic direction for the Company (having regard to the contents of Schedule 7). Each Shareholder Representative Forum member will be expected to represent the overall expectations their Shareholding Council wishes to have addressed in the Statement of Expectations at the scheduled meeting.
- (c) **Draft Development:**
 - (i) Following the meeting referred to in clause (b), the Company will provide administrative support to the Shareholder Representative Forum in relation to the preparation of a draft Statement of Expectations. The initial draft will capture the output from the initial discussion and engagement (and potentially other relevant stakeholders).
 - (ii) The draft Statement of Expectations should clearly outline all matters set out in Schedule 7 and will be circulated to the Shareholder Representative Forum members (and the Board chair) no later than 6 months before the SoE Due Date.
- (d) **Review and Negotiation:**
 - (i) No later than four months before the SoE Due Date:
 - (aa) the draft Statement of Expectations will be reviewed by the Shareholder Representative Forum members; and
 - (bb) feedback and comments will be provided. This may include feedback and comments from the Board.
 - (ii) A further draft of the Statement of Expectations will be created and shared again with the Board for feedback no later than three months before the SoE Due Date.

(e) **Finalisation and Agreement:** No later than one month before the SoE Due Date:

- (i) the Shareholder Representative Forum will convene to discuss and agree the feedback received from the Board; and
- (ii) once the draft Statement of Expectations has been reviewed, it will be approved by the Shareholder Representative Forum by consensus. In the absence of consensus being achieved, the Statement of Expectations will be voted on as a Reserved Matter in accordance with the voting requirements for the applicable Reserved Matter Period.

11.4 **Publication:** The Shareholder Representative Forum will ensure that the process set out in, or agreed pursuant to, clause 11.3, is published on the website of one or more of the Shareholding Councils in accordance with the LG(WS) Act.

11.5 **Substance:** 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 and Schedule 11.

11.6 **Circulation:** No later than the period set out in Schedule 1 before the publication date, or an alternative date agreed by the Shareholding Councils, the agreed Statement of Expectations will be circulated to the Chairperson of the Board, the Chief Executive of the Company and the Shareholders Representative Forum.

11.7 **Compliance:** The Board must have regard to the contents of the Statement of Expectations when setting the Water Services Strategy and is accountable to the Shareholding Councils for this.

11.8 **Amendment or substitution:** The Shareholding Councils may, in accordance with the applicable decision-making thresholds set out in Schedule 8, decide at any time (but no later than 3 months before the next Water Services Strategy is due), or on application of the Board, to amend, revoke or substitute the Shareholding Councils' Statement of Expectations. Before making a decision in relation to the amendment or revocation of a Statement of Expectations, the Shareholding Councils (acting through the Shareholder Representative Forum), must consult with the Board.

12. ISSUE OF STAGE 2 SHARES

12.1 **Timing:** On the Completion Date of each Transfer Agreement, the Company will issue Stage 2 Shares to the relevant Shareholding Council, to be held by that Shareholding Council on the terms set out in Schedule 6.

12.2 **Principle:** The Shareholding Councils have agreed that the number of shares, in the absence of consensus, determine the voting rights of a Shareholder. As voting rights are exercised to inform the direction of the Company and are exercised for the benefit of communities to whom the Transferred Water Services are provided, the underlying principle for share allocation of Stage 2 Shares is that it is based on the Total Water Connections in the Shareholding Council's Service Area.

12.3 **Stage 2 Share issue:** The issue of Stage 2 Shares will be determined in the following manner:

- (a) The Company will issue Stage 2 Shares to the Shareholding Council(s) that transfer its/their water services business to the Company on the Operational Date, with the number of such shares to be calculated as one share for every 1,000 Total Water Connections (rounded up) within the relevant Shareholding Council's Service Area on the date of issue;
 - (b) The Company will issue all subsequent Stage 2 Shares:
 - (i) based on one share for every 1,000 Total Water Connections (rounded up) within the Service Area of the incoming Shareholding Councils on their applicable Completion Date; and
 - (ii) each share issue under clause 12.3(b)(i) will trigger a review of the existing Stage 2 Shares held by Stage 2 Shareholders, with further Stage 2 Shares to be issued to reflect any increase in the Total Water Connections in the Service Area for any of the Stage 2 Shareholders. Any decreases in the number of Total Water Connections will be ignored and will not result in a reduction of Stage 2 Shares.
 - (c) To ensure the allocation of Stage 2 Shares reflects the Total Water Connections across the applicable Shareholding Councils' Service Areas, and are adjusted to reflect material changes in a Shareholding Council's Service Area (whether due to population growth, boundary changes or other changes), the Company will undertake a five-yearly review of connections, with the first review occurring five years after the Operational Date ("**Stage 2 Shares Review**"). This requirement to carry out a Stage 2 Shares Review can be waived by Special Majority Resolution of Stage 2 Shareholders.
 - (d) If there has been a material change in the Total Water Connections in the Service Areas of two or more Shareholding Councils, including due to an amalgamation affecting an existing Shareholding Council or a change to the Service Area boundary, then the Shareholding Councils can agree by Special Majority Resolution to undertake a Stage 2 Shares Review at a time in addition to the five yearly reviews under clause 12.3(c).
- 12.4 **Waiver:** Shareholding Councils waive any pre-emptive rights in respect of the issue of Stage 2 Shares to an existing Shareholding Council where the Stage 2 Shares are issued in accordance with this clause 12.

13. ADMISSION OF NEW SHAREHOLDERS

- 13.1 **Principle:** While the intention of Shareholding Councils is to create an entity for the collective benefit, this needs to be balanced with the need to enable the Company to focus on developing the processes that will achieve the anticipated efficiencies and safely transition the Transferred Water Services of existing Shareholding Councils into the Company.
- 13.2 **No issue of Stage 2 Shares prior to 1 December 2027:** No Stage 2 Shares will be issued (other than those already committed to under this agreement) before 1 December 2027 unless a Special Majority Resolution to the contrary is passed at the Shareholder Representative Forum.

- 13.3 **Reserved Matter:** Other than in respect of the Stage 1 Shareholders becoming Stage 2 Shareholders in accordance with this agreement and a Transfer Agreement, the admission of new Stage 2 Shareholders, new shareholders, and any issue of Shares, will be a Reserved Matter and subject to the approval of existing Shareholding Councils in accordance with clause 6.4 and the relevant Reserved Matter Period set out in Schedule 8.
- 13.4 **New shareholders:** Any application by any local or regional authority to become a Shareholding Council must be supported by a formal resolution from the council submitting the application. The Board will put a proposal to the Shareholding Councils via the Shareholder Representative Forum seeking approval to admit a new shareholder.
- 13.5 **New shareholder proposal:** The proposal in clause 13.4 must include:
- (a) an independent assessment of the proposed incoming shareholders' assets and liabilities relating to the proposed Transferred Water Services of the proposed incoming shareholder;
 - (b) whether there is any underinvestment relating to the proposed Transferred Water Services of the proposed incoming shareholder that needs to be addressed either prior to or immediately after the proposed transfer for the provision of water services to be compliant with regulations;
 - (c) financial implications for the Company if the council is admitted (including the projected impact on the borrowing capacity of the Company) and any counterproposal that is recommended;
 - (d) conditions of entry that will apply, including the financial entry contribution to be made by the proposed incoming shareholder to the Company which will be equitable and take into account the upfront monetary and time investment made by the Shareholding Councils in establishing the Company. Unless otherwise approved by Special Majority Resolution, the entry contribution will be no less than the amount calculated as follows (allowing for cost of capital):

$$\left[\frac{(A + B)}{(C)} \right] \times (D)$$

where:

A is the amount of a contribution towards the value of the intellectual property built up by the Company as determined by the Shareholding Councils;

B is the cost of establishment of the Company (including the Establishment Costs and Establishment Funding);

C is the current Total Water Connections to which the Company provides water services immediately prior to the proposed incoming shareholder becoming a shareholder (rounded up to the nearest 1000); and

D is the number of Total Water Connections in the Service Area of the proposed incoming shareholder (rounded up to the nearest 1000);

- (e) likely shares to be issued to incoming shareholder and impact on existing shareholders. The number of shares that will be issued to the incoming shareholder will be determined by the same Stage 2 Share issue methodology specified in clause 12; and
 - (f) a recommendation in relation to the timing and transition of the proposed new shareholder which ensures any risk to the safe transition of existing Shareholders or operations of the Company is fully mitigated and any other matters the Board considers Shareholding Councils should have regard to.
- 13.6 **Costs:** The applicant shareholder will be required to meet the cost incurred by the Board in preparing the above proposal.
- 13.7 **Terms for accession:** If the proposal is approved, the incoming shareholder will be required to:
 - (a) accede to this agreement on existing terms;
 - (b) pay the entry contribution to the Company agreed by Shareholding Councils; and
 - (c) comply with any further conditions of entry established by the Board and approved by existing Shareholding Councils.
- 13.8 **Clauses not to apply:** For the avoidance of doubt, clauses 13.3 to 13.7 do not apply to the admission of Taupō DC as a Stage 2 Shareholder pursuant to a Transfer Agreement entered into by Taupō DC and the Company while Taupō DC still held Stage 1 Shares.
- 14. SHARE SALE, FURTHER ISSUE, AMALGAMATION AND VALUATION**
- 14.1 **No sale:** No Shareholding Council 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.
- 14.2 **No Security Interest:** A Shareholding Council must not grant a Security Interest over any of its Shares.
- 14.3 **Share issue:** Subject to approval of the Shareholding Councils in accordance with clause 6.4 and the commitment to issue Stage 2 Shares on the Completion Date of each Shareholding Council's Transfer Agreement, the Board may issue Shares in accordance with the Constitution and this agreement.
- 14.4 **Amalgamation of Local Authorities:** In the event of an amalgamation or any other change in the governance structure of a Shareholding Council, the Shareholding Councils will meet and discuss the effect of the amalgamation on the shareholding structure of the Company and will exercise their voting rights under clause 12.3(d) for a Stage 2 Share Review to ensure that the shareholding percentages for the Stage 2 Shares reflect the number of connections in the Service Area of each Shareholding Council prior to amalgamation, and the aggregate total post-amalgamation.

15. TERM AND TERMINATION

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

- (a) in respect of a particular Shareholding Council, that Shareholding Council no longer holds any Shares;
- (b) only one Shareholding Council owns all Shares;
- (c) none of the Shareholding Councils hold Shares; or
- (d) the date on which the Company is liquidated or otherwise wound-up.

16. CONSEQUENCES OF TERMINATION

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

16.2 **Survival:** Termination of this agreement will not affect the rights and obligations of the Shareholding Councils set out in clauses 1, 16, 19 and 21 which are intended to survive the termination of this agreement.

17. SUSPENSION OF RIGHTS

17.1 **Consequences:** If an Event of Default occurs in respect of a Shareholding Council (the "**Defaulting Shareholder**") the Non-Defaulting Shareholders may, while that Event of Default continues, by notice in writing to the Defaulting Shareholder in accordance with clause 17.2, require that the Defaulting Shareholder is suspended as follows:

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

17.2 **Non-Defaulting Shareholder:** For the purposes of clause 17.1:

- (a) "Non-Defaulting Shareholders" means all Shareholding Councils which are not the Defaulting Shareholder; and
- (b) any notice which may be given by the Non-Defaulting Shareholders under clause 17.1 may be given by a Shareholding Council or Shareholding Councils which holds or hold more than half of the Shares held by all Non-Defaulting Shareholders.

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

- (a) shall be paid at the rate set out in Schedule 1;
- (b) shall be paid by instalments at intervals of ten Business Days from the Due Date; and
- (c) shall be calculated on a daily basis from and including the Due Date until the unpaid amount is paid in full.

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

17.4 **Other remedies:** Clauses 17.1 and 17.3 are without prejudice to any other right, power or remedy under this agreement, at law, or otherwise, that any Shareholding Council has in respect of a default by any other Shareholding Council.

18. DISPUTE RESOLUTION

18.1 **Clause to apply:** Any dispute arising between the parties in connection with this agreement (including in respect of a matter raised in the Shareholder Representative Forum) must be determined in accordance with this clause 18.

18.2 **Notice in writing:** If a Shareholding Council claims that a dispute has arisen, that Shareholding Council must give written notice ("**Dispute Notice**") to all of the other Shareholding Councils in accordance with clause 20. The Dispute Notice must specify the nature of the dispute.

18.3 **Interested Shareholding Councils:** At any time following receipt of the Dispute Notice, a Transferring Shareholding Council may, where they are not directly involved in the dispute, provide notice to the other Shareholding Councils:

- (a) that they are interested in the subject matter of the dispute, in which case they (along with the Shareholding Councils which are directly involved in the dispute) will be considered to be "**Interested Shareholding Councils**"; and
- (b) where they have previously given notice under sub-clause (a), that they are no longer interested in the dispute, in which case, that Shareholding Council will not or no longer be considered to be an Interested Shareholding Council.

18.4 **Negotiation:**

- (a) On receipt of a notice delivered in accordance with clause 18.2 and before any Shareholding Council may refer a dispute to mediation, the SRF Representatives of the Interested Shareholding Councils must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
- (b) If any SRF Representative considers that the dispute is not being resolved in a timely manner, such SRF Representative may serve written notice on the Interested Shareholding Councils' SRF Representatives to escalate the dispute to

the Mayors or equivalent (where the SRF Representatives are not themselves the Mayor or equivalent) of the Interested Shareholding Councils for resolution.

