

SHAREHOLDERS' AGREEMENT RELATING TO CENTRAL DISTRICTS WATER LIMITED

HOROWHENUA DISTRICT COUNCIL

PALMERSTON NORTH CITY COUNCIL

RANGITIKEI DISTRICT COUNCIL

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SCHEDULE 2 RESERVED MATTERS REQUIRING SHAREHOLDER APPROVAL

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PARTIES

1. **HOROWHENUA DISTRICT COUNCIL (HDC)**
2. **PALMERSTON NORTH CITY COUNCIL (PNCC)**
3. **RANGITIKEI DISTRICT COUNCIL (RDC)**

BACKGROUND

- A. HDC, PNCC and RDC:
 - (i) intend to incorporate the Company to become the water organisation responsible for delivering water services in the Service Area; and
 - (ii) will each contemporaneously on Day One, expected to be 1 July 2027, transfer water services assets, liabilities and other matters to the Company pursuant to the Transfer Agreements. From Day One, the Company will be a water services provider under the Local Government (Water Services) Act 2025, which was enacted to give effect to the Local Water Done Well water reforms.
- B. The purpose of this agreement is to record how the parties will manage their shareholdings in the Company and their respective relationships with each other.
- C. Once incorporated, the Company will accede and become a party to this agreement to record certain obligations owed to it by, and owed by it to, the Shareholders.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this agreement the following definitions apply:

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

Board means the board of Directors of the Company.

Board Skills Matrix means a matrix setting out the skills which are required to be represented on the Board, by being held by one or more Directors in office, as adopted and amended by the Shareholders Committee from time to time in accordance with Schedule 3.

Business means the business and activities set out in clause 2.1 of the Constitution.

Business Day means a day (other than a Saturday, a Sunday or a public holiday) on which registered banks are open for business in the Manawatū-Whanganui region, New Zealand.

Companies Act means the Companies Act 1993.

Company means Central Districts Water Limited.

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

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

Day One means 1 July 2027, or any later date agreed by all Shareholders.

Day Zero means the date the Company is incorporated.

Director means a director of the Company.

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

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

Financial Year means:

- (a) the period from the Day Zero to 30 June immediately following Day Zero;
- (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.

Independent Director means a Director who is neither a current elected member of any Local Authority that is a Shareholder nor a current employee of any Shareholder or the Company.

LGA means the Local Government Act 2002.

LGFA means New Zealand Local Government Funding Agency Limited.

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

Local Authority has the meaning given to it in section 5 of the LGA.

Ordinary Resolution means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

Reserved Matters means matters of the nature listed in Schedule 2.

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 means the combined service areas (as defined in section 4 of the LG(WS) Act) of the Shareholders being, at the date of adoption of this agreement, the territorial districts of Palmerston North, Rangitikei and Horowhenua.

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

Shareholder means a shareholder in the Company and includes any person who subsequently becomes a shareholder.

Shareholders Committee means the joint committee formed by the Shareholders pursuant to clause 6.1.

Shareholders Committee Representative means a member of the Shareholders Committee.

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

Statement of Expectations has the meaning given to it in section 220 of the LG(WS) Act.

Term means the term of this agreement as set out in clause 10.1.

Terms of Reference means the terms of reference of the Shareholders Committee in the form set out in Schedule 3, as amended from time to time in accordance with this agreement.

Transfer Agreement has the meaning given to it in section 4 of the LG(WS) Act.

Unanimous Resolution means a resolution that is approved by all of the Shareholders entitled to vote and voting on the question.

Water Services has the meaning given to it in section 4 of the LG(WS) Act, which will be the water services transferred to the Water Organisation in accordance with the Transfer Agreement between the Water Organisation and each Shareholder.

Water Services Annual Budget has the meaning given to it in section 220 of the LG(WS) Act.

Water Services Strategy has the meaning given to it in section 220 of 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 party, person or entity includes:

- (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;
- (f) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause or schedule is to a clause or schedule of this agreement;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, 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 are 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 will be performed on or by the Business Day immediately following that day; and
- (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

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

2. SHARES

2.1 Initial Shares on Issue: As at the date of incorporation, the Company will have the number of Shares set out in Schedule 1 which are held by the Shareholders set out in Schedule 1.

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- 2.2 Ordinary Shares:** As at Day Zero, all Shares on issue will be fully paid, ordinary shares ranking equally in all respects.

3. PURPOSE OF COMPANY

- 3.1 Purpose:** It is the intention of the Shareholders that the Company is to carry on the Business.
- 3.2 Initial business set up:** The Shareholders will work together to procure the initial business set up, operational steps, and transactions described and summarised in Schedule 1.

