

Shareholders' Agreement relating to Kaikōura Hurunui Water Services Limited

PARTIES

Kaikōura District Council
Council

Hurunui District Council
Council

Kaikōura Hurunui Water Services Limited
Company

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AGREEMENT dated

4th FEBRUARY

2026

PARTIES

Kaikōura District Council

and

Hurunui District Council

and

Kaikōura Hurunui Water Services Limited

(Company)

BACKGROUND

- A. Kaikōura District Council and Hurunui District Council are Shareholders in the Company. The parties have entered into this agreement to record how the Shareholders will manage their shareholdings in the Company and their respective relationships with each other.
- B. The Company is party to this agreement to record certain obligations owed to it by, and owed by it to, the Shareholders.
- C. The terms and conditions of this agreement are set out in Schedule 1 (Agreement Details), Schedule 2 (Terms and Conditions) and Schedule 3 (Reserved Matters).

SIGNATURES

KAIKŌURA DISTRICT COUNCIL

By:



Signature of Authorised Signatory

MAYOR CRAIG MACLURE
Name of Authorised Signatory

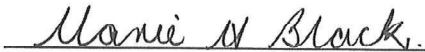


Signature of Authorised Signatory

WILL DARGATZ, CHIEF EXECUTIVE OFFICER
Name of Authorised Signatory

HURUNUI DISTRICT COUNCIL

By:



Signature of Authorised Signatory

MAYOR MANIE BLACK
Name of Authorised Signatory



Signature of Authorised Signatory

HAMISH DARGATZ
Name of Authorised Signatory

KAIKŌURA HURUNUI WATER SERVICES LIMITED

By:



Signature of Authorised Signatory

KARL DAVID SMITH
Name of Authorised Signatory



Signature of Authorised Signatory

ROSS PICKWORTH
Name of Authorised Signatory

SCHEDULE 1

AGREEMENT DETAILS

Initial share issue and shareholding (Clause 2.2, Schedule 2)	Total Shares to be issued on incorporation: Two ordinary shares and 200 Class A Shares Initial Shareholders: <table><thead><tr><th>Shareholder</th><th>Number of Ordinary Shares</th><th>Number of Class A Shares</th></tr></thead><tbody><tr><td>Kaikōura District Council</td><td>1</td><td>99</td></tr><tr><td>Hurunui District Council</td><td>1</td><td>101</td></tr></tbody></table>	Shareholder	Number of Ordinary Shares	Number of Class A Shares	Kaikōura District Council	1	99	Hurunui District Council	1	101
Shareholder	Number of Ordinary Shares	Number of Class A Shares								
Kaikōura District Council	1	99								
Hurunui District Council	1	101								
Price payable for each share issued (Clause 2.3, Schedule 2)	\$1 per Ordinary Share \$1 per Class A share									
Name of Company (Clause 2.4, Schedule 2)	Kaikōura Hurunui Water Services Limited									
Registered office and address for service of Company (Clause 2.4, Schedule 2)	66 Carters Road Amberley 7410									
Initial business set up activities (Clause 3.2, Schedule 2)	• Completion of legal documentation, e.g. Transfer Agreement (including valuation of assets), novation of agreements, transfer of consents • Establishment of financial/funding arrangements • Appointment of directors and employees • Ensuring appropriate policies, processes and systems are in place • Risk management, including arranging insurance • Communications with stakeholders									

Directors and term of appointment

(Clause 4.2, Schedule 2)

Initial directors and terms of appointment:

Initial directors	Term expiry date	Appointed by
TBA	TBA	TBA
TBA	TBA	TBA
TBA	TBA	TBA

Principles for share issue

(Clause 9.3, Schedule 2)

- Class A shares will carry voting rights but no rights to any dividends and distributions on liquidation.
- On, or as soon as practicable, following the Transfer Date, it is expected that Class B Shares will be issued in consideration for the Net Asset Value of the water services assets, liabilities and responsibilities transferred by each Shareholder. to the Company under the Transfer Agreement.
- Class B shares will not carry voting rights
- Class B shares will be the basis on which any dividends and distributions on liquidation will be distributed.
- Unless the parties agree otherwise:
 - the Company's assets will be revalued as at the first anniversary of Transfer Date and at every third anniversary of the Transfer Date thereafter, such revaluation to occur within three months of that anniversary; and
 - if, and to the extent that, such valuation determines that the proportion of a Shareholder's Net Attributable Asset Value to the Shareholders' aggregate Net Attributable Asset Value is greater than the proportion of that Shareholder's Class B Shares to the total number of Class B Shares on issue the Company shall issue further Class B Shares to that Shareholder for no further consideration to the intent that the relative proportions of Class B Shares continue to reflect the relative Net Attributable Asset Values.
- Class A Shares are redeemable at \$1.00 per Class A Share on 12 months' written notice to the Company by a holder of the Class A Shares provided always that any such redemption may only be exercised in respect all (and not some) of that holder's Class A Shares and any other redeemable shares held by that holder.
- Class B Shares are redeemable on 12 months' written notice to the Company by a holder of the Class B Shares in consideration for:

	○ the Attributable Assets attributable to that holder; and ○ assumption by that holder of the Attributable Debt attributable to that holder. provided always that any such redemption may only be exercised in respect of all (and not some) of that holder's Class B Shares and any other redeemable shares held by that holder.
Other matters which may be included in the Statement of Expectations <i>(Clause Error! Reference source not found., Schedule 2)</i>	• Expectations relating to dividends • Expectations relating to harmonisation/non-harmonisation of finances between districts • the employment of staff on Transfer date, including the terms and conditions of employment on Transfer date; • the acceptance of shareholders' liabilities relating to water services staff as at Transfer date; • agreement of shared services agreements between the shareholders and Kaikōura Hurunui Water Services Limited; and • the novation of agreements in place as at Transfer date between the shareholders' and third parties which establish rights and/or obligations relating to three waters.
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 <i>(Clause Error! Reference source not found., Schedule 2)</i>	One month
Interest rate payable on payment default <i>(Clause 12.3(a), Schedule 2)</i>	90 day bank bill rate (or equivalent) plus 100 basis points

Place of arbitration <i>(Clause 13.2, Schedule 2)</i>	Christchurch	
Address for notices <i>(Clause 15.1, Schedule 2)</i>	Kaikōura District Council	Hurunui District Council
	96 West End Kaikōura 7300 Email: ceo@kaikoura.govt.nz Attention: Chief Executive Officer	66 Carters Road Amberley 7410 Email: ceo@hurunui.govt.nz Attention: Chief Executive Officer
	Kaikōura Hurunui Water Services Limited	
	66 Carters Road Amberley 7410 Email: TBC Attention: Chief Executive Officer	

SCHEDULE 2

TERMS AND CONDITIONS

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

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

- (a) **Associated Person** means, in relation to a person, any other person that the first person is a shareholder in, a director of, or employed in an executive capacity of;
- (b) **Attributable Assets** means, in relation to a Shareholder, the water services and other assets:
 - (i) transferred or to be transferred by that Shareholder to the Company under a Transfer Agreement which:
 - (aa) are, and continue to be, located within that Shareholder's District; or
 - (bb) are otherwise attributable to and used for the purposes of that Shareholder's District; and
 - (ii) which are otherwise reasonably attributable to that Shareholder including any assets designated as Attributable Assets of that Shareholder in the Company's statements of financial position; and
- (c) **Attributable Debt** means in relation to a Shareholder:
 - (i) any debt for which the Company assumed liability under the Transfer Agreement with that Shareholder; and
 - (ii) any debt reasonably attributable to that Shareholder including any debt designated as Attributable Debt of that Shareholder in the Company's statements of financial position;
- (d) **Board** means the board of Directors of the Company;
- (e) **Business** means the business and activities of a water organisation within the meaning of the LG(WS) Act;
- (f) **Business Day** means a day (other than a Saturday, a Sunday or a public holiday) on which registered banks are open for business in Kaikoura and Hurunui, New Zealand;
- (g) **Companies Act** means the Companies Act 1993;
- (h) **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 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 but does not include the provisions of this agreement;

- (i) **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;
- (j) **Director** means a director of the Company;
- (k) **District** means, as the context requires, the relevant district listed in Schedule 2 of the LGA;
- (l) **Event of Default** in respect of a Shareholder means where a Shareholder breaches or fails to observe any of the obligations under this agreement and:
 - (i) 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;
 - (ii) if that breach or failure is not capable of remedy; or
 - (iii) that breach or failure is material in the context of the obligations of that Shareholder under this agreement;
- (m) **Financial Year** means:
 - (i) the period from the Incorporation Date to 30 June immediately following the Incorporation Date;
 - (ii) each subsequent period commencing on 1 July and ending on the next 30 June during the Term; and
 - (iii) the period from 1 July immediately preceding the end of the Term, to the end of the Term;
- (n) **Incorporation Date** means the date on which the Company is incorporated as determined by the date recorded by the New Zealand Companies Office;
- (o) **LGA** means the Local Government Act 2002;
- (p) **LGFA** means the New Zealand Local Government Funding Agency Limited;
- (q) **LGFA Guarantor** means a Guarantor under the deed of guarantee between certain local authorities and TEL Security Trustee (LGFA) Limited dated 7 December 2011 as amended and restated on 6 July 2020;
- (r) **LG(WS) Act** means the Local Government (Water Services) Act 2025;
- (s) **Local Authority** has the meaning given to it in the LGA;