- (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the Interested Shareholding Councils) of the date of the notice referred to in clause 18.4(b), any SRF Representative of the Interested Shareholding Councils may submit the dispute to mediation.

18.5 **Mediation:**

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

18.6 **Arbitration:**

- (a) If the dispute has not been resolved within 40 Business Days (or within such other period as agreed by the Interested Shareholding Councils) of the dispute being referred to mediation, any Interested Shareholding Council (the "**Initiating Party**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other Interested Shareholding Councils (together with the Initiating Party, the "**Disputing Parties**") for final resolution in accordance with the provisions of this clause 18.6 and in accordance with the provisions of the Rules of Arbitration of the New Zealand Dispute Resolution Centre, as amended or modified from time to time ("**NZDRC Rules**").
- (b) The arbitral panel shall consist of one arbitrator. The arbitrator will be appointed by the agreement of the Disputing Parties or, failing agreement within 10 Business Days of the date of the Arbitration Notice, in accordance with the NZDRC Rules.
- (c) The seat of arbitration shall be as set out in Schedule 1 and the arbitration shall be conducted in the English language.
- (d) The award of the arbitration shall be in writing and must include reasons for the decision.
- (e) The award of the arbitration shall be final and binding on the Disputing Parties. No Disputing Party may appeal to the High Court under Clause 5 of the Second

Schedule of the Arbitration Act 1996 on any question of law arising out of an award.

- (f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair, with reference to which of the Disputing Parties are only Interested Shareholding Councils.
- (g) Neither the existence of any dispute nor the fact that any arbitration is pending hereunder shall relieve any of the parties of their respective obligations under this agreement.

18.7 **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.

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

18.9 **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.

19. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS

19.1 **Confidentiality:** Each party must keep confidential the Confidential Information, and must not disclose or permit the disclosure of such Confidential Information to any other person. If a party becomes aware of a breach of this obligation, that party will immediately notify the other parties.

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

- (a) the other parties have consented to the disclosure of the relevant Confidential Information;
- (b) the disclosure is specifically contemplated and permitted by this agreement;
- (c) the disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this agreement;
- (d) the disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this agreement;
- (e) the disclosure is required by a court or governmental or administrative authority; or
- (f) the disclosure is required by applicable law or regulation, including under the Local Government Official Information and Meetings Act 1987.

19.3 **Public announcements and media releases:** Each Shareholding Council agrees that it will not make any public announcements or issue media releases in connection with, or on behalf of, the other Shareholding Councils or the Company in relation to the Company or Water Services, except with the written consent of the other Shareholding Councils. Nothing in this provision shall prohibit or restrict a Shareholding Council from making a public

announcements or media releases in connection with the Shareholding Council's own involvement with, or policies in relation to, the Company.

20. NOTICES

20.1 **Giving notices:** Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in Schedule 1.
- (b) Emailed to that party at its email address and marked for the attention of the representative set out in Schedule 1.

20.2 **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.

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

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, five Business Days after it is posted.
- (c) 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.

21. GENERAL

21.1 **No partnership, joint venture:** Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between any of the Shareholding Councils, and a Shareholding Council may not make, or allow to be made, any representation that any such relationship exists between any of the Shareholding Council. A Shareholding Council shall not have authority to act for, or to incur any obligation on behalf of, any other Shareholding Council, except as expressly provided for in this agreement.

21.2 **No privity:** Other than as expressly provided for in this agreement, this agreement is not intended to confer a benefit on any person or class of persons who is not a party to it.

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

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

- (a) an original; or
- (b) a photocopy; or
- (c) an electronic copy;

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

- 21.5 **Entire agreement:** This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written agreement or anything said or done by or on behalf of another party before this agreement was executed.
- 21.6 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.
- 21.7 **Further assurance:** Each Shareholding Council 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.
- 21.8 **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.
- 21.9 **Assignments and transfer:** A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties.
- 21.10 **Costs:** Except as otherwise set out in this agreement, each party must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.
- 21.11 **Waivers:**
- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the Shareholding 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.
 - (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.
- 21.12 **Governing law:** This agreement is governed by the laws of New Zealand.

SCHEDULE 3 – ESTABLISHMENT STRATEGY

1. Purpose

1.1. The purpose of this strategy is to:

- a) set the overall direction to achieve the formation of an operational Company by 1 July 2026 and achieve this through the Establishment Period; and
- b) inform the development of the Establishment Plan.

2. Definitions

2.1. In this strategy document, the following definitions apply:

Agreed Transfer Date: has the meaning set out in the Shareholders' Agreement.

Alternative Analysis: means the analysis of 'existing arrangements' that was undertaken by a Shareholding Council to meet the requirements of the Local Government (Water Services Preliminary Arrangements) Act 2024 before identifying Waikato Water Done Well as the preferred option.

Company: means Waikato Waters Limited.

Day 0: means the day on which the Company is incorporated.

Day 1: means the Operational Date.

Establishment Funding: means the budgeted costs approved by the Transferring Shareholding Councils (through the Shareholder Representative Forum) to finance the implementation of the Establishment Plan.

Establishment Period: means the period from Day 0 to Day 1.

Establishment Plan: means the detailed programme of work to get to Day 1 which will be delivered to the Board of the Company (once appointed) to implement.

Major Decisions Framework: means the framework in relation to Transferring Shareholding Council decision making that applies from Day 0 until that Transferring Shareholding Council's Agreed Transfer Date and **Major Decisions** has the meaning set out in that framework.

Operational Date: has the meaning set out in the Shareholders' Agreement.

Relevant Long-Term Plan: means the long-term plan(s) and/or annual plan(s) of a Shareholding Council that was in place immediately prior to the signing of the Shareholder's Agreement.

Shareholders' Agreement: means the agreement entered between the Shareholding Councils as shareholders of the Company and to which this Establishment Strategy is attached as a schedule.

Strategic Outcomes: has the meaning set out in the Shareholders' Agreement.

Transfer Agreement: has the meaning set out in the Shareholders' Agreement.

Transferring Shareholding Council: has the meaning set out in the Shareholders' Agreement.

3. Establishment objective

- 3.1. The establishment objective is to safely transfer responsibility and authority for drinking water and wastewater services from each Transferring Shareholding Council into the Company on each Agreed Transfer Date.
- 3.2. The objective will be achieved once each Transferring Shareholding Council has successfully transferred the relevant people, processes, assets and systems required to deliver water services into the Company in a manner that aligns with the establishment delivery principles set out in clause 5.1 below.

4. Content

- 4.1. The content of this document includes:

- a) **Strategy for establishing an operational Company by 1 July 2026:** planning is informed by agreed principles for delivery for the first Transferring Shareholding Councils transitioning into the Company.
- b) **Strategy for accommodating different Transferring Shareholding Council timelines:** sequencing of Transferring Shareholding Councils' Agreed Transfer Dates and staged migration.
- c) **Strategy for developing the establishment plan:** the agreed approach to establishment, including:
 - (i) the functions the Company must have in place by Day 1; and
 - (ii) mechanisms to implement the transfer (both for those transferring on Day 1 and for those with a later Agreed Transfer Date).
- d) **Transferring Shareholding Council commitments to establishment:** in the period between Day 0 and their Agreed Transfer Date.
- e) **Strategic position in relation to pricing and prioritisation:** the initial expectations of Transferring Shareholding Councils regarding pricing and prioritisation both on and immediately after transition by the relevant Transferring Shareholding Council into the Company.

5. Establish an operational company by Day 1

- 5.1. The agreed establishment delivery principles that inform establishment planning are:
 - a) The Company is set up for success;
 - b) Create certainty for our people;
 - c) Do just enough for Day 1, minimise changes where possible;
 - d) Key staff for the day-to-day running and maintenance of an asset transfer no later than the asset itself;
 - e) Minimise impact on and risk to the customer;
 - f) Services to the customer are at least the same (no less) on day of transfer;
 - g) Existing relationships and obligations (whether statutory, contractual or otherwise) to partners, in particular hapū and iwi are honored;
 - h) To ensure clarity on the interface services between each Transferring Shareholding Council and the Company on day of transfer;

- i) Leverage existing IT/system capability, where possible; and
- j) Low risk approach is preferred.

6. Accommodate different timelines

- 6.1. Transferring Shareholding Councils have agreed that they will transfer their business into the Company in a staged manner. The Agreed Transfer Date for each Transferring Shareholding Council is as follows (listed chronologically):

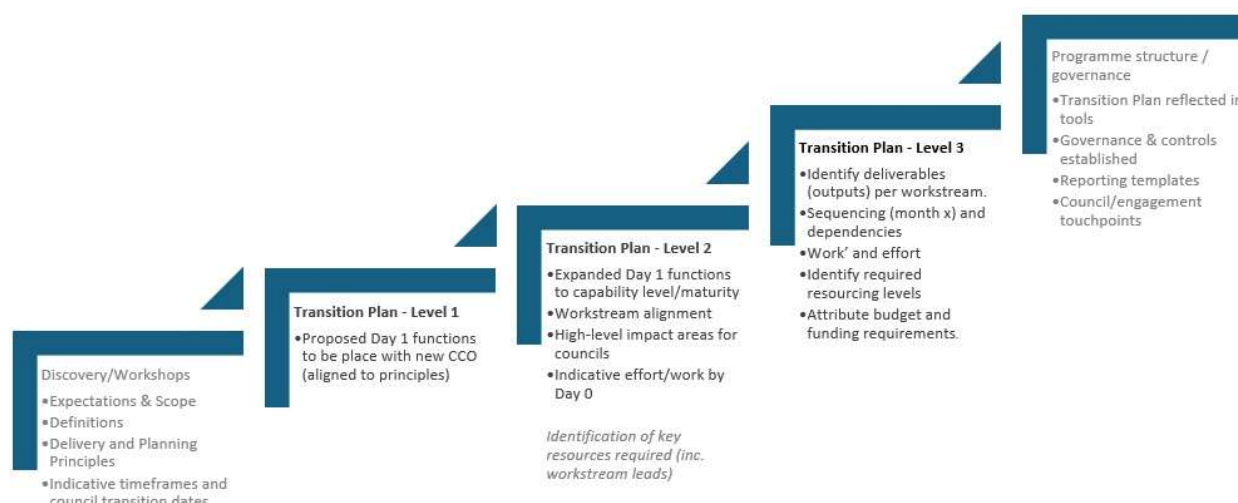
Shareholding Council	Agreed Transfer Date
South Waikato District Council	1 July 2026
Waitomo District Council	1 July 2026
Waipā District Council	1 July 2026
Matamata-Piako District Council	1 October 2026
Ōtorohanga District Council	1 July 2027
Hauraki District Council	1 July 2027

7. Delivering the establishment plan

- 7.1. The programme team is mandated to develop an Establishment Plan based on the delivery principles that will inform activity during the Establishment Period.

Work to be undertaken for Day 1

- 7.2. Planning has been orientated around functions within a (typical) water services company, which in turn will be organised into workstreams. This approach is consistent with the expected technical nature of the Establishment Plan and specialist resources required. Planning will leverage subject matter experts from Shareholding Councils.
- 7.3. The way the Establishment Plan is being developed is set out below. As planning develops and evolves, the programme team will continue to socialise and gain feedback.



Mechanisms to implement the transfer

- 7.4. In accordance with the Shareholders' Agreement, each Transferring Shareholding Council will enter into a Transfer Agreement and will, at a high level:
- a) **Responsibility for water services:** confirm responsibility and authority for drinking water and wastewater is transferring to the Company (with the Transferring Shareholding Councils holding the Board to account);
 - b) **Assets, liabilities and contracts:** specify all matters transferring, including the right to revenue for water charges collected by the Transferring Shareholding Council that relate to the period after the Transfer Agreement is effected; and
 - c) **Staff:** Existing staff and those that will transition are critical to get right. The approach proposed will be in accordance with the legislative transitional provisions but will also leverage off work carried out in the context of the last water services reform. Retention of staff is a key strategic objective and therefore the people and capability workstream must ensure regular and ongoing communications with staff (in a manner pre-agreed with each Transferring Shareholding Council).

8. Shareholders' commitments

- 8.1. To implement the strategy, and without limiting anything stated in the Shareholders' Agreement or the Transfer Agreement, during the Establishment Period each Transferring Shareholding Council will be required to, in accordance with clause 6 of Schedule 2 of the Shareholders' Agreement:
- a) **Financing:** contribute towards the financing of the Establishment Funding, noting that the Establishment Funding will ultimately be passed to the Company; and
 - b) **Business continuity:** until that Transferring Shareholding Council's Agreed Transfer Date, operate and conduct its water services business in the normal course as forecast under the Relevant Long-Term Plan (unless agreed otherwise with the Company) and adhere to the Major Decisions Framework.

9. Expectations pricing and prioritisation

Pricing

- 9.1. The strategy is that the Company will implement pricing from Day 1 until the first water services strategy is adopted (no later than 1 July 2027) that achieves the following:
- a) maintains differential pricing across the districts of Transferring Shareholding Councils in the period immediately after establishment;
 - b) subject to ensuring that capital works can be undertaken as required by clause 9.2 below, charges for water no higher than that forecast by a Transferring Shareholding Council in its Relevant Long-Term Plan; and
 - c) billing continues in a manner consistent with how a Transferring Shareholding Council currently bills.