4. BOARD AND DIRECTORS

4.1 Board:

- (a)** The Company will have no less than the minimum and no more than the maximum number of Directors specified in the Constitution.
- (b)** The Directors will be appointed and removed by the Shareholders Committee in accordance with the Constitution and Schedule 3.

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

5. SHAREHOLDERS' OBLIGATIONS

5.1 Voting and Shareholder reserved matters:

- (a)** Subject to clause 5.1(b) and any resolution that is required by the Companies Act or the Constitution to be passed as a Special Resolution or Unanimous Resolution, all resolutions of meetings of the Shareholders may be passed by Ordinary Resolution.
- (b)** The Company will not enter into any transaction or matter which is a Reserved Matter unless the entry into such transaction or matter is approved in writing by:
 - (i)** the Shareholders who together hold at least the required percentage of all Shares held by the Shareholders to meet the required approval threshold, as listed in Schedule 3; or
 - (ii)** if such an approval threshold is not listed in Schedule 3, by Special Resolution.

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

- 5.3 Compliance with laws:** The Shareholders will each ensure they comply with their, and the Company complies with its, obligations under the LGA, Local Government (Water Services Preliminary Arrangements) Act 2024, the LG(WS) Act, the Local Government Official Information and Meetings Act 1987, the Companies Act and all other laws applicable to the Shareholders and the Company.
- 5.4 Spirit of collaborative working:** The Shareholders must at all times act in a spirit of co-operation and collaborative working, endeavouring to act together to allow for the effective communication of the Shareholders' intentions or requirements to the Company.
- 5.5 No surprises:** The Shareholders will use best endeavours to act under the principle of "no surprises", both with the Company and with each other in relation to their respective interests.

6. SHAREHOLDERS COMMITTEE

6.1 Establishment and Terms of Reference:

- (a)** After the approval of this agreement, the Shareholders will jointly establish, maintain and operate a Shareholders Committee in accordance with the Terms of Reference to provide overarching governance of the Company, including:
 - (i)** in relation to the appointment of Directors to the Board of the Company, including Directors to be appointed on incorporation;
 - (ii)** to assist the Shareholders to fulfil their obligations under this agreement; and
 - (iii)** where the Company has any obligation to consult with the Shareholders under the LG(WS) Act or other applicable law, to allow the Company to meet such obligation by consulting with the Shareholders Committee.
- (b)** The Shareholders Committee will be established as a joint committee under clause 30(1)(b) of Schedule 7 to LGA.
- (c)** Each Shareholder:
 - (i)** hereby confirms the Terms of Reference for the Shareholders Committee are on the terms attached at Schedule 3 to this agreement, as amended from time to time in accordance with this agreement;
 - (ii)** will appoint Shareholders Committee Representatives and Alternates in accordance with the Terms of Reference and clause 6.2; and
 - (iii)** agrees to delegate to the Shareholders Committee the responsibilities and powers necessary to participate in and carry

out the Shareholders Committee governance oversight responsibilities, including those responsibilities and powers set out in Schedule 3, and in relation to agreeing:

- (A) when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required (without prejudice to Shareholder and Board rights to call meetings under the Constitution or the Companies Act); and
 - (B) the appointment, removal and remuneration of Directors.
- (d) Any amendment to the Terms of Reference must be by unanimous agreement of the Shareholders (or of the Shareholders Committee Representatives duly authorised pursuant to clause 6.4).

6.2 Appointing and replacing a Shareholders Committee Representative: Each Shareholder must appoint three members to the Shareholders Committee, of which one must be an elected member of that Shareholder, and one must be a representative for mana whenua. In addition, each Shareholder is to appoint two Alternates, one for its representative for mana whenua and one for the other Shareholder Committee members appointed by it. Each Shareholder's appointed Shareholders Committee Representative and/or Alternates may be replaced from time to time by that Shareholder providing written notice to the Shareholders Committee and the other Shareholders.

6.3 Independent Chairperson

- (a) The Shareholders Committee may, by unanimous vote, appoint an independent chairperson, to act as the chairperson of the Shareholders Committee (**Independent Chairperson**).
- (b) To be independent, and qualify for appointment under clause 6.3(a), a person must be neither a current elected member of any Shareholder nor a current employee of any Shareholder or the Company, or employed or otherwise associated with any Mana Whenua member of the Shareholders Committee. To qualify for appointment as Independent Chairperson, a person must also not be disqualified from holding office as a director of a company under section 151 of the Companies Act.
- (c) The Independent Chairperson shall not have a vote on any resolution of the Committee, or be counted in the quorum for a Committee meeting, but shall be permitted to engage fully at Committee meetings and in the Committee decision-making process.
- (d) The Committee shall decide upon the remuneration (if any) of the Independent Chairperson, which shall be paid in equal amounts by the Shareholders.
- (e) An Independent Chairperson may be removed and replaced at any time by unanimous vote of the Committee.