- (t) **Material** means material in the context of the Business and assets of the Company as a whole;
- (u) **Net Attributable Asset Value** means, in relation to a Shareholder:
 - (i) the value of the Attributable Assets of that Shareholder; less
 - (ii) the value of the Attributable Debt of that Shareholder,
 as determined by an independent valuation carried out in accordance with generally accepted accounting principles and valuation standards and as agreed between the Shareholders;
- (v) **Ordinary Resolution** has the meaning given to it in the Constitution;
- (w) **Reserved Matters** means matters of the nature listed in Schedule 3;
- (x) **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;
- (y) **Service Area** has the meaning set out in the LG(WS) Act;
- (z) **Shares** means shares in the Company on issue from time to time;
- (aa) **Shareholder** means a shareholder in the Company and includes any person who subsequently becomes a shareholder;
- (bb) **Special Resolution** means a resolution that is approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question;
- (cc) **Statement of Expectations** has the meaning given to it in LG(WS) Act;
- (dd) **Transfer Agreement** has the meaning set out in the LG(WS) Act;
- (ee) **Transfer Date** means 1 July 2026 (unless otherwise agreed by the parties);
- (ff) **Water Services** has the meaning set out in the LG(WS) Act, which shall be the water services in respect of which responsibility is transferred to the Company in accordance with the respective Transfer Agreements between the Company and each Shareholder;
- (gg) **Water Services Annual Budget** has the meaning set out in the LG(WS) Act; and
- (hh) **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 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 refer to New Zealand law, including as amended or re-enacted;
- (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (l) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (m) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
- (n) an obligation not to do something includes an obligation not to allow or cause that thing to be done.

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

2. ESTABLISHMENT OF COMPANY

2.1 **Incorporation:** The Shareholders shall immediately after signing this agreement take all steps necessary (including signing documents) to:

- (a) incorporate the Company as a New Zealand registered company including by:
 - (i) granting any necessary authorisations, approvals and delegations;

- (ii) procuring the execution of director consent forms by the Initial Directors;
 - (iii) preparing, or procuring that an authorised person prepares, a share register for the Company; and
 - (iv) completing, or procuring that an authorised person complete, all necessary Companies Office filings; and
 - (b) procure that the Company enter into and execute this agreement.
- 2.2 **Shares:** The Company shall immediately upon incorporation have the number of ordinary shares and Class A shares set out in Schedule 1 which, on issue, will be held by the Shareholders set out in Schedule 1.
- 2.3 **Payment for Shares:** The sum set out in Schedule 1 shall be payable by each Shareholder in respect of each Class A Share held by that Shareholder, receipt of which is hereby acknowledged.
- 2.4 **Name and registered office:** The name of the Company shall be as set out in Schedule 1 and the initial registered office and address for service of the Company shall be as set out in Schedule 1.

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. In particular, the Shareholders agree that the Transfer Agreements will reflect the terms relating to the Transfer Agreements as agreed in the commitment agreement between the initial Shareholders dated 5 August 2025 (unless otherwise agreed by the parties).

4. BOARD AND DIRECTORS

- 4.1 **Board:** The Company will have the number of Directors that comply with in the Constitution. The Directors will be appointed and removed in accordance with the Constitution.
- 4.2 **Existing Directors:** As at the date of this agreement, the Directors named in Schedule 1 are deemed to have been nominated by the Shareholders to be the Directors and are deemed to have been appointed for a term commencing from the date of incorporation of the Company and continuing for the period stated in Schedule 1 unless the Director otherwise ceases to be a Director in accordance with the Constitution or the Companies Act.
- 4.3 **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.

5. SHAREHOLDERS' RIGHTS AND OBLIGATIONS

- 5.1 **Voting:** Subject to clause 5.2 and any resolution that is required by the Companies Act or the Constitution to be passed as a Special Resolution, or by any other voting threshold, all resolutions of meetings of the Shareholders may be passed by Ordinary Resolution.
- 5.2 **Reserved Matters:** The Company will not enter into any transaction or matter which is a Reserved Matter unless the entry into of that transaction or matter is approved in writing with the threshold for the relevant Reserved Matter specified in Schedule 3.
- 5.3 **Compliance with laws:** The Shareholders will each ensure that 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 Water Services Act 2021, the Companies Act and all other applicable laws.
- 5.4 **Spirit of collaborative working:** The Shareholders and the Company 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 and of the Company's intentions or requirements, as applicable.
- 5.5 **No surprises:** The Shareholders shall use best endeavours to act under the principle of "no surprises", both with the Company and with each other in relation to their respective interests. The Company shall use best endeavours to act under the principle of "no surprises" with each of the Shareholders in relation to their respective interests.