Prioritisation

- 9.2. From Day 1 until the first water services strategy is adopted, the strategy is that the capital works programme as set out in the Relevant Long-Term Plan of each Transferring Shareholding Council will inform the programme of work to be undertaken by the Company. This is subject to:
- a) the Company approving the business case for projects that are not in construction as at the Agreed Transfer Date; and
 - b) a need arising for the Company to invest in a critical asset within the Service Area of a Transferring Shareholding Council which was not included in the capital works programme. This extends to differences in the capital works programme set out in the Relevant Long-Term Plan and the approved water services delivery plan. Where this occurs, the capital works programme within that service area may be reprioritised in consultation with the relevant Transferring Shareholding Council.

SCHEDULE 4 – TERMS OF APPOINTMENT OF INITIAL DIRECTORS

Registration:

1. Each Initial Director listed in the application for registration of the Company acts as a director of the Company on the terms set out in this Schedule.

Term of Appointment:

2. The term of appointment is from the date of incorporation of the Company until such date as confirmed by the Shareholder Representative Forum in writing to be the effective date of appointment of the Chair of the Board of Directors (**Term**).
3. If, during the Term, an Initial Director no longer holds the office of Chief Executive in a Transferring Shareholding Council, he or she will be deemed to have resigned immediately as a director of the Company and the Company will appoint his or her replacement as an Initial Director.
4. The Initial Directors are not eligible for reappointment to the Board where such an appointment would be contrary to the requirements for a Water Organisation under the LG(WS) Act.

Termination:

5. The appointment will automatically terminate on expiry of the Term.

Duties and Responsibilities:

6. During the Term, the duties and responsibilities of the Initial Directors will be limited as:
 - a) the Company will not be operational; and
 - b) no Transfer Agreements (or other material transaction) will be entered into by the Company until such time as the Establishment Board is in place.
7. Notwithstanding the above, the Directors will:
 - a) ratify, and procure the Company enter into, this agreement;
 - b) in accordance with the Companies Act, act in the best interests of the Company. As it is in the best interests of the Shareholding Councils for the Company to be set up for success, the interests of the Shareholding Councils and the interest of the Company are considered to be aligned during the Term;
 - c) extend the term of, and/or enter into a new employment or contractual arrangement with, the Waikato Water Done Well programme director (or any replacement for the same) as appropriate to give effect to the approved Establishment Plan;
 - d) delegate authority to the Waikato Water Done Well programme director to enter into contracts to engage establishment team members and such other contracts as fall within the scope of the approved Establishment Plan;
 - e) continue to provide direction to the Waikato Water Done Well programme team charged with developing and implementing the Establishment Plan in accordance with the Establishment Strategy;
 - f) exercise reasonable care and diligence and comply with all applicable laws and regulations;

- g) ensure that the Shareholder Representative Forum is supported in:
 - i. the recruitment and appointment process for the Chair of the Board and wider Establishment Board; and
 - ii. approving the Establishment Budget and communicating this to each Transferring Shareholding Council (as defined in Schedule 3);
- h) ensure that each Transferring Shareholding Council is aware of and contributes its Establishment Funding Share to the Company no later than the agreed Establishment Funding Payment Dates; and
- i) provide governance oversight to the application of the Establishment Funding.

Remuneration and Expenses:

- 8. Each Initial Director also holds the office of Chief Executive in a Transferring Shareholding Council. No further remuneration will be paid to the Initial Directors.
- 9. Each Transferring Shareholding Council will be responsible for reimbursing their Initial Director any expenses incurred in carrying on activities as a director.

Indemnity:

- 10. Each Transferring Shareholding Council will extend its Directors and Officers Liability insurance (or equivalent policy) to cover the activities of its Chief Executive as an Initial Director during the Term. Each Transferring Shareholding Council will bear their own costs should any costs be incurred because of this extension.

Confidentiality and Conflicts of Interest:

- 11. Each Initial Director will:
 - a) maintain the confidentiality of company information; and
 - b) disclose any potential conflicts of interest (noting that their role as a Chief Executive of a Transferring Shareholding Council is not considered to be a conflict during the Term).

SCHEDULE 5 – TERMS OF STAGE 1 SHARES

Part A – Terms of Stage 1 Shares held by a Shareholding Council with an Agreed Transfer Date.

1. **Transfer:** Stage 1 Shares cannot be sold or transferred other than as expressly provided for in the Shareholders' Agreement.
2. **Voting rights:** Each Stage 1 Share carries one vote until commencement of the Reserved Matter Period 2 (as defined in the Shareholders' Agreement), at which point Stage 1 Shares become non-voting.
3. **Dividend:** In accordance with the Constitution, the Stage 1 Shares do not carry any right to a dividend or distribution.
4. **Cancellation:** Stage 1 Shares will automatically be cancelled (for no consideration) on the earlier of:
 - a) A shareholder no longer being party to the Shareholders' Agreement; and
 - b) Stage 2 Shares being issued to the relevant Stage 1 Shareholder;

Part B – Terms of Stage 1 Shares held by a Shareholding Council without an Agreed Transfer Date (this being Taupō DC)

1. **Transfer:** Stage 1 Shares cannot be sold or transferred other than as expressly provided for in the Shareholders' Agreement.
2. **Voting rights:** Stage 1 Shares held by a Shareholding Council that does not have an Agreed Transfer Date are non-voting at all times.
3. **Dividend:** In accordance with the Constitution, the Stage 1 Shares do not carry any right to a dividend or distribution (including on winding up of the Company).
4. **Cancellation:** Stage 1 Shares will automatically be cancelled (for no consideration) on the earlier of:
 - a) a shareholder no longer being party to the Shareholders' Agreement; or
 - b) the shareholder not satisfying Special Condition 1 and Special Condition 2 (as applicable) set out below.
5. **Special Condition 1:**
 - a) Taupō DC and the Company having entered into a service level framework agreement by 1 July 2026 pursuant to which the parties agree:
 - i. the scope of services the Company can offer Taupō DC;
 - ii. the timeframe from when services will be provided ("**Services Effective Date**") (not being a date later than 1 July 2027); and
 - iii. the pricing methodology that will apply².

² including any minimum monetary threshold for the provision of services and noting that the Company will be entitled to include a management fee as part of the services delivery

- b) Where the requirements of sub-clause (a) have been met, the relevant Stage 1 Shares are held conditional on the shareholder remaining a party to, and complying with the terms of, the service level framework agreement.

6. Special Condition 2: By 1 July 2027:

- a) Taupō DC having engaged the Company to provide services under the services level framework agreement entered into under Special Condition 1 above up to any pre-agreed monetary value; and
- b) the Company (acting reasonably) being satisfied that Taupō DC has undertaken a review of its water services model to ascertain whether Taupō DC should transfer responsibility for water services to the Company within a specific timeframe before 1 July 2031. If, following the review, Taupō DC decides:
 - i. to enter into a Transfer Agreement with the Company (with an intended completion date of no later than 1 July 2031), then:
 - a. Taupō DC will fall within the definition of a Transferring Shareholding Council within the meaning of the Shareholders' Agreement and all consequent provisions will apply to it;
 - b. the Transfer Agreement will be agreed in accordance with the Shareholders' Agreement;
 - c. Taupō DC will continue as a Stage 1 Shareholder until the Transfer Agreement is completed; and
 - d. the provisions of the Major Decisions framework attached to the Shareholders' Agreement will apply to future decisions of Taupō DC (subject to such amendments as recommended by the Board); or
 - ii. it does not wish to enter into a Transfer Agreement with the Company then Taupō DC will continue to be a Stage 1 Shareholder subject to Special Condition 3 below (all other conditions for being a shareholder remaining satisfied).

7. Special Condition 3:

- a) By 1 July 2030, and as part of the preparation of the water services strategy that will apply to its in-house business unit from 1 July 2030, Taupō DC will in good faith undertake a further review of its water services delivery model.
- b) If the decision is made to enter into a Transfer Agreement with the Company (with a completion date of no later than 1 July 2031), the provisions set out in sub-paragraph (i) of Special Condition 2 above apply and Taupō DC will continue as a Stage 1 Shareholder until the Transfer Agreement is completed.
- c) If the decision is made not to enter into a Transfer Agreement, or no decision is made by 1 July 2030:
 - i. Taupō DC will cease to be a Stage 1 Shareholder from the earlier of the date of the relevant decision or from either 1 July 2030 or a negotiated earlier termination date, at which point its Stage 1 shares will be cancelled for no consideration; and
 - ii. Taupō DC is entitled to continue to receive services in accordance with the terms of the relevant services level framework agreement, as may be amended.

SCHEDULE 6 – TERMS OF STAGE 2 SHARES

1. **Transfer:** Stage 2 Shares cannot be sold or transferred other than as expressly provided for in the Constitution and/or the Shareholders' Agreement.
2. **Voting rights:** Each Stage 2 Share carries one vote.
3. **Dividend:** In accordance with the Constitution, the Stage 2 Shares do not carry any right to a dividend or distribution.
4. **Conditions:** Each Stage 2 Shareholder must be a party to the Shareholders' Agreement.
5. **Review:** Allocation of Stage 2 Shares will be reviewed in accordance with clauses 12.3(c) and 12.3(d) of the Shareholders' Agreement.

SCHEDULE 7 – SHAREHOLDER REPRESENTATIVE FORUM – SRF TERMS OF REFERENCE

1. Introduction

- 1.1 Waikato Waters Limited is a council-controlled organisation ("**Company**") jointly established by Shareholding Councils for the purpose of providing water services to their communities. The relationship between the Shareholding Councils is governed by the Shareholders' Agreement. Pursuant to that agreement, the shareholders have agreed to form the Shareholder Representative Forum ("**SRF**") as a committee of shareholders.

2. Purpose

- 2.1. The purpose of the SRF is to support the coordination of multiple council interests and operate as the liaison between the Company and the Shareholding Councils and between the Shareholding Councils themselves.
- 2.2. In particular, the SRF will:
 - a) oversee and provide direction to the Board on behalf of the Shareholding Councils; and
 - b) provide a forum for representatives of Shareholding Councils to meet, discuss and co-ordinate decision making on relevant issues and, through their representatives, exercise their powers in respect of the Company.

3. Membership

- 3.1. Each Shareholding Council will appoint one elected member as its representative to the SRF ("**SRF Representative**") (by resolution passed in accordance with their respective council decision-making frameworks) by providing written notice to the SRF and the other Shareholding Councils (together with a copy of the relevant resolution).
- 3.2. The SRF Representative will attend SRF meetings convened in accordance with these terms of reference.
- 3.3. Unless decided otherwise by a Shareholding Council, and notified to the SRF in writing, the SRF Representative will be its Mayor.
- 3.4. In accordance with the Shareholders' Agreement, each Shareholding Council (by resolution passed in accordance with their respective council decision-making frameworks):
 - a) will appoint an alternate representative (being an elected member) by providing written notice to the SRF and the other Shareholding Councils (together with a copy of the relevant resolution);
 - b) can replace the SRF Representative or alternate at any time by providing written notice to the SRF and the other Shareholding Councils (together with a copy of the relevant resolution); and
 - c) will ensure that its appointed SRF Representative or their alternate attends each meeting of the SRF.

4. Meetings and administration

- 4.1. **Chairperson:** The Chair and Deputy Chair of the SRF will be elected by the SRF once all SRF Representatives have been appointed, as a Reserved Matter at the first meeting where a quorum is achieved. The SRF may choose to appoint an independent Chair who, if so appointed, will take on the responsibilities of the Chair, but will not have a vote.
- 4.2. **Frequency of meetings:** The SRF will meet no less than once every six months, and more frequently:
 - a) where a meeting is called in accordance with clause 10 of the Constitution; or

- b) to meet the requirements of preparing the Statement of Expectations in the manner set out in the Shareholders' Agreement.
- 4.3. **Rules for meetings:** The following paragraphs of Schedule 1 to the Constitution will apply to all meetings of the SRF (whether convened by the Board or otherwise):
 - a) Clause 2 – Notice of meetings
 - b) Clause 3 – Methods of holding meetings
 - c) Clause 4 – Quorum
 - d) Clause 5 – Adjournment
 - e) Clause 6 – Voting
- 4.4. **Alternates:** The alternate appointed by a Shareholding Council may attend and vote at meetings of the SRF, but only in the event that the SRF Representative is unable to do so.
- 4.5. **Non-attendance:** If a SRF Representative or their alternate is not present at the number of consecutive SRF meetings set out in Schedule 1, that Shareholding Council will be required, on notice by any other Shareholding Council, to replace that Shareholding Council's appointed SRF Representative and alternate.
- 4.6. **Reimbursement of costs:** Each Shareholding Council will be responsible for reimbursing its representative on the SRF for any costs associated with that person's membership of the SRF.
- 4.7. **Administration:** Reports to be considered by the SRF may be submitted by any of the Shareholding Councils or the Company at least five business days before the next scheduled meeting.
- 4.8. **Secretariat:** Secretariat is to be provided by the Company as agreed between the Company and the SRF.
- 4.9. **Minor amendment:** These terms of reference may be amended at any time by consensus of the SRF, provided that the amendment is:
 - a) of a formal or technical nature;
 - b) made to correct a manifest error or inconsistency; or
 - c) necessary to comply with the provisions of any law and:
 - (i) the SRF has notified the Shareholding Councils of the proposed change at least 20 Business Days before the effective date of the amendment; and
 - (ii) no Shareholding Council has objected to the amendment by notice in writing given to the Company within that 20 Business Day period.
- 4.10. **Review:** The SRF will review these terms of reference annually and recommend any amendments (other than amendments made by the SRF in accordance with paragraph 4.9 above) to the Shareholding Councils, who may amend these terms of reference in accordance with clause 21.8.