- (f) An Independent Chairperson may resign at any time by notice to the Committee.
- (g) An Independent Chairperson shall hold office until they:
 - (i) cease to be independent as provided in clause 6.3(a);
 - (ii) are removed from office under clause 6.3(e);
 - (iii) resign in accordance with clause 6.3(f); or
 - (iv) become a person disqualified from holding office as a director of a company under section 151 of the Companies Act.

6.4 Authority of Shareholders Committee Representatives: Subject to the delegations under clause 6.1 above, the Shareholders agree that any action, matter or decision for a Shareholder under this agreement may be exercised by a duly authorised Shareholders Committee Representative or Alternate, each of whom must be an elected member of a Shareholder.

6.5 Shareholders Committee meetings: Unless the Shareholders Committee determines otherwise, the Shareholders Committee will meet on a quarterly basis.

6.6 Attendance of Shareholders Committee Representatives at meetings: Each Shareholder will ensure that each of its appointed Shareholders Committee Representatives or their Alternates attend each meeting of the Shareholders Committee.

6.7 Failure to attend: If a Shareholder's appointed Shareholders Committee Representative or their Alternates are not present at two or more consecutive meetings of the Shareholders Committee, then that Shareholder will be required, on notice by any other Shareholder, to replace that Shareholder's appointed Shareholders Committee Representative and/or Alternates (as appropriate).

7. LOANS AND GUARANTEES BY SHAREHOLDERS

7.1 Loans and guarantees: Subject to clause 7.2, no Shareholder will be required to make any loans to the Company or guarantee the obligations of the Company, to any creditor or other party except with the express prior agreement of such Shareholder.

7.2 LGFA funding guarantee: The Shareholders agree that, at the required or desirable time before Day One, each Shareholder will take all steps necessary, including providing any guarantee (in amounts proportionate to their shareholdings, or otherwise as may be agreed with LGFA), to enable the Company to access funding through LGFA.

8. STATEMENT OF EXPECTATIONS

8.1 Preparation:

- (a) The Shareholders will be responsible for jointly preparing a Statement of Expectations for the Company in accordance with the LG(WS) Act, within the time periods required by the LG(WS) Act.
- (b) The Shareholders will delegate responsibility for preparing and adopting the Statement of Expectations to the Shareholders Committee in accordance with clause 6.1.
- (c) Unless the Shareholders otherwise agree, or an alternative process is provided for in the LG(WS) Act (in which case that alternative process will be followed), the Shareholders Committee will meet at least eight months before the date on which the Company is required to prepare a Water Services Strategy under the LG(WS) Act, to discuss and agree to the process for preparing the next Statement of Expectations, which will be consistent with the Constitution and the process requirements set out in the LG(WS) Act, and will publish that process on the website of one or more of the Shareholders in accordance with the LG(WS) Act.
- (d) In addition to the requirements specified in the LG(WS) Act, the Statement of Expectations will also include the matters set out in Schedule 1.
- (e) No later than the period set out in Schedule 1 before the publication date, or an alternative date agreed by the Shareholders, the agreed Statement of Expectations will be circulated to the Chairperson of the Board, the Chief Executive of the Company and the Shareholders Committee.

9. SHARES AND SHAREHOLDERS

- 9.1 **No sale:** No Shareholder may directly or indirectly sell, transfer, or dispose of the legal or beneficial ownership of, or the control of, any of its Shares otherwise than in compliance with this agreement, the Constitution and the LG(WS) Act.
- 9.2 **No Security Interest:** A Shareholder must not grant a Security Interest over any of its Shares.
- 9.3 **Share issue:** Subject to approval of the Shareholders in accordance with clause 5.1, the Board may issue Shares in accordance with the Constitution and this agreement, including the principles set out in Schedule 1.
- 9.4 **Additional Shareholders:** Subject to the approval of the Shareholders in accordance with clause 5.1, additional Local Authorities may become shareholders in the Company in accordance with the Constitution, the principles set out in Schedule 1, and Schedule 2.
- 9.5 **Exiting shareholders:** A Local Authority may cease to be a shareholder in the Company in accordance with the Constitution and the principles set out in Schedule 1 (a **Shareholder Exit**).
- 9.6 **Amalgamation of Local Authorities:** In the event of an amalgamation (**Amalgamation Event**), the Shareholders Committee will meet and discuss the effect of the amalgamation on the shareholding structure of the Company and will exercise their

voting rights to ensure that the shareholding percentages for the Shares remain reasonable as agreed by all Shareholders.