6. LOANS AND GUARANTEES BY SHAREHOLDERS

- 6.1 **Loans and guarantees:** No Shareholder will be required to make any loans to the Company or guarantee the obligations of the Company, to any creditor or other party except with the express prior agreement of such Shareholder or as set out in clause 6.2 below.
- 6.2 **LGFA:** The Shareholders agree that it is intended that the Company will borrow from the LGFA. In accordance with the LGFA foundation policies, the Company (as a council controlled organisation) must have financial support from its Shareholders. To this end, it is agreed that each Shareholder will:
- (a) support the Company in taking all steps necessary for it to:
 - (i) be approved by the LGFA as a borrower; and
 - (ii) accede to the LGFA's Multi Issuer Deed and Notes Subscription Agreement (or similar); and
 - (b) maintain the Shareholder's status as an LGFA Guarantor at all times; and
 - (c) guarantee the LGFA debt of the Company if required to do so.
- 6.3 **Calls by the LGFA on Shareholder guarantees of LGFA debt held by the Company:** If any guarantee given by the Shareholders in respect of the Company's obligations is called by the LGFA, to the extent that that guarantee relates to the Attributable Debt of a Shareholder, that Shareholder:

- (a) shall pay the LGFA the sum demanded under the guarantee in accordance with the obligations under the guarantee; and
- (b) indemnifies the other Shareholder or Shareholders in respect of its, or their, liability under the guarantee.

7. DISTRIBUTIONS

- 7.1 The Board may authorise dividends and other distributions (as those terms are defined in the Companies Act) only in accordance with a dividend policy adopted by the Shareholders in accordance with this clause.
- 7.2 The Shareholders may agree by a unanimous resolution of Shareholders to the Company adopting an updated dividend policy from time to time. Unless otherwise agreed by that unanimous resolution of Shareholders, the payment of any dividend (including if made under an updated dividend policy) will be:
 - (a) subject to the Company being able to:
 - (i) comply with its then current business plan;
 - (ii) comply with its obligations to any third party;
 - (iii) comply with its legal obligations, including under the LG(WS) Act (including the obligation not to not pay a dividend amount that could compromise the Company's ability to act in accordance with the financial principle that it must ensure that the revenue and funding it applies to providing water services is sufficient to sustain the Company's long-term investment in its water services while meeting all regulatory requirements);
 - (iv) meet the solvency test set out in the Companies Act; and
 - (v) maintain prudential capital reserves,(as determined in each case by the Board); and
 - (b) made on a pro-rata basis, in proportion to the Class B Shares then held by each Shareholder.

8. STATEMENT OF EXPECTATIONS

- 8.1 **Preparation:** The Shareholders will be responsible for jointly preparing the Statement of Expectations in accordance with the LG(WS) Act, within the time periods required by the LG(WS) Act:
 - (a) Unless the Shareholders otherwise agree, or an alternative process is provided for in the LG(WS) Act (in which case that alternative process will be followed), the Shareholders will agree the process for preparing the Statement of Expectations, which will be consistent with the Constitution and include consulting with the Company. This process will be published on the website of at least one of the Shareholders.

- (b) 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.
 - (c) No later than period set out in Schedule 1 before the publication date, or an alternative date agreed by the Shareholders, the Statement of Expectations will be circulated to the Chairperson of the Board, the General Manager of the Company and the Shareholders.
- 8.2 **Compliance:** The Shareholders will exercise their rights as shareholders (including director appointment rights and voting rights) to promote that the business of the Company is conducted in accordance with its Statement of Expectations.

9. SHARE SALE, ISSUE, AMALGAMATION AND VALUATION

- 9.1 **No sale:** No Shareholder shall directly or indirectly sell, transfer, or dispose of the legal or beneficial ownership of, or the control of, any of its Shares otherwise than in compliance with this clause 9, Schedule 3, the Constitution and LG(WS) Act.
- 9.2 **No Security Interest:** A Shareholder must not grant a Security Interest over any of its Shares, unless agreed by all other Shareholders acting reasonably.
- 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, the principles set out in Schedule 1, and