5. Decision-making

- 5.1. In accordance with the Shareholders' Agreement, the SRF will make decisions in accordance with the principles set out in clause 6.2 in all matters.
- 5.2. When efforts to achieve consensus on a particular matter have failed (as determined by the Chairperson), the matter will be put to the vote in accordance with the decision-making framework set out in clause 6.4 of the Shareholders' Agreement.

- 5.3. 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.
- 5.4. SRF Representatives must attend SRF meetings equipped to cast votes on behalf of their councils at the relevant meeting. Decisions made by the SRF are binding on the Shareholding Councils.

6. Proposal with Iwi Chairs

- 6.1. In accordance with the Shareholders' Agreement, the SRF must promptly after its first meeting:
 - a) convene and agree a process for engaging with Iwi (as defined in the Shareholders' Agreement);
 - b) engage with the relevant Iwi Chairs to consider and agree a proposal for how Shareholding Councils can effectively partner with Iwi and with existing co-governance entities / authorities across the service area to achieve the agreed outcomes (as specified in the Shareholders' Agreement³); and
 - c) present the proposal to each of the Shareholding Councils for consideration and approval.

7. Delegated authority

- 7.1. Each Shareholding Council has delegated to its SRF Representative the responsibilities and powers in relation to the following matters:

A. Establishment matters

- a) Agreeing the establishment funding that Transferring Shareholding Councils will collectively finance up to the agreed capped amount.
- b) Recruitment, selection and appointment of the Chair of the Establishment Board and Establishment Directors.

B. Enduring matters

Strategic matters and priorities

- c) Oversee preparation of the Statement of Expectations (having received feedback and considered recommendations from each Shareholding Council and the Company).
- d) Approve the Statement of Expectations (including any proposed amendment, revocation or substitution as is permissible under the Shareholders' Agreement).

Reserved matters

- e) Receiving, considering and approving any or all Reserved Matters (as defined in the Shareholders' Agreement) that require shareholder decision making.

Board of Directors

- f) Recruitment, selection and appointment of the Chair of the Board and Directors.
- g) Approving a remuneration framework for the Board (which will apply also to the Establishment Board).
- h) Removal of any directors.
- i) Monitoring the performance of the board of the Company.

³ Refer to section 6.4 of Shareholders' Agreement and Schedule 8 which set out the matters over which the SRF can exercise decision making power.

Reporting and accountability

- j) Receiving and considering the half-yearly and annual reports of the Company.
- k) Receiving and considering such other information from the Company as the SRF may request on behalf of the shareholders and/or may receive from time to time.
- l) Undertaking performance and other monitoring of the Company.
- m) Considering and providing recommendations to the shareholding councils on proposals from the Company or any shareholding council.
- n) Providing co-ordinated feedback, and recommendations as needed, on any matters requested by the Company or any shareholding council, including each draft water services strategy.

Procedural

- o) 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.
- p) Providing recommendations to the Shareholders regarding changes to the Shareholders' Agreement and the constitution of the Company.
- q) Engaging with the Board in response to any requests for input into policy or procedural matters.

7.2. In the exercise, or anticipated exercise, of the delegated authorities set out above:

- a) any Shareholding Council may:
 - (i) obtain independent advice at the expense of that Shareholding Council; and/or
 - (ii) request the Board to obtain independent advice at the Company's expense; and
- b) if the Board fails to comply with a request under sub-paragraph (ii) above, the SRF may, with the approval of a unanimous resolution of the SRF, obtain independent advice at the Company's expense.

7.3. The SRF may further delegate its powers to a sub-committee of the SRF (and such sub-committee may also include persons other than SRF Representatives) on such terms as the SRF may determine by Special Resolution by Vote.

SCHEDULE 8 – RESERVED MATTERS

RESERVED MATTERS

Matter or transaction
Material transactions
"Major transactions" as that term is defined in the Companies Act.
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.
Any shareholder amending their Agreed Transfer Date so that it occurs earlier than otherwise agreed in the Establishment Strategy.
Any delegation by the SRF to a sub-committee.
The SRF obtaining independent advice in respect of the exercise, or anticipated exercise, of the delegated authorities of the SRF, at the Company's expense (unanimous).

RESERVED MATTER PERIOD 1

Reserved Matter	Level of Transferring Shareholding Council support (Stage 1 Shares held equally at this time, with one vote per Stage 1 Share)
"Major transactions", Companies Act	Special Resolution by Vote
Approving Statement of Expectations	Special Resolution by Number of those Shareholding Councils who have committed to an Agreed Transfer Date that is on or before 1 July 2028.
Appointment of Directors of the Board and the Chair and Deputy Chair of the SRF	Special Resolution by Vote
Any material change to the Company's business	Not permitted during Reserved Matter Period 1.
Any alteration to, or revocation of, the Constitution	Special Resolution by Vote
Any issue of Shares, or instrument that could result in issued Shares	Special Resolution by Vote

Any alteration of rights, privileges or conditions attaching to the Shares	Special Resolution by Vote
Any cancellation, buy-back or reduction of Shares (excluding Stage 1 shares which are cancelled in accordance with terms of issue)	Special Resolution by Vote
Any consolidation, division, or subdivision of Shares	Special Resolution by Vote
Any transaction by the Company relating to the Shares held by it (including giving financial assistance)	Special Resolution by Vote
Any arrangement, dissolution, reorganisation, liquidation, merger or amalgamation of the Company	Special Resolution by Vote
Any shareholder amending their Agreed Transfer Date so that it occurs earlier than otherwise agreed in the Establishment Strategy	Special Resolution by Vote
Any delegation by the SRF to a sub-committee	Special Resolution by Vote
The SRF obtaining independent advice in respect of the exercise, or anticipated exercise, of the delegated authorities of the SRF, at the Company's expense	Unanimous

RESERVED MATTER PERIOD 2

Reserved matter	Level of shareholder support Only Stage 2 Shareholders can vote (with one vote per Stage 2 Share), unless specified below
"Major transactions", Companies Act	Special Majority Resolution
Approving Statement of Expectations	Special Resolution by Number Stage 1 Shareholder participation: Any remaining Stage 1 Shareholder who has an Agreed Transfer Date will be entitled to vote and will count for the purposes of a Special Resolution by Number
Appointment of Directors of the Board and the Chair and Deputy Chair of the SRF	Special Resolution by Number
Five-year periodic review of Stage 2 Share allocation (decision to waive)	Special Majority Resolution
Any material change to the Company's business	Special Majority Resolution (and in accordance with legislation)
Any alteration to, or revocation of, the Constitution	Special Majority Resolution
Any issue of Shares, or instrument that could result in issued Shares	Special Majority Resolution
Any alteration of rights, privileges or conditions attaching to the Shares	Special Majority Resolution
Any cancellation, buy-back or reduction of Shares (excluding Stage 1 shares which are cancelled in accordance with terms of issue)	Special Majority Resolution
Any consolidation, division, or subdivision of Shares	Special Majority Resolution
Any transaction by the Company relating to the Shares held by it (including giving financial assistance)	Special Majority Resolution
Any arrangement, dissolution, reorganisation, liquidation, merger or amalgamation of the Company	Special Majority Resolution

Any shareholder amending their Agreed Transfer Date so that it occurs earlier than otherwise agreed in the Establishment Strategy	Special Majority Resolution
Any delegation by the SRF to a sub-committee	Special Resolution by Vote
The SRF obtaining independent advice in respect of the exercise, or anticipated exercise, of the delegated authorities of the SRF, at the Company's expense	Unanimous

SCHEDULE 9 – MAJOR DECISIONS

1. Purpose

To set out the framework that applies to Transferring Shareholding Council decision making during the period between the Incorporation Date and a Transferring Shareholding Council's Agreed Transfer Date.

2. Definitions

Terms in capitals in this framework document have the same meaning as set out in the Establishment Strategy in Schedule 3.

3. Scope of Framework

- 3.1. A Transferring Shareholding Council must continue to operate its water services during the Establishment Period (and until its Agreed Transfer Date where this is later) in a manner that ensures a no-harm approach to staff, customers, lwi partners, other stakeholders and to the future success of the Company.
- 3.2. Pragmatic steps need to be taken to ensure existing operations continue as seamlessly as possible and relationships are effectively managed and maintained as councils prepare to transfer their business to the Company, and the Company prepares to receive.
- 3.3. To this end, this Major Decisions Framework applies to major decisions that are proposed to be made by a Transferring Shareholding Council in the period from Day 0 and a Transferring Shareholding Council's Agreed Transfer Date. To the extent of any inconsistency between this framework and the terms of the Transfer Agreement (once effective), the terms of the Transfer Agreement will prevail.

4. Business as usual decisions

- 4.1. A proposed decision of a Transferring Shareholding Council is not a Major Decision for the purposes of this framework to the extent that it relates to the Transferring Shareholding Council's obligation to:
 - a) operate and conduct its water services business in the normal course in accordance with the business practices employed by the Transferring Shareholding Council as at the Incorporation Date;
 - b) continue to make such payments and discharge such obligations as is consistent with the timing and method of payment applied by the Transferring Shareholding Council in the 12-month period prior to the Shareholders' Agreement;
 - c) undertake all steps necessary to enter into a Transfer Agreement with the Company before its Agreed Transfer Date; and
 - d) complete an annual plan, long-term plan, amendment to a long-term plan during the period between the Incorporation Date and the Agreed Transfer Date where the decision does not reduce the forecast price increases for water charges set out in the Relevant Long-Term Plan (or the water services delivery plan submitted to DIA where the projected price increases are higher in that plan than in the Relevant Long-term Plan).

5. Major decisions

- 5.1. A proposed decision of a Transferring Shareholding Council will be considered a "**Major Decision**" if it relates to:

- a) a matter set out in section 4.1(d) above but does not align with the forecast price increases for water charges set out in the Relevant Long-Term Plan (or water services delivery plan where applicable);
- b) a policy the council is required to adopt under the Local Government Act 2002 and which relates to water services that are transferring to the Company;
- c) any new or amendment to a by-law that relates to water services;
- d) the purchase or disposal of strategic asset, other than in accordance with the Relevant Long-Term Plan. Strategic Assets refers to any interest in land that may have relevance to water services, any change to access to operational facilities or ownership of water services infrastructure assets;
- e) the undertaking of any capital works programme, other than in accordance with the Relevant Long-Term Plan;
- f) a material increase in the employment costs of Transferring Shareholding Council employees who primarily work in water services and who it is anticipated will be transferred to the Company (not being the Chief Executive or executive level employees of a Transferring Shareholding Council);
- g) entry into any loan or other financial transaction in relation to water services other than in accordance with the Relevant Long-Term Plan; and
- h) entry into or renewal of any contract (other than capital works contracts) that exceeds a period beyond 6 months after the Agreed Transfer Date.

6. Process for Major Decisions

6.1. Where a proposed decision is a Major Decision (as defined above):

- a) the Chief Executive of the Transferring Shareholding Council must engage with the Chief Executive of the Company (or if the appointment of the Company Chief Executive is pending, such person as nominated by the Directors of the Company) (**Company Representative**) in relation to the proposed decision;
- b) sufficient information should be provided to the Company Representative for them to understand the reasons for the proposed decision;
- c) the Company Representative is entitled to make recommendations / proposals in relation to the proposed decision, including providing detail of any negative impact the decision may have on the ability of the Company to carry on the water services business from the Agreed Transfer Date;
- d) the Transferring Shareholding Council must have regard to, and respond to, the recommendation / proposal from the Company Representative before making a formal decision; and
- e) following the decision being made, provide one-off or periodic reporting (as appropriate in the circumstances) to the Company on the decision that was made and the outcomes of that decision (including in compliance with the "no surprises" principle in clause 6.3(a)(iii)).

The above does not waive or alter any rights the Company may have under the terms of the Transfer Agreement or otherwise.

SCHEDULE 10– BOARD MATRIX OF SKILLS

Matrix of Skills

Each Director of the Company must have the skills, knowledge, or experience to:

- guide the Company, given the nature and scope of its activities; and
- contribute to the achievement of the objectives of the Company.

In making all Director appointments, the Shareholding Councils must ensure that all directors have the essential attributes and core competencies set out in the Institute of Directors Competency Framework and that the Board collectively has the attributes set out below.

Establishment Board appointments must place a particular emphasis on commercial acumen and systems to ensure effective governance oversight over the establishment and transition implementation.