9.7 Consequences of Shareholder Exit or Amalgamation: If a Shareholder Exit or Amalgamation Event occurs or is likely to occur:

- (a) the Shareholders Committee will meet and discuss the effect of the Shareholder Exit or Amalgamation Event on the shareholding structure of the Company and will exercise their voting rights to ensure that the structure (including the relative shareholding percentages of the remaining Shareholders) remains fit for purpose having regard to the purpose of the Company as set out in clause 3; and
- (b) if requested by a Shareholder, the Shareholders Committee will meet and discuss the effect of the Shareholder Exit or Amalgamation Event on the arrangements contemplated under this agreement more widely in accordance with the following principles:
 - (i) each Shareholder acknowledges their ongoing commitment to the principle of co-operation and collaborative working as set out in clause 5.4; and
 - (ii) the arrangements in respect of the governance of the Company must continue to be fit for the purpose of the Company as a water organisation and the respective community and economic interests of the remaining Shareholders.

10. TERM AND TERMINATION

10.1 Term: Subject to clause 11.2, the **Term** of this agreement commences on the date signed by all Shareholders and continues until the first date on which:

- (a) only one Shareholder owns all Shares;
- (b) none of the Shareholders hold Shares;
- (c) all Shareholders agree that this document is terminated; or
- (d) the Company is liquidated.

11. CONSEQUENCES OF TERMINATION

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

11.2 Survival: Termination of this agreement will not affect the rights and obligations of the Shareholders set out in clauses 1, 11, 13, 15, 16 and 17 which are intended to survive the termination of this agreement.

12. SUSPENSION OF RIGHTS

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

- (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 that Shareholder's right to vote) are suspended and that Shareholder is not to be counted for the purpose of determining a quorum for a Shareholders' meeting;
- (b) all voting rights of the Shareholders Committee Representatives appointed by the Defaulting Shareholder are suspended; and
- (c) all Director appointment rights of the Defaulting Shareholder are suspended.

12.2 Non-Defaulting Shareholder: For the purposes of clause 12.1:

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

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

- (a) paid at the rate set out in Schedule 1;
- (b) paid by instalments at intervals of 10 Business Days from the Due Date; and
- (c) 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.

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

13. DISPUTE RESOLUTION

13.1 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.

13.2 Negotiation:

- (a) On receipt of a notice delivered in accordance with clause 13.1 and before any party may refer a dispute to arbitration or expert determination, the Shareholders Committee Representatives must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
- (b) If any Shareholders Committee Representative considers that the dispute is not being resolved in a timely manner, such Shareholders Committee Representative may serve written notice on the other parties' Shareholders Committee Representatives to escalate the dispute to the Chief Executives or equivalent (where the Shareholders Committee Representatives are not the Chief Executive or equivalent) of the applicable Shareholders for resolution.
- (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 13.2, any party may submit the dispute to arbitration or expert determination.

13.3 Arbitration:

- (a) If the parties do not resolve the dispute by negotiation, and unless the parties agree to refer the dispute to Expert Determination, any party (the **Initiating Party**) may refer that dispute to binding arbitration by issuing a written notice (**Arbitration Notice**) to the other party or parties (together with the Initiating Party, the **Disputing Parties**) for final resolution in accordance with the provisions of this clause 13.3 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 will 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 will be as set out in Schedule 1 and the arbitration will be conducted in the English language.
- (d) The award of the arbitration will be in writing and must include reasons for the decision.
- (e) The award of the arbitration will 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 will 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 will relieve any of the Parties of their respective obligations under this agreement.

13.4 Expert Determination: If the parties agree to refer the dispute to an Expert Determination, then:

- (a) any Shareholder or the Company may refer the dispute to such firm of chartered accountants or lawyers (depending on the nature of the matters in issue) with suitable experience in dealing with such matters as are in dispute:

- (i) as is agreed by a majority of the Shareholders Committee and the Company; or
- (ii) failing agreement within 5 Business Days of the date of any Shareholder notifying details of its suggested expert to the other Shareholders and the Company, as is appointed by the President for the time being of the New Zealand Law Society,

(the **Expert**). The Expert will be required to make a decision in respect of the issue or dispute (and any consequential adjustments) within 10 Business Days from the date upon which the matter is referred to him or her.

- (b) The decision of the Expert will, in the absence of fraud or manifest error, be conclusive and binding on all Shareholders and the Company.

- (c) In resolving an issue or dispute under this clause:

- (i) the Expert will be deemed to be acting as an expert, not as a mediator or an arbitrator;
- (ii) nothing in this clause will constitute a submission to arbitration under the Arbitration Act 1996;
- (iii) each Shareholder and the Company must give the Expert any information and assistance, and will ensure that its duly authorised representatives meet with the Expert, as the Expert may reasonably require in order to expedite the resolution of the issue or dispute; and
- (iv) the Shareholders and the Company will be jointly and severally liable to the Expert for all costs incurred by the Expert, but the Expert may allocate, to any one or more of the Shareholders and the Company, the responsibility for payment of those costs and that allocation will be binding on the Shareholders and the Company.