COLLECTIVE BOARD ATTRIBUTES

		Establishment Board	Operational Board		
		At least one director	At least one director	Multiple directors	All directors
Candidates with the ability and willingness to:					
1.	Chair the Board	√	√		
2.	Participate fully in the life of the Board and on subcommittees as required	√			√
3.	Demonstrate the individual attributes outlined below	√			√
Relevant knowledge and experience in/of:					
4.	Governance and leadership experience	√			√
5.	Commercial strategic and business acumen (with experience to oversee commercial negotiations)	√		√	
6.	Board member suitable to chair the Finance and Assurance committee, likely with a Chartered Accountant or equivalent background		√		
7.	Relationship management skills and experience, particularly in the Local Government context and with previous public sector experience Proven track record of high EQ and leading through complex change processes	√		√	
8.	Understanding of governance delivering community good civil infrastructure assets	√	√		

9.	Governance experience in industries delivering other utilities (such as electricity, telecoms)	√	√		
10.	A strong understanding of the Waikato region and contemporary local government context, including appreciation of public accountability.	√		√	
11.	A strong understanding of the co-governance arrangements for the Waikato region, including the Waikato River Authority, Hauraki Gulf Forum and the Waihou, Piako, Coromandel Catchment Authority.	√	√		
12.	Practical, and preferably governance leadership, experience in Water Services	√	√		
13.	Resource and environmental management and the RMA - – demonstrating a commitment to kaitiakitanga and stewardship of the natural environment		√		
14.	Experience integrating Te Ao Māori and Tikanga Māori in a professional board environment. Understands how to lead, impact and influence to maintain, uphold, and proactively engage with the principles of the Treaty of Waitangi	√	√		

SCHEDULE 11 – STATEMENT OF EXPECTATIONS

1. Establishment matters

- 1.1. To the extent a Statement of Expectations is adopted before all Shareholding Councils have transferred their Water Services business into the Company, the Shareholding Councils should include their:
- a) expectations of the Board during establishment, for example, that the Board have a significant focus on ensuring a smooth and successful transition of people, processes and systems at each stage; and
 - b) expectations in relation to pricing and prioritisation as set out in the Establishment Strategy.

2. Legislatively required content

- 2.1. As required under the LG(WS) Act, the Statement of Expectations must include how Shareholding Councils expect the Company:
- a) to meet the Statutory Responsibilities;
 - b) to perform its duties and functions to achieve the agreed vision and purpose for the Company;
 - c) to achieve the Strategic Outcomes; and
 - d) to relate to each Shareholding Council's resource management planning and land-use planning that are relevant to the Company's service area.
- 2.2. It must also include:
- a) the Shareholding Councils collective strategic priorities for the Company;
 - b) any requirement that the Company act in accordance with any relevant statutory obligation that applies to a Shareholding Council; and
 - c) the information the Company must include in its water services half-yearly report.

3. Agreed additional content

- 3.1. Shareholding Councils (through their SRF Representative) must also consider including the following content:
- a) the expectation that the Board set the critical success factors to achieve the agreed strategic outcomes;
 - b) the expectation an effective and trusted relationship is maintained with each Shareholding Council and what is expected in relation to collaborating with Shareholding Councils and other parties when providing water services;
 - c) the expectation that the Company will establish positive relationships with existing co-governance entities / authorities of the region (Waikato River Authority, Hauraki Gulf Forum and the Waihou, Piako, Coromandel Catchment Authority);
 - d) how Shareholding Councils require the Company to conduct its relationships with:
 - (i) the shareholders;
 - (ii) the shareholders' communities or any specified stakeholders within those communities;

- (iii) Hapū, Iwi, and other Māori organisations (including any obligation a Shareholding Council may have);
- (iv) the Company's customers;
- (v) performance indicators and measures the Shareholding Councils may use to monitor the Company; and
- (vi) that the Company act in accordance with an obligation that a Shareholding Council may have with a third party under a contract or other agreement;
- e) a requirement that the Company undertake a specified obligation on behalf of a Shareholding Council;
- f) effective partnering with Iwi to build on existing obligations of Councils (including giving effect to Te Ture Whaimana) and establish and maintain strategic relationships promote a catchment-based approach to consenting and investment;
- g) establish and maintain processes to provide opportunities for hapū and Iwi to contribute to the decision-making processes of the Company and consider ways in which it may foster the development of hapū and Iwi capacity to contribute to these decision-making processes;
- h) opportunities for effective partnering with Waikato Regional Council;
- i) expectations in relation to growing cultural competence of the Company through governance, management and workforce;
- j) a requirement to undertake community or customer engagement, and the contents of that engagement; and
- k) any matters that are relevant to all or a specified part of the water services provided by the Company (for example, a matter that applies only to wastewater) or to all or a specified part of the Company's service area (for example, a matter that applies only to the district of a Shareholding Council).

SCHEDULE 12– AGREED FORM TRANSFER AGREEMENT

Transfer Agreement

PARTIES

Waikato Waters Limited

The Company

[Council]

Council

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PARTIES

Waikato Waters Limited

("Company")

[WWDW Council name]

("Council")

INTRODUCTION

- A. The Council is responsible for providing Water Services and is the owner of various drinking water, wastewater and other infrastructure and assets, as well as various associated liabilities.
- B. In accordance with the legislation implementing Local Water Done Well, the Council has determined that a joined-up approach to Water Services is the structural delivery option that best meets the long-term needs of its communities. To this end, the Council, together with [1] other Waikato councils, has:
- (a) jointly established the Company for the purpose of transferring its responsibility for providing drinking water and wastewater services to it to it; and
 - (b) included the joint model as the future delivery model for water services in their respective water services delivery plans.
- C. Under the terms of the Shareholders' Agreement, each of the shareholding councils has made a commitment as to when and how it will transfer its Water Services business into the Company. In accordance with the terms of the Shareholders' Agreement and pursuant to sections [11] and [12], and Schedule 2, of the LG(WS) Act, the Council hereby enters into this transfer, interface and services agreement with the Company to:
- (a) implement the transfer to the Company of:
 - (i) responsibility for providing the Transferring Water Services;
 - (ii) all infrastructure owned or controlled by Council that is used primarily for the purpose of providing the Transferring Water Services (including specified infrastructure) unless expressly excluded;
 - (iii) related assets and other matters that are necessary for the Company to carry out, and be responsible for, providing the Transferring Water Services in the Service Area; and
 - (iv) relevant Water Service liabilities;
 - (b) agree how the parties will work together in relation to matters of shared interest; and

- (c) agree arrangements for any services by the Company to the Council, and by the Council to the Company.

1. AGREEMENT

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

- (a) Schedule 2: The Council has agreed to transfer to the Company, and the Company 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.
- (b) Schedule 2A: The net debt calculation **[Drafting note: this is still being finalised]**.
- (c) 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 Transferring Water Services that will be performed by the Company following Completion.
- (d) Schedule 4: The terms on which one party will provide the other party with other ad hoc services and deliverables after Completion.
- (e) Schedule 5: The general terms and conditions which apply to this agreement.
- (f) 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

WAIKATO WATERS LIMITED

By:

Signature of Director

Signature of Director

Name of Director

Name of Director

SCHEDULE 1
AGREEMENT DETAILS

Transfer Terms under Schedule 2

Completion Date <i>(Clause 7.1, Schedule 2)</i>	[Drafting Note: for each Waikato Waters Limited Shareholding Council this is intended to be the Agreed Transfer Date as set out in the Shareholders' Agreement and the agreed Establishment Strategy]
Settlement Amount <i>(Clause 3.1, Schedule 2)</i>	The Settlement Amount is the amount calculated in accordance with Schedule 2A.
List or description of Assets to be transferred (or expressly not to be transferred) under this agreement <i>(Appendices 1 and 2 of Schedule 2)</i>	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 <i>(Appendices 1 and 2 of Schedule 2)</i>	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 <i>(Appendices 1 and 2 of Schedule 2)</i>	See Appendices 1 and 2 of Schedule 2.

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

Shared Interest	As agreed under the Shareholders' Agreement, the Council will
------------------------	--

Arrangements

(clause 2.2, Schedule 3)

provide the Company with the Post-Completion Transition Services set out in Schedule 3. [Drafting note: this schedule will be completed to include the ongoing arrangements between the Company and the Council that are necessary until such time as the Company has developed the capability / introduced the systems to enable it to carry out the specific matters on its own (for example, billing and call-centre operation)].

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);
- the performance or exercise of any statutory functions in respect of emergency management; and
- such other matters as the parties are required to undertake to comply with the LG(WS) Act, such as developing, adopting and implementing a stormwater network risk management plan.
[Drafting note: this will be reviewed and updated to reflect the final form of the LG(WS) Act]

Party to collect Water Charges

(clause 3, Schedule 3)

From the Completion Date, until such time as notified by the Board (provided that such time is no later than [] years from the Completion Date unless agreed otherwise between the Council and the Company), the Council will continue to collect the Water Charges on behalf of the Company.

Representatives

(clause 5.2, Schedule 3)

Council: as notified in writing to the Company three months prior to the Completion Date

Company: as notified in writing to the Council three months prior to the Completion Date

Interface Governance Group Members

(clause 5.3, Schedule 3)

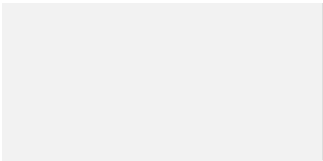
Chair: [Drafting note: To be confirmed by Interface Governance Group as its first meeting]

Council representative(s): as notified in writing to the Company three months prior to the Completion Date.

Company representative(s): as notified in writing to the Council three months prior to the Completion Date

Ad hoc Services and Deliverables Terms under Schedule 4

Summary of Council's provision of Services and Deliverables <i>(Services and Deliverables are provided in full detail in clauses 2 and 4, Schedule 4 and any Service Order)</i>	<p>As at the Commencement Date of this agreement, the summary of Services and Deliverables that Council will provide to the Company under this agreement and Service Orders are:</p> <p>[Drafting note: to be completed]</p>	
Summary of the Company's provision of Services and Deliverables <i>(Services and Deliverables are provided in full detail in clauses 2 and 4, Schedule 4 and any Service Order)</i>	<p>As at the Commencement Date of this agreement, the summary of Services and Deliverables that the Company will provide to Council under this agreement and Service Orders are:</p> <p>[Drafting note: the Service Order specifying the Services and Deliverables will be completed as between the Council and the Company in each transfer agreement – this will reflect the services that the Council may need the company to support it with as it adjusts to its new non-water operating model]</p>	
Invoice details <i>(clause 3, Schedule 4)</i>	Council	Company
	<p>[Drafting note: to include payment contact details, this may be the party representative contact]</p> <p>Email: [Insert email address to be used for invoicing]</p>	<p>[Drafting note: to include payment contact details, this may be the party representative contact]</p> <p>Email: [Insert email address to be used for invoicing]</p>
General Terms and Conditions under Schedule 5		
Commencement Date <i>(Clause 1.1, Schedule 5)</i>	<p>[Drafting note: this will be the Agreed Transfer Date of the relevant Council or such other date as is agreed to be the Completion Date]</p>	
Service Area <i>(Background A)</i>	<p>Has the meaning set out in the LG(WS) Act where such service area is within the boundary of a Shareholding Council (as that boundary is constituted at any time in Part 2, Schedule 2, LGA).</p>	
Place of arbitration <i>(Clause 10.4(c), Schedule 5)</i>	<p>Cambridge, unless agreed otherwise by the parties in writing</p>	
Address for notices <i>(clause 13.1, Schedule 5)</i>	Council	Company
	<p>[insert physical and postal address details of the Council's office]</p>	<p>[TBC - physical and postal address details of the Company's office]</p>



Email: [Insert details]

Attention: [Insert details]

Email: [Insert details]

Attention: [Insert details]

DRAFT

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 Company.

1. MATTERS TO BE TRANSFERRED

1.1 Agreement to transfer:

- (a) **Assets and Obligations:** The Council shall transfer the Assets and Obligations to the Company, and the Company shall:
 - (i) receive the Assets free of any Encumbrances; and
 - (ii) 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.
- (b) **Statutory responsibilities, functions, duties and powers:** The Council shall transfer the Statutory Responsibilities to the Company, and the Company shall comply with the Statutory Responsibilities as required by this agreement, and the relevant legislation.
- (c) **Operational Responsibilities and Management Responsibilities:** The Council shall transfer the Operational Responsibilities and Management Responsibilities to the Company, and the Company shall comply with the Operational Responsibilities and Management Responsibilities as required by this agreement, and the relevant legislation.
- (d) **Resource Consents Responsibilities:** The Council shall transfer the Resource Consents Responsibilities to the Company, and the Company shall comply with the Resource Consents Responsibilities as required by this agreement, and the relevant legislation.

2. MATTERS NOT TRANSFERRED

- 2.1 **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 Company, and those matters shall continue to be owned, retained and/or performed and exercised by the Council.
- 2.2 **No assumption of Liabilities:** Except as expressly provided in this agreement, the Company only assumes the Obligations and the Responsibilities, and does not assume any other Liabilities of the Council in relation to the Assets or otherwise.

3. SETTLEMENT AMOUNT

- 3.1 **Settlement Amount:** The Settlement Amount is the amount calculated in accordance with Schedule 2A.

4. TAX

- 4.1 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.