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

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

13.7 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.

14. DISTRIBUTION PRINCIPLES ON LIQUIDATION

14.1 Principles: The principles which govern the distribution on liquidation of the Company (which are intended to be legally binding) include:

- (a) each Shareholder would be entitled to have the original Water Services assets it transferred to the Company (or representative equivalent assets) transferred back to it along with the relevant debt apportioned to those assets;
- (b) an adjustment amount may be payable on liquidation by any Shareholder to reflect effective compensation for the costs of any new Water Services assets that may transfer to such Shareholder, less the allocation and assumption of a share of the Company's debt (and other liabilities) for the new Water Services assets; and
- (c) the basis on which that adjustment amount is set will be determined by the Shareholders Committee.

15. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS

15.1 Confidentiality: Each party must keep confidential the Confidential Information and must not disclose or permit the disclosure of any 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.

15.2 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.

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

16. NOTICES

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

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

16.2 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.

16.3 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; or
- (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.

17. GENERAL

17.1 Company incorporation: The Shareholders agree to take all steps necessary to incorporate the Company at a time to be agreed by the Shareholders (and, in any case, by no later than 31 May 2026) and to procure that, on or as soon as reasonably practicable after incorporation, the Company becomes a party to this agreement.

17.2 No partnership, joint venture: Nothing in this agreement will create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between any of the Shareholders, and a Shareholder may not make, or allow to be made, any

representation that any such relationship exists between any of the Shareholders. A Shareholder will not have authority to act for, or to incur any obligation on behalf of, any other Shareholder, except as expressly provided for in this agreement.

17.3 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.

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

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

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

17.5 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.

17.6 Severance: If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it will be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and will not affect the enforceability, legality, validity or application of any other provision of this agreement.

17.7 Further assurance: Each Shareholder will 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.

17.8 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.

17.9 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.

17.10 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.

17.11 Inconsistency with Constitution: If there is any inconsistency between:

- (a) a provision in this document and a mandatory provision in the LG(WS) Act, the LGA or the Companies Act, then the mandatory provision in the LG(WS) Act, the LGA, or the Companies Act (as the case may be) will prevail; and
- (b) this document and the Constitution then each party agree to abide by this document and to do everything required to change the Constitution so that it is consistent with this document.

17.12 Waivers:

- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the Council granting it. A waiver only affects the particular right, obligation or breach for which it is given. It is not an implied waiver of any other right, obligation or breach or an implied waiver of that right, obligation or breach on any other occasion.
- (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.

17.13 Governing law: This agreement is governed by the laws of New Zealand.

SIGNATURES**HOROWHENUA DISTRICT COUNCIL**

By:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory**PALMERSTON NORTH CITY COUNCIL**

By:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory**RANGITIKEI DISTRICT COUNCIL**

By:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

SCHEDULE 1

FURTHER DETAILS

<div>Service Area(s) for provision of "Water Services"</div> <div>(Clause 1.1)</div>	<div>The Service Area for the provision of Water Services initially relates to the territorial districts of:</div> <div><div>(a) Horowhenua District Council;</div><div>(b) Palmerston North City Council; and</div><div>(c) Rangitikei District Council.</div></div>												
<div>Initial share issue and shareholding</div> <div>(Clause 2.1)</div>	<div>Total Shares to be issued on incorporation: 100</div> <div>Initial Shareholders, their shareholdings and voting percentages are:</div> <table><tr><th>Shareholder</th><th>Number of Shares</th><th>Voting %</th></tr><tr><td>Horowhenua District Council</td><td>25</td><td>25%</td></tr><tr><td>Palmerston North City Council</td><td>65</td><td>65%</td></tr><tr><td>Rangitikei District Council</td><td>10</td><td>10%</td></tr></table>	Shareholder	Number of Shares	Voting %	Horowhenua District Council	25	25%	Palmerston North City Council	65	65%	Rangitikei District Council	10	10%
Shareholder	Number of Shares	Voting %											
Horowhenua District Council	25	25%											
Palmerston North City Council	65	65%											
Rangitikei District Council	10	10%											
<div>Initial business set up activities</div> <div>(Clause 3.2)</div>	<div>In addition to the matters expressly covered elsewhere in this document:</div> <div><div>(a) Service Level Agreements: Each Shareholder and the Company will, prior to Day One, agree and enter into appropriate service level agreements, under which each Shareholder shall provide support services to the Company as required by the Company on an interim basis before its own systems, processes and capabilities are in place.</div><div>(b) Transfer Agreements: Each Shareholder and the Company will, prior to Day One, agree and enter into a separate Transfer Agreement (as between each Shareholder and the Company), for the transfer of that Shareholder’s Water Services obligations (and associated assets, liabilities and debts) to the Company on the terms contained in the relevant Transfer Agreement.</div><div>(c) Shared Services: Determine which services (if any) will be shared between the Company and any Shareholder.</div></div>												
<div>Other matters to be included in the Statement of Expectations</div>	<div>The following matters will be addressed in the Statement of Expectations (unless otherwise determined by the Shareholders Committee):</div> <div><div>(a) relationships with Shareholders, the communities of each Shareholder, and customers;</div></div>												

(Clause 8.1(d))	<ul style="list-style-type: none"> (b) performance indicators; (c) strategic priorities for the Water Services Strategy; (d) third party obligations; (e) specific obligations of the Shareholders; and (f) requirement to undertake community and/or customer engagement.
<p>Time period before publication to provide the agreed Statement of Expectations to the Chairperson of the Board, the Chief Executive of the Company and the Shareholders Council</p> <p>(Clause 8.1(c))</p>	<p>15 Business Days</p>
<p>Principles for share issue</p> <p>(Clause 9.3)</p>	<p>New Shareholders</p> <p>The principles which govern the process for additional Local Authorities joining after the establishment of the Company (which are intended to be legally binding) include:</p> <ul style="list-style-type: none"> (a) additional Local Authorities may become shareholders in the Company; (b) additional Local Authorities would be issued shares in same manner as Horowhenua District Council, Palmerston North City Council, and Rangitikei District Council, as the founding shareholding councils; (c) a “buy in” price will be payable; (d) the “buy in” price will be set on a basis that takes into account a proportionate share of the costs incurred by the founding shareholding councils to establish the Company; and (e) the basis on which that “buy in” price is set will be determined by the Shareholders Committee.
<p>Principles for exiting shareholders</p> <p>(Clause 9.5)</p>	<p>The principles which govern the process for any Shareholder Exit after the establishment of the Company (which are intended to be legally binding) include:</p> <ul style="list-style-type: none"> (a) a Shareholder may exercise its right to exit the Company by giving two years’ notice of its intention to cease to be a Shareholder. The terms on which the exit may occur, such as any “buy out” price will be a Reserved Matter; (b) the right to exit may only be exercised after a period of no less than 10 years from Day One;

	<p>(c) the exiting Shareholder would be entitled to have the original water services assets it transferred to the Company (or representative equivalent assets) transferred back to it along with the relevant debt apportioned to those assets;</p> <p>(d) a “buy out” price may be payable by the exiting Shareholder on the Shareholder Exit to reflect effective compensation for the costs of any new water services assets that may transfer to the exiting Shareholder, less the allocation and assumption of a share of the Company’s debt (and other liabilities) for the new water services assets; and</p> <p>(e) the basis on which that “buy out” price is set will be determined by the Shareholders Committee.</p>
<p>Interest rate payable on payment default (Clause 12.3(a))</p>	<p>Bill Rate plus 3% per annum</p> <p>For the purposes of this paragraph, Bill Rate means:</p> <p>(a) the bank bill reference (bid) rate (rounded upwards, if necessary, to the nearest two decimal places) administered by the New Zealand Financial Benchmark Facility (or any other person which takes over the administration of that rate) for the relevant period and displayed on page BKBM of the Bloomberg screen or Thomson Reuters equivalent (or its or their successor page); or</p> <p>(b) if this rate does not appear on page BKBM of the Bloomberg screen or Thomson Reuters equivalent (or its or their successor page) or if such page is not available, the average of the mean bid and offered rates of Westpac New Zealand Limited for bank bills of exchange having a tenor of 90 days at 10.45 am on that Business Day, provided always that if such rate would be less than zero, it will be zero.</p>
<p>Place of arbitration (Clause 13.3(c))</p>	<p>Palmerston North</p>

Address for notices <i>(Clause 15.1)</i>	Horowhenua District Council	Rangitikei District Council
	126 Oxford Street, Levin 5510, New Zealand Email: moniqued@horowhenua.govt.nz Attention: Monique Davidson	46 High Street, Marton 4710, New Zealand Email: carol.gordon@rangitikei.govt.nz Attention: Carol Gordon
	Palmerston North City Council	Central Districts Water Limited
	32 The Square, Palmerston North 4410, New Zealand Email: waid.crockett@pncc.govt.nz Attention: Waid Crockett	32 The Square, Palmerston North 4410, New Zealand Email: chris.dyhrberg@pncc.govt.nz Attention: Chris Dyhrberg
Shareholders Committee membership <i>(Schedule 3)</i>	Total number of members of the Shareholders Committee: up to 10. Initial members of the Shareholders Committee: 3 members appointed by Horowhenua District Council; 3 members appointed by Palmerston North City Council; 3 member appointed by Rangitikei District Council; and 1 independent member appointed pursuant to Terms of Reference. Quorum for meetings of the Shareholders Committee: at least five members (or their Alternates) in total, including at least one Shareholders Committee Representative that is an elected member of each appointing Council.	