5. EMPLOYEES/CONTRACTORS

- 5.1 **Principle:** The Council wants to ensure there is employment security, to the extent possible, for Transferring Water Services employees during the transfer process. It is an expectation of the Council that the Company will offer employment in the Company for Council employees who primarily work in Transferring Water Services (not being the Chief Executive or executive level employees of a council).
- 5.2 **Identification of affected employees and contractors:** Pursuant to clause [2] of Schedule 1 of the LG(WS) Act, as modified to meet the requirements of the Establishment Strategy, the Council will identify and notify the Company of the affected employees, on the earlier of 10 Business Days after the date of this agreement and three months before the Agreed Transfer Date. The Council will also notify the Company of any Contractors providing services relating to the Transferring Water Services.
- 5.3 **Offer of employment:** The Company shall, within twenty Business Days of receiving the notification referred to in clause 5.2, consult with the Council as to the terms and conditions to be offered to those Employees referred to in clause 5.1 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 those Employees, employment to each such Employee on the same or similar terms and conditions enjoyed by the Employee on the date of this agreement, and will treat each such Employee's service as continuous. The Company may also choose to offer to any Contractor identified in clause 5.2 a new independent contractor agreement. Each offer to Employees or Contractors is referred to as an "Offer".
- 5.4 **Acceptance:** The parties shall use all reasonable endeavours to persuade each Employee and Contractor to accept the Offer.
- 5.5 **Conditions of Offer:** The Offer will be conditional on the transfer proceeding and with effect from the Completion Date. In respect of Employees, the Offer will be conditional on the Employee waiving any entitlement to redundancy compensation/notice from the Council.
- 5.6 **Access to Employees and Contractors:** The Council will, at such times as reasonably requested by the Company, allow the Company access to:
- (a) each Employee and Contractor to discuss the Offer; and
 - (b) subject to obtaining each Employee's and Contractor's consent to disclosure, if required, each Employee's employment records (or equivalent for Contractors).
- 5.7 **Company's Assumed Accrued Employee Benefits:** The Company shall from Completion assume, and indemnify the Council against, all Liability of the Company for all Accrued Employee Benefits relating to Employees who have accepted an Offer.
- 5.8 **Return of Employee and Contractor information:** Where any Employee or Contractor does not accept an Offer, the Company will, at the option of the Council, return to the Council or destroy all

personal information provided to the Company in relation to the relevant Employee (including but not limited to all employment records provided under clause 5.4(b) of Schedule 2) or Contractor.

6. PRE-COMPLETION OBLIGATIONS

6.1 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):

- (a) 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 and in accordance with any applicable provisions in the Shareholders' Agreement (with particular reference to the Establishment Strategy);
- (b) 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 the Shareholders' Agreement;
- (c) continue to adhere to the Major Decisions Framework set out in the Shareholders' Agreement;
- (d) to the extent not already executed, execute a deed of guarantee in favour of LGFA in accordance with the commitment set out in the Shareholders' Agreement;
- (e) promptly notify the Company 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; and
- (f) no later than [60] Business Days prior to the Agreed Transfer Date, give notice ("**Council Debt Notice**") to the Company of the Council's best estimate of the amount of the Council's Council Water Infrastructure Debt, the Council's share of Establishment Costs, the Council's Establishment Funding Share and any Transitional Activity Costs including sufficient detail for the Company to be able to confirm how such amounts were reached and that such amounts comprise Council Water Infrastructure Debt, the Council's share of Establishment Costs, the Council's Establishment Funding Share and any Transitional Activity Costs (as applicable).

6.2 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):

- (a) alter any of the conditions of employment of the Employees or Contractors (other than as required to provide for changes required to meet agreements with unions, salary increases and the payment of bonuses in accordance with the ordinary course of operations of the Council);
- (b) agree to amend any of the terms of any Assumed Contract; or
- (c) acquire or dispose of any of the Assets other than in the ordinary course of conducting the Business.

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

- (a) is expressly permitted by this agreement; or
- (b) is approved in writing by the Company.

6.4 **Novation and Counterparty Consents:**

- (a) 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 Company, to novate the relevant Assumed Contract to the Company with effect from Completion.
- (b) 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 Company, on terms that are acceptable to both the Council and Company ("**Counterparty Consents**").
- (c) The Company shall provide such assistance to the Council as it reasonably requests in relation to sub-clauses (a) and (b).
- (d) If:
 - (i) no deed of novation has been entered into in respect of that Assumed Contract; and
 - (ii) 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 Company shall not delay or fail to undertake Completion and clause 9 of Schedule 2 will apply.

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

- (a) is necessary for the Company 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
- (b) primarily relates to the provision of the Transferring 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.

7. COMPLETION

7.1 **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.

7.2 **Obligations on Completion:** At Completion:

- (a) The Company shall pay the Settlement Amount to the Council in immediately available funds by electronic transfer to a bank account nominated by the Council;
- (b) the Company shall issue the Stage 2 Shares to the Council in accordance with the Shareholders' Agreement and update Companies Office to reflect the change in shareholding, and the Council will consent to such issue;
- (c) legal and beneficial title to, risk to, and possession of, the Assets shall be given by the Council and accepted by the Company, 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 Company;
- (d) the Council shall take such actions, and sign and deliver to the Company (together with all relevant documents of or evidencing ownership) such documents and other things necessary, to transfer to the Company full and unencumbered legal and beneficial title to, and possession of, the Assets as the Company may reasonably require;
- (e) the Company assumes the Obligations and shall take such actions, and sign and deliver to the Council such documents and other things necessary, for the Company 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
- (f) the Company assumes the Responsibilities and shall take such actions for the Company to assume full responsibility for the Responsibilities as the Council may reasonably require.

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

7.4 **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 Company is entitled, without prejudice to any of its other rights or remedies to:

- (a) 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 Company may elect), the Council from liability to comply as soon as possible with its obligations under that clause;
- (b) fix a new date for Completion, which shall be treated for all purposes as the Completion Date;
- (c) sue for specific performance; and/or
- (d) request Ministerial intervention under the terms of the LG(WS) Act or Local Government (Water Services Preliminary Arrangements) Act 2024 as a consequence of the Council

failing to comply with section 22 of that Act (by not giving effect to the undertaking for future delivery of the Transferring Water Services set out in its water services delivery plan).

8. APPORTIONMENT

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

- (a) the aggregate amount of all Accrued Employee Benefits at the Completion Date relating to Employees who have accepted an Offer ("**Accrued Employee Benefits Amount**"); and
- (b) the aggregate of all amounts payable to the Council pursuant to any of the Assumed Contracts or in relation to the Assets (including water rates/charges), 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**");
- (c) the aggregate of all amounts received by the Council pursuant to any of the Assumed Contracts or in relation to the Assets (including water rates/charges), which have been received by the Council at the Completion Date in relation to the period after the Completion Date ("**Advance Revenue**");
- (d) the amount of all Apportionable Outgoings:
 - (i) unpaid by the Council at the Completion Date in respect of the period up to and including the Completion Date ("**Accruals**"); and
 - (ii) paid by the Council at the Completion Date in respect of the period after the Completion Date ("**Prepayments**").

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

- (a) approves the Apportionment Statement; or
- (b) does not approve the Apportionment Statement, such notice ("**Dispute Notice**") to specify the matters that the Company disputes or disagrees with ("**Matters in Dispute**"), in which case the Company and the Council must meet within five Business Days of the date of the Dispute Notice and attempt to resolve the Matters in Dispute. If the Matters in Dispute are not resolved by the Company and the Council within five Business Days of such meeting then either the Company 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:
 - (i) the Expert will be an accountant with relevant experience appointed by the Council and the Company 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;

- (ii) the Council and the Company will together provide to the Expert copies of this agreement, the Dispute Notice and a copy of the Apportionment Statement; and
- (iii) the Expert will be instructed to:
 - (aa) 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;
 - (bb) 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 Company; and
 - (cc) if required, adjust the Apportionment Statement and provide a copy to each of the Council and the Company;
- (iv) the decision will be final and binding on the parties;
- (v) 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
- (vi) the parties will bear their own costs (including legal costs) and an equal share of the costs and expenses of the Expert.

8.3 Difference between Accruals and Prepayments: If:

- (a) the Outstanding Revenue plus the Prepayments exceed the aggregate of the Accruals and the Advance Revenue and the Accrued Employee Benefits Amount, the Company must pay an amount equal to the difference to the Council; and
- (b) 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 Company,

as an adjustment of the Settlement Amount within five Business Days of:

- (c) the date on which the Council receives notice from the Company under clause 8.2(a) of Schedule 2; or
- (d) 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.

9. ASSUMED CONTRACTS

9.1 Assignment and Novation:

- (a) Subject to clause 6.4 of Schedule 2 and Completion, and on and with effect from the Completion Date, the Council assigns and the Company 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.
- (b) Subject to the provisions of the LG(WS) Act providing otherwise, 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.

9.2 Consent to transfer of Relevant Contracts:

- (a) 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 Company.
- (b) Pending the transfer of any Relevant Contract to the Company under clause 9.1 of Schedule 2, the Council must:
- (c) hold the Benefits of the Relevant Contract on trust for the Company and account to the Company 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
- (d) 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 Company.

9.3 Performance of Relevant Contracts:

- (a) 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.
- (b) The Company 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.

9.4 Transfer of Relevant Contracts Unavailable: If, despite their reasonable endeavours, the Council and the Company 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 Company, as soon as reasonably possible, procure that the Relevant Contract is terminated with no Liability or cost to the Company. To avoid doubt, there will be no adjustment to the Settlement Amount, and the Council will have no Liability to the Company, as a result of any such termination.

10. POST-COMPLETION PROVISIONS

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

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

(a) is necessary for the Company 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

(b) primarily relates to the provision of the Transferring 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 Company), for consideration determined by the parties consistent with how the consideration was determined for the Assets and Obligations (and clause 8 will apply to the transfer of such Further Item, with such amendments as necessary in the context of the transfer of the Further Item). 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.

10.3 **Receipt of post-Completion amounts:** On and from Completion, the Company 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 Company 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 Company. The Council shall promptly provide to the Company such information as is necessary to enable the Company 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.

10.4 **Post-Completion wash-up:**

(a) The parties acknowledge that:

- (i) the Settlement Amount is calculated on the basis of the Council's best estimate of its Council Water Infrastructure Debt; and
- (ii) each of the Council's share of Establishment Costs, the Council's Establishment Funding Share and any Transitional Activity Costs is calculated on the basis of the Council's best estimate of those amounts,

as at the date of the Council Debt Notice.

(b) Within **[12]** months of the Completion Date, the Council will give a further notice ("**Final Debt Notice**") to the Company setting out the actual amount of its Council Water Infrastructure Debt, the Council's share of Establishment Costs, the Council's Establishment Funding Share (including interest incurred by the Council on the Council's Establishment Funding Share) and any Transitional Activity Costs (together, the "**Final Debt Amount**") as at the Completion Date, including sufficient detail for the Company to

be able to verify the Final Debt Amount payable by the Company, including at such dates agreed under clause 1(a)(ii)(A) of Schedule 2A.

- (c) The Final Debt Notice will also include the amount of the difference between the Settlement Amount and the Final Debt Amount ("**Difference**"), which, if the Settlement Amount is greater than the Final Debt Amount, will be repayable by the Council to the Company, and if the Settlement Amount is less than the Final Debt Amount, will be payable by the Company to the Council, in accordance with subclause (e) below.
- (d) The Company shall:
 - (i) as soon as practicable after receipt of the Final Debt Notice, notify the Council about whether the Company wishes to verify the amount(s) set out in the Final Debt Notice, and if yes, the reasonable time period required by the Company to do so; and
 - (ii) if it notifies the Council that it wishes to verify the amount(s) set out in the Final Debt Notice, the Company will complete its verification within the reasonable time period notified to Council under subclause (d)(i)(or such other period agreed in writing with the Council), and notify the Council of such completion.
- (e) Within [10] Business Days of the later of:
 - (i) the receipt of the Final Debt Notice;
 - (ii) the date of completion of the Company's verification of the Final Debt Notice under subclause (d) above; and
 - (iii) if applicable, the Final Debt Amount being agreed or determined in accordance with paragraph 2 of Schedule 2A,

the relevant party with the payment obligation under subclause (d) above will pay the Difference to the other.

10.5 **Company to provide information:** Following Completion, the Company 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 the Transferring Water Services.

10.6 **Council to provide information:** Following Completion, the Council shall permit the Company 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 Company relating to the Business, the Responsibilities and/or the provision of the Transferring Water Services.

11. WARRANTIES AND INDEMNITIES

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

- (a) the Assets:
 - (i) are the absolute property of, and under the control of, the Council; and
 - (ii) are not subject to any Encumbrance;

- (b) 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
- (c) the Council is not in breach, in any material respect, of any of the Responsibilities.

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

- (a) any exception or qualification fairly disclosed in any formal disclosure letter given by or on behalf of the Council to the Company before execution of this agreement by the Company (disclosure will be considered to have been made if the matter is included in the approved Council water services delivery plan); and
- (b) 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 Company.

11.3 **Company Acknowledgement:** The Company acknowledges and agrees that:

- (a) the Assets are sold on a strictly "as is where is" basis; and
- (b) the Council has not made any statement, representation or warranty (express or implied) as to, and the Company 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
1.	<i>[eg all drinking water pipes located in Service Area]</i>	<i>[in situ]</i>
2.		
3.		

OBLIGATIONS

A ASSUMED CONTRACTS

	Contract name/description	Counterparty consent required?
1.		
2.		

RESPONSIBILITIES

A) STATUTORY RESPONSIBILITIES

	Statutory Responsibilities	Reference
1.		
2.		
3.		

B) OPERATIONAL RESPONSIBILITIES

	Operational Responsibilities	Reference
1.		
2.		
3.		

C) MANAGEMENT RESPONSIBILITIES

	Management Responsibilities	Reference
1.		
2.		

3.		
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D) RESOURCE CONSENTS RESPONSIBILITIES

	Resource Consents Responsibilities	Reference
1.		
2.		
3.		

E) IWI AND HAPŪ RESPONSIBILITIES

	Iwi and hapū Responsibilities	Reference
1.		
2.		
3.		

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APPENDIX 2 – MATTERS TO NOT BE TRANSFERRED

EXCLUDED ASSETS

	Excluded Assets
1.	
2.	
3.	

EXCLUDED CONTRACTS

	Excluded Obligations
1.	
2.	
3.	

EXCLUDED RESPONSIBILITIES

	Excluded Responsibilities	Reference
1.		
2.		
3.		

SCHEDULE 2A

[Drafting note: at the time of entering into the Shareholders' Agreement, work is still underway to particularise the detail of this Schedule 2A. Schedule 2A will be updated after the Shareholders' Agreement has been signed. The proposed final schedule will be agreed by the Chief Executives of the relevant councils and brought to each shareholding council to approve in advance of their Agreed Transfer Date and having regard to the agreed principle that there will be consistency in the terms of the transfer agreements across councils]

Settlement Amount and Council Water Infrastructure Debt Calculation

1. Principles for establishing the net debt calculation

- (a) The intent is that the Company either:
 - (i) pays the Council an amount equal to:
 - (A) the Council's Council Water Infrastructure Debt;
 - (B) the Council's share of the Establishment Costs;
 - (C) the Council's Establishment Funding Share, including interest incurred by the Council on the Council's Establishment Funding Share; and
 - (D) any Transitional Activity Costs,

(in each case to the extent actually paid to the Company or a third party by the Council, and not previously repaid to the Council); or
 - (ii) agrees with the Council in writing that:
 - (A) the Council will retain some or all of its Council Water Infrastructure Debt until future date(s) agreed with the Company, on which the Company will pay the Council the amount of that retained Council Water Infrastructure Debt;
 - (B) the Company will pay the Council an amount equal to the Council's Council Water Infrastructure Debt (less the amount that will be retained by the Council under subclause (a)(ii)(A) above), the Council's share of the Establishment Costs, and the Council's Establishment Funding Share (to the extent actually paid to the Company and not previously repaid to the Council); and
 - (C) the Company will meet such costs of the Council in retaining the Council Water Infrastructure Debt under subclause (a)(ii)(A) above, as agreed and specified in writing between the parties.
- (b) The Council will be responsible for paying its creditors and collecting its receivables balances at the Completion Date.
- (c) The Council will remain responsible for the provision of the Transferring Water Services until the Completion Date, but will not incur debt amounts greater than those projected in the Council's long-term plan in place on the date of the Shareholders' Agreement (notwithstanding any subsequent amendments to such long-term plan after that date).

2. Council Water Infrastructure Debt determination

- (a) Within [20] Business Days of receipt of the Council Debt Notice or the Final Debt Notice (as applicable), the Company may request further information from the Council, and/or may take steps to verify or audit the amounts set out in the Council Debt Notice or the Final Debt Notice (as applicable).
- (b) The Council will promptly provide all reasonable assistance to the Company in respect of any further information requested or any verification or audit which the Company wishes to undertake.
- (c) If the Company does not agree with the amount of the Council Water Infrastructure Debt set out in the Council Debt Notice or the Final Debt Notice (as applicable), the Company will, provide notice in writing to the Council, after which the parties will discuss and endeavour to agree the amount of the Council Water Infrastructure Debt within [10] Business Days after receipt of that notice (or such longer period as is agreed between the parties in writing). If the parties cannot agree the amount of the Council Water Infrastructure Debt in that period, the Company may, by notice in writing to the Council, refer the matter for expert determination in accordance with clauses 8.2(b)(i) to (vi) (applied with the necessary amendments to make those clauses applicable to the determination of the Council Water Infrastructure Debt).

3. Settlement Amount calculation [Drafting note: To be confirmed]

Subject to paragraph 1(a)(ii) of this Schedule 2A, the Settlement Amount is the Council's best estimate of the amount of the Council Water Infrastructure Debt as at the Completion Date:

- (a) [TBC]

4. Transitional Activity Costs

[TBC]

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:

- (a) ensuring that Shared Interests are managed effectively and efficiently; and
- (b) the arrangements for Water Charges for the Water Services to be performed by the Company.

1. RELATIONSHIP MANAGEMENT

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

- (a) **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.
- (b) **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 Company, 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.
- (c) **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.
- (d) **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.

2. MATTERS OF SHARED INTEREST

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

- (a) matters of Shared Interests are managed effectively and efficiently; and
- (b) each party can meet its statutory and contractual obligations.

2.2 **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**").

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

- (a) the functions, roles, responsibilities and accountabilities of each party are defined;
- (b) each party can meet their statutory functions, power and duties;
- (c) 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
- (d) 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.

2.4 **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:

- (a) any change to the Shared Interest Arrangements or Service Order must be agreed in writing between the parties; and
- (b) a change to the Shared Interest Arrangements or Service Order will be effective from the date the parties agree to implement the changes.

3. **COUNCIL CONTINUES TO COLLECT CHARGING AND REVENUE COLLECTION ARRANGEMENTS FOR A TRANSITIONAL PERIOD**

3.1 **Collection by Council:** The parties agree that on a transitional basis as part of the Post-Completion Transition Services, and in accordance with clause [6(b)] of Schedule 2 of the LG(W)S Act, the rates, fees and other charges in relation to the Transferring Water Services will be collected by the Council ("**Water Charges**") on behalf of the Company.

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

- (a) how and when the Council will pass revenue collected on to the Company, including details of transitional arrangements and the duration of those arrangements;
- (b) any associated fees and expenses that will be charged and retained by the Council; and
- (c) a confirmation that, for the period of time the Council collects the rates, fees and other charges, the Council will provide the Company with sufficient revenue each Financial Year to enable the Company to undertake the capital and operating investment programme in the Company's capital works programme (as informed by each Shareholder's respective capital works programme immediately prior to incorporation of the Company) and, once adopted by the Company, in the Company's Water Services Strategy for a Financial Year.

3.3 **Final decision responsibility:** The:

- (a) Company's capital expenditure and operating expenditure for the Water Services provided by the Company; and
- (b) Company's level of Water Charges for the Water Services,

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

4. TRANSITION TO COMPANY COLLECTION CHARGING AND REVENUE COLLECTION ARRANGEMENTS

4.1 **Collection by Company:** The parties agree that after the transitional period (the duration of which will be determined by the Board in consultation with the Shareholding Councils), and in accordance with clause [6(b)] of Schedule 2 of the LG(W.S) Act, Water Charges will be collected by the Company. Once this applies:

- (a) clause 2.1 above will cease to apply and the Company will collect Water Charges in accordance with its powers and statutory obligations under the LG(W.S) Act, and
- (b) the water charges arrangements agreed pursuant to clause 2.2 above will cease to apply, with the Council no longer entitled to charge any associated fees and expenses previously charged.

5. GOVERNANCE FOR MANAGING SHARED INTERESTS

5.1 **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.

5.2 Appointment of Representatives:

- (a) Each party will appoint the respective person(s) in accordance with the process identified in clause 5.2(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.
- (b) Three months prior to the Completion Date, each party will confirm their Representative and the members they wish to appoint as additional Interface Governance Group members.
- (c) Each party shall ensure that its Representative and Interface Governance Group members are reasonably available during normal business hours.
- (d) Each party may replace a Representative or Interface Governance Group 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 representative / member being replaced and will provide the contact details of the replacement to the other party.

5.3 Interface Governance Group Members:

- (a) The Interface Governance Group members will be those members notified in writing in accordance with clause 5.2(b) above. There shall be no more than 3 Interface Governance Group members per party at any one time (including the Representative).
- (b) 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.
- (c) Each party may nominate another person or member to be its alternate and may remove that alternate appointed by them at anytime.

- (d) 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.

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

- (a) consider any Compliance Reports submitted to it and propose any recommendations to address any non-compliance identified;
- (b) consider any information sharing issues as referred to at clause 2 of Schedule 5;
- (c) consider and attempt to resolve any issues or disputes referred to it by a party under clause 10 of Schedule 5;
- (d) carry out the review of this agreement under clause 3 of Schedule 5;
- (e) consider and provide a recommendation to each party of any proposed change to this agreement, including any Service Orders; and
- (f) consider such other matters as the parties may agree.

5.5 **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**"):

- (a) 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.
- (b) 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.
- (c) 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.

5.6 **Meetings of the Interface Governance Group:**

- (a) The first chair of the Interface Governance Group is the member appointed in accordance with the process set out in the Agreement Details and is appointed for the first 2 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.
- (b) The Interface Governance Group shall meet at least once every 6 months and more frequently if required or agreed.
- (c) 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.

- (d) The Company 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.
- (e) Decisions and recommendations of the Interface Governance Group shall be unanimous.
- (f) A quorum of the Interface Governance Group shall be at least one member from each party.
- (g) Where a matter to be discussed by the Interface Governance Group affects the interests of another shareholding council of the Company, the Representatives may agree to meet with the representatives of that shareholding council.

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APPENDIX 1 – SHARED INTEREST ARRANGEMENTS FOR [X]

[Drafting Note: to be completed after the date of incorporation and agreed across shareholders once there is clarity on LG(W)S and the Board is in place to discuss the below matters with the Shareholder Representative Form and / or the Chief Executives across the Councils]

[The matters of shared interest under section 5(2) of the LG(W)S 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:

- (a) how the parties will engage and work together in relation to land use planning and the provision of and planning for water services;*
- (b) how the Council will work with the Company in relation to its planning process under the Resource Management Act 1991;*
- (c) sharing information for the purposes of each party carrying out its statutory and contractual functions;*
- (d) engaging with the community in relation to planning for growth;*
- (e) how the parties will engage in relation to the Company performing its functions under the Building Act; and*
- (f) 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.]

DRAFT

SCHEDULE 4

AD HOC SERVICES AND DELIVERABLES

PURPOSE OF SCHEDULE 4: Schedule 4 provides the terms and conditions that apply to the Company providing ad hoc services to the Council, or the Council providing ad hoc services to the Company. 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.

1. AD HOC SERVICES

- 1.1 **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.
- 1.2 **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:
- (a) that the Service Recipient accepts the proposal, in which case clause 1.3 of this Schedule 4 will apply;
 - (b) 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
 - (c) 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.
- 1.3 **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.

2. GENERAL OBLIGATIONS

- 2.1 **General:** In performing its obligations under this agreement and any Service Order, the Service Provider will:
- (a) provide all Personnel, processes and resources required to perform its obligations under this agreement, including to provide the Services and Deliverables;
 - (b) comply with the reasonable directions of the Service Recipient;
 - (c) as applicable, provide and implement the Services and Deliverables in accordance with the terms of this agreement and each relevant Service Order;
 - (d) provide all equipment, tools, materials and other resources necessary for the provision of the Services and Deliverables;

- (e) 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;
- (f) 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;
- (g) not damage or adversely affect the property, operations, reputation or goodwill of the Service Recipient or any related entity;
- (h) not disrupt the Service Recipient's operations and other activities, except to the extent reasonably required in order to provide the Services and Deliverables;
- (i) 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;
- (j) 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;
- (k) without limiting the Service Provider's other obligations, promptly notify the Service Recipient in writing of:
 - (i) any breach or likely breach of the Service Provider's obligations under this agreement; and
 - (ii) any matter that may impact on the Service Provider's ability to perform its obligations in accordance with this agreement; and
- (l) 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.

2.2 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:

- (a) give the Service Provider notice to immediately remedy the deficiency at the Service Provider's cost;
- (b) withhold any payment due to the Service Provider until the deficiency is satisfactorily remedied; and/or
- (c) 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.

2.3 Personnel: The Service Provider must:

- (a) 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;
- (b) be responsible for all acts and omissions of its Personnel as if they were the acts or omissions of the Service Provider;
- (c) 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
- (d) 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.

2.4 **Statutory or Regulatory Functions:**

- (a) 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.
- (b) 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.

2.5 **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:

- (a) only use the system to provide the Services and Deliverables;
- (b) 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;
- (c) not interfere with or dispute or cause any damage to the system;
- (d) ensure that the system is protected from unauthorised access or use or misuse, damage or destruction by any person;
- (e) not allow the integrity of data and information held on the system to be compromised; and
- (f) follow the policies and procedures of the other party to maintain the accuracy of data and information held within the system.

3. **PAYMENT AND INVOICING**

- 3.1 **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.
- 3.2 **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.

- 3.3 **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.
- 3.4 **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.
- 3.5 **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.
- 3.6 **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.
- 3.7 **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) a valid tax invoice for the purposes of the Goods and Services Tax Act 1985;
 - (b) be sent directly to the Service Recipient via email to the email address set out in the Agreement Details; and
 - (c) include all information reasonably required to enable the Service Recipient to validate the claim for payment including:
 - (d) any purchase number, Service Order number or contract number applicable to the invoice;
 - (e) reference to this agreement (under which the invoice is issued); and
 - (f) the Charges for and description of each Service and/or Deliverable being invoiced,
- ("Valid Tax Invoice").
- 3.8 **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.
- 3.9 **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.

4. DISENGAGEMENT SERVICES

- 4.1 **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.
- 4.2 **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.