SCHEDULE 2

RESERVED MATTERS REQUIRING SHAREHOLDER APPROVAL

MATTER OR TRANSACTION	REQUIRED APPROVAL
<i>Special Resolution matters</i>	
"Major transactions" as that term is defined in the Companies Act.	Special Resolution
Any alteration to, or revocation of, the Constitution (other than clause 8 of the Constitution relating to Distributions (as defined in the Constitution)).	Special Resolution
Any issue of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares (to a Shareholder).	Special Resolution
Any alteration of rights, privileges or conditions attaching to the Shares.	Special Resolution
Any consolidation, division, or subdivision of Shares.	Special Resolution
Any cancellation, buy-back or reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	Special Resolution
The giving of any financial assistance for the purpose of, or in connection with, the purchase of Shares.	Special Resolution
The terms of any Shareholder Exit.	Special Resolution
Making a material change in the nature of the Company's business or engaging in business activities other than the Business.	Special Resolution
Incurring any indebtedness to any person other than New Zealand Local Government Funding Agency Limited or a New Zealand registered banking institution.	Special Resolution
Granting any security interest over any of the assets of the Company.	Special Resolution
<i>Unanimous Resolution matters</i>	
Any issue of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares (to anyone other than a Shareholder).	Unanimous Resolution
Liquidation or winding up of the Company.	Unanimous Resolution

Schedule 2: Matters requiring Shareholder approval

Amalgamation Event.	Unanimous Resolution
Transfer of Shares (except as permitted in the Constitution).	Unanimous Resolution
Any alteration to, or revocation of, the Terms of Reference.	Unanimous Resolution
Any amendment to clause 8 of the Constitution relating to Distributions.	Unanimous Resolution

SCHEDULE 3

SHAREHOLDERS COMMITTEE TERMS OF REFERENCE

1. PURPOSE

The Shareholders Committee (**Shareholders Committee**) is established, as a joint committee under clause 30(1)(b) of Schedule 7 to the LGA to:

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

2. SHAREHOLDERS COMMITTEE RESPONSIBILITIES

The Shareholders Committee's responsibilities are:

- (a) Appointing and removing Directors, and determining the term of each Director's appointment;
- (b) Endorsing which Director will be Chair of the Board;
- (c) Adopting and amending the Board Skills Matrix;
- (d) Determining the Company's Board appointment policy;
- (e) Seeking and interviewing candidates for the Company's Board as needed;
- (f) Approving the remuneration of directors of the Company;
- (g) Engaging with the Company, on behalf of the Shareholders, in relation to the Company's preparation and approval of its significance and engagement policy;
- (h) Preparing, considering comments from the Company on, and adopting the Statement of Expectations for the Company;
- (i) Receiving, considering and providing comments and recommendations to the Company on its draft Water Services Strategy, and any amendments to it;
- (j) Receiving and considering draft Transfer Agreements;
- (k) Receiving and considering draft Transitional or Service Level Agreements;
- (l) Receiving and considering the Water Services Half-yearly Report and Water Services Annual Report of the Company;

- (m) Receiving and considering such other information from the Company as the Shareholders Committee may receive or request on behalf of the Shareholders from time to time;
- (n) Undertaking performance and other monitoring of the Company, and of the Board;
- (o) Considering and providing recommendations to the Shareholders on proposals from the Company;
- (p) Providing co-ordinated feedback, and recommendations as needed, on any matters requested or proposed by the Company or any Shareholder including water services assets and infrastructure and water conservation;
- (q) Developing, as required, a role description for an Independent Chair, and interviewing and appointing an Independent Chair;
- (r) Determining when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required, without prejudice to Shareholder and Board rights to call meetings under the Company's constitution; and
- (s) Providing recommendations to the Shareholders regarding changes to these terms of reference, the Shareholders' Agreement and the constitution of the Company.

3. SHAREHOLDERS' RESPONSIBILITIES

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

4. MEMBERSHIP

- (a) The membership of the Shareholders Committee will total the number of persons set out in Schedule 1.
- (b) Each Shareholder will appoint three members of the Shareholders Committee, with the initial members being as set out in Schedule 1.
- (c) At least one but no more than two members of the Shareholders Committee appointed by each Shareholder must be elected members of the appointing Shareholder.
- (d) Each Shareholder may appoint one Mana Whenua representative as one of its three members of the Shareholders Committee.