4.3 **Disengagement Services:** The disengagement services may include the Service Provider:

- (a) 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);
- (b) 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;
- (c) actioning the disengagement plan within the required timeframes;
- (d) 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;
- (e) answering questions and providing information relevant to the Services and Deliverables as requested by the Service Recipient;
- (f) 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;
- (g) arranging or procuring the secondment of suitably qualified Personnel as may be reasonably required by the Service Recipient;
- (h) 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;
- (i) returning to the Service Recipient intellectual property and other intangible property of the Service Recipient;
- (j) providing training reasonably required by the Service Recipient; and
- (k) providing any additional Disengagement Services specified in the relevant Service Order.

4.4 **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.

4.5 **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 Waikato Waters Limited ("Waikato Waters") 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]

Attachments

Attachments

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

SIGNED by Waikato Waters Limited

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].

DRAFT

ATTACHMENT 2 TO SERVICE ORDER
Pricing terms

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

DRAFT

APPENDIX 2 – RATES CARD AND SERVICES CATALOGUE

[Placeholder for parties to agree a rates card that will apply for services being provided by the council or Company 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.]

DRAFT

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.

1. TERM

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

2. INFORMATION SHARING, CONFIDENTIALITY AND CO-OPERATION

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

- (a) 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;
- (b) 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;
- (c) the parties will act in good faith and in accordance with the Relationship Principles when a party reasonably makes a request for information to be shared; and
- (d) 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.

- 2.2 **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.

- 2.3 **Confidentiality:** Each party shall:

- (a) use its reasonable endeavours to identify Confidential Information relating to that party at the time it is supplied to the other party; and
- (b) deal with all Confidential Information in accordance with clause 11 of this Schedule 5.

3. REVIEW OF AGREEMENT

- 3.1 **Periodic review:** Subject to clause 42 below, this agreement must be reviewed at intervals of not more than 5 years.

- 3.2 **First review:** The parties have agreed that the first review must occur within 5 years of the date of this incorporation of the Company 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.

- 3.3 **Content of review:** A review of this agreement may include a review of:

- (a) the Relationship Principles;
- (b) whether the provisions of this agreement and any Service Orders are being complied with and are functioning adequately from a practical perspective;
- (c) 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;
- (d) whether additional or amended Services and Deliverables are required under any Service Order; and
- (e) residual issues from the Compliance Reports and any actions from the Interface Governance Group.

4. HEALTH AND SAFETY

4.1 **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:

- (a) the Service Provider's Personnel, the Service Recipient's Personnel or their respective property; and
- (b) the Service Recipient's clients and their property.

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

- (a) the Service Provider must:
- (b) 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;
- (c) 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;
- (d) comply with all reasonable directions of the Service Recipient relating to health, safety and security; and
- (e) 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.

4.3 **Requirement to consult, co-operate and co-ordinate:** 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.

5. INTELLECTUAL PROPERTY

5.1 Pre-Existing Intellectual Property:

- (a) All Pre-Existing Intellectual Property remains the property of the original owner.
- (b) In relation to any Service:
 - (i) 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
 - (ii) 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:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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.

6. INSURANCE

- 6.1 **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.

7. FORCE MAJUERE EVENT

7.1 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:

- (a) changes to legislation;
- (b) interference by a third party; or
- (c) 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.

7.2 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.

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

- (a) 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;
- (b) work together to determine how the Services and Deliverables may safely continue to be provided during the Force Majeure Event; and
- (c) continue to carry out all obligations under this agreement and any Service Order to the extent possible despite the Force Majeure Event.

7.4 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.

8. RECORDS

8.1 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.

8.2 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.

9. CONFLICTS

9.1 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:

- (a) ensure that the conflict is avoided in practice; or

- (b) if avoidance is not practicable, ensure that the effects of the conflict are minimised.

9.2 **Honesty and integrity:** 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:

- (a) prejudice the Service Provider's ability to meet its obligations under this agreement; or
- (b) create a conflict of interest for the Service Provider.

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

- (a) 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
- (b) take all actions reasonably required by Service Recipient to resolve any such conflict.

9.4 **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.

10. DISPUTE RESOLUTION

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

10.2 **Negotiation:**

- (a) 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.
- (b) If any Representative considers that the dispute is not being resolved in a timely manner, such Representative may serve written notice on the other parties' Representatives to escalate the dispute to the Chief Executives or equivalent (where the Representatives are not the Chief Executive or equivalent) of the applicable parties for resolution.
- (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 10.2 of this Schedule 5, any party may submit the dispute to mediation.

10.3 **Mediation:**

- (a) If the parties do not resolve the dispute by negotiation, the parties must, in good faith and acting reasonably, do their best to resolve the dispute by participating in mediation with an independent mediator.
- (b) If the parties do not agree on a mediator, then the mediator will be appointed by the New Zealand Dispute Resolution Centre.

- (c) The parties must mediate the dispute in accordance with principles agreed between them or, if no agreement can be reached, the New Zealand Dispute Resolution Centre Mediation Rules.
- (d) Unless the parties agree otherwise, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) will be shared equally between the parties, but the parties will each pay their own costs of preparing for and participating in the mediation (such as for travel and legal representation).

10.4 **Arbitration:**

- (a) If the dispute has not been resolved within 40 Business Days (or within such other period as agreed by the parties) of the dispute being referred to mediation, any party (the "**Initiating Party**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other Party or Parties (together with the Initiating Party, the "**Disputing Parties**") for final resolution in accordance with the provisions of this clause 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**").
- (b) The arbitral panel shall consist of one arbitrator. The arbitrator will be appointed by the agreement of the Disputing Parties or, failing agreement within 10 Business Days of the date of the Arbitration Notice, in accordance with the NZDRC Rules.
- (c) The seat of arbitration shall be as set out in Schedule 1 and the arbitration shall be conducted in the English language.
- (d) The award of the arbitration shall be in writing and must include reasons for the decision.
- (e) The award of the arbitration shall be final and binding on the parties. No party may appeal to the High Court under Clause 5 of the Second Schedule of the Arbitration Act 1996 on any question of law arising out of an award.
- (f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.
- (g) Neither the existence of any dispute nor the fact that any arbitration is pending hereunder shall relieve any of the Parties of their respective obligations under this agreement.
- (h) The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement, arbitral award or other resolution.
- (i) During a dispute, each party must continue to perform its obligations under this agreement.
- (j) This clause does not restrict or limit the right of a party to obtain interlocutory relief.

11. **CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS**

- 11.1 **Confidentiality:** Each party must keep confidential the Confidential Information, and must not disclose or permit the disclosure of such Confidential Information to any other person. If a party becomes aware of a breach of this obligation, that party will immediately notify the other parties.
- 11.2 **Further permitted use and disclosure:** This agreement does not prohibit the disclosure of Confidential Information by a party in the following circumstances:

- (a) the other parties have consented to the disclosure of the relevant Confidential Information;
- (b) the disclosure is specifically contemplated and permitted by this agreement;
- (c) the disclosure of Confidential Information is to 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;
- (d) the disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this agreement;
- (e) 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;
- (f) the disclosure is required by a court or governmental or administrative authority; or
- (g) the disclosure is required in accordance with clause 11.4 of this Schedule 5; or
- (h) the disclosure is otherwise required by law.

11.3 **Consultation:** To the extent disclosure is required to be made in accordance with sub-clauses 11.2(f) to 11.2(h), 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.

11.4 **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 Company in relation to the Company 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 Company.

11.5 **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.

12. TERMINATION

12.1 **Termination:** This agreement may only be terminated by mutual agreement between the parties, subject to the parties complying with any applicable obligations under the Shareholders' Agreement, the LG(Ws) Act and / or the LGPA Act.

12.2 **Effect of termination:**

- (a) 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.
- (b) 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.

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

- (a) the Service Provider must refund to the Service Recipient all amounts paid by the Service Recipient for Services or Deliverables not provided;
- (b) the Service Provider shall return to the Service Recipient all of the Service Recipient's property;
- (c) 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
- (d) 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.

12.4 Partial termination:

- (a) 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).
- (b) 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.
- (c) 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.

13. NOTICES

13.1 Giving notices: Any notice or communication given to a party under this agreement is only given if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out in Schedule 1.
- (b) Emailed to that party at its email address and marked for the attention of the representative set out in Schedule 1.

- 13.2 **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.
- 13.3 **Time notice is given:** Any notice or communication is to be treated as given at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, five Business Days after it is posted.
 - (c) 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.

14. GENERAL

- 14.1 **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.
- 14.2 **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.
- 14.3 **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.
- 14.4 **Counterparts:** This agreement is deemed to be signed by a party if that party has signed or attached that party's signatures to any of the following formats of this agreement:
- (a) an original; or
 - (b) a photocopy; or
 - (c) an electronic copy;

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

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

- 14.7 **Further assurance:** Each party shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.
- 14.8 **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.
- 14.9 **Assignments and transfer:** A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties.
- 14.10 **Costs:** Except as otherwise set out in this agreement, each party must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.
- 14.11 **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.
- 14.12 **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 (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.
- 14.13 **Waivers:**
- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver only affects the particular right, obligation or breach for which it is given. It is not an implied waiver of any other right, obligation or breach or an implied waiver of that right, obligation or breach on any other occasion.
 - (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.
- 14.14 **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

1. INTERPRETATION AND DEFINITIONS

1.1 Terms in capitals on this agreement which are not defined, have the same meaning as set out in the Shareholders' Agreement.

1.2 **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 Council 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.

"Agreed Transfer Date" has the meaning given to it in the Shareholders' Agreement.

"Apportionable Outgoings" means the amounts payable by the Council in relation to:

- (a) the Assumed Contracts; and
- (b) 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.

"Board" means Directors who number not less than the required quorum, acting together as a board of Directors.

"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 Company 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.

"Company" means Waikato Waters Limited.

"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, with this intended to be the Agreed Transfer Date as defined in the Shareholders' Agreement.

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

"Confidential Information" means any commercially sensitive 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.

"Constitution" means the constitution of the Company (including the Schedules) and all amendments to it from time to time.

"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.

"Council Debt Notice" has the meaning given to that term in clause 6.1(f) of Schedule 2.

"Council Water Infrastructure Debt" means the aggregate of the debt owed by the Council which was incurred in relation to the infrastructure and related assets/matters which are being transferred

to the Company in accordance with this agreement, the value of which is determined in accordance with Schedule 2A.

"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.

"Director" means a person appointed as a director of the Company in accordance with the Constitution.

"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 and who are offered a new employment agreement under clause 5.3 or clause 5.4 of Schedule 2.

"Encumbrance" means:

- (a) 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
- (b) 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.

"Establishment Strategy" means the agreed strategy informing the transition of a water services business into the Company as set out in the Shareholders' Agreement.

"Excluded Matters" means the excluded assets, excluded obligations and excluded responsibilities that are not transferred by the Council to the Company 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.

"Financial Year" has the meaning set out in the LG(WS) Act.

"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.

"Iwi and hapū Responsibilities" means the responsibilities arising in relation to existing relationships and obligations (whether statutory, contractual or otherwise) with Iwi and the Council's

Service Area that are transferred by the Council to the Company as set out in Appendix 1 of Schedule 2, but excluding those responsibilities set out in Appendix 2 of Schedule 2.

"LGA" means the Local Government Act 2002.

"LGPA" means the Local Government (Water Services Preliminary Arrangements) Act 2024.

"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, contingent 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 Company 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:

- (a) any Liabilities in respect of the period after Completion which relate to the Employees and Contractors who have accepted an Offer (provided that such Liabilities are assumed by the Council under clause 2.2 of Schedule 2); and
- (b) 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 Company 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.

"Post-Completion Transition Services" means the services that the Company engages the council to provide from the Completion Date, as particularised in Schedule 3.

"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.

"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, Resource Consent Responsibilities and Iwi and hapū 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 Company 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
- (c) 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.

"Settlement Amount" means the amount calculated in accordance with Schedule 2A.

"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.

"Shareholders' Agreement" means the shareholders' agreement entered into between the Company and each of its shareholders and dated on or about the date of incorporation of the Company.

"Shareholding Councils" means each of the councils that are party to the Shareholders' Agreement.

"Stage 1 Shares" has the same meaning as set out in the Shareholders' Agreement.

"Stage 2 Shares" has the same meaning as set out in the Shareholders' Agreement.

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

"Total Water Connections" has the meaning set out in the Shareholders' Agreement.

"Transferring Water Services" means the drinking water services and wastewater services the Council is transferring Statutory Responsibility for to the Company under the terms of this agreement,

"Transaction" means the transaction recorded in this agreement.

"Transitional Activity Costs" means any costs incurred by the Council in undertaking a transition activity agreed by the Board and set out in Schedule 2A. **"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.

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

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

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

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

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) words in this agreement have the same meaning as in the Companies Act 1993 unless inconsistent with the context;
- (e) a reference to a party, person or entity includes:
 - (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;

- (f) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause, schedule, appendix or attachment is to a clause, schedule, appendix or attachment of this agreement;
- (h) 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;
- (i) references to the word 'include' or 'including' are to be construed without limitation;
- (j) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (l) an obligation not to do something includes an obligation not to allow or cause that thing to be done;
- (m) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (n) 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
- (o) an obligation not to do something includes an obligation not to allow or cause that thing to be done.