5. CHAIRPERSON AND DEPUTY CHAIRPERSON

- (a) Once all members of the Shareholders Committee have been appointed, they will:
 - (i) appoint an Independent Chairperson, who will have no voting rights; and
 - (ii) appoint a Deputy Chairperson.

- (b) The Deputy Chairperson:
 - (i) will act as the chair in the absence of the Independent Chairperson appointed pursuant to clause 5(a); and
 - (ii) may be removed and replaced by the members of the Shareholders Committee.

6. QUORUM

- (a) For a meeting of the Shareholders Committee to have a quorum, five members, or their appointed Alternates, must be present, including at least one Shareholders Committee Representative that is an elected member of each appointing Council.
- (b) Where the Shareholders Committee is providing a forum for the Shareholders to meet and exercise their powers in relation to the Company, the requirements of the Company's constitution and shareholders' agreement will prevail over the Terms of Reference.

7. ALTERNATES

- (a) Each Shareholder must appoint two Alternates for the Shareholders Committee Representatives appointed by it, one of whom is to be an Alternate for the appointed representative for mana whenua, in accordance with the Shareholders' Agreement.
- (b) Where any Alternate attends a meeting of the Shareholders Committee, they may vote at meetings, and undertake all actions in relation to the Shareholders Committee (including signing any resolution), as if they were the relevant Shareholders Committee Representative, but only in the event that the Shareholders Committee Representative is unable or unavailable to do so.

8. DECISION-MAKING

- (a) The Shareholders Committee will strive to make all decisions by consensus.
- (b) In the event that a consensus on a particular matter before the Shareholders Committee is not able to be reached, the Shareholders Committee will vote on a resolution in respect of the matter.
- (c) Each member of the Shareholders Committee, except the Independent Chairperson appointed under clause 5(a)(i), will have one vote, and resolution may be passed by a simple majority of votes.
- (d) In the situation where there is an equality of votes cast on a matter, the Independent Chairperson does not have a casting vote.
- (e) Any resolution of the Shareholders Committee may be passed in writing, signed or assented to by or on behalf of Shareholders Committee Representatives holding the requisite majority of votes to pass the resolution, as specified above. Any such

resolution in writing may consist of one or more documents in similar form (including letters, facsimiles, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Shareholders Committee Representatives. Any Shareholders Committee Representative not signing the resolution must be provided with a copy of the resolution.

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

9. REMUNERATION

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

10. ADMINISTRATION

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

11. ALTERATION OR REVOCATION

No alteration or revocation of these Terms of Reference will be of any force or effect unless approved in accordance with Schedule 2 of the Shareholders Agreement.

12. DEFINED TERMS

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

Board means the board of Directors of the Company.

Board Skills Matrix means a matrix setting out the skills which are required to be represented on the Board, by being held by one or more Directors in office, as adopted and amended by the Shareholders Committee from time to time.

Company means Central Districts Water Limited.

Director means a director of the Company.

Service Area has the meaning given to it in section 4 of the LG(WS) Act and, in relation to the Company, comprises the combination of the areas delineated by geographical boundaries specified in each Transfer Agreement as the area in which the Company will provide water services under that Transfer Agreement, and also includes other areas in which the Company provides water services with the approval of the Shareholders Committee and subject to compliance with any requirements of the LG(WS) Act.

Shareholder means a shareholder in the Company and includes any person who subsequently becomes a shareholder.

Shareholders' Agreement means the agreement relating to the Company between the Shareholders and the Company, once incorporated, as amended from time to time.

Shareholders Committee means the joint committee formed by the Shareholders in accordance with the Shareholders' Agreement.

Shareholders Committee Representative means a member of the Shareholders Committee appointed in accordance with the Shareholders' Agreement.

Statement of Expectations has the meaning given to it in section 220 of the LG(WS) Act.

Transfer Agreement has the meaning given to it in section 4 of the LG(WS) Act.

Water Services has the meaning given to it in section 4 of the LG(WS) Act, which will be the water services transferred to the Company in accordance with the Transfer Agreement between the Company and each Shareholder and otherwise provided by the Company in its Service Area.

Water Services Annual Budget has the meaning given to it in section 220 of the LG(WS) Act.

Water Services Annual Report has the meaning given to it in section 220 of the LG(WS) Act.

Water Services Half-yearly Report means the document referred to in section 248 of the LG(WS) Act.

Water Services Strategy has the meaning given to it in section 220 of the LG(WS) Act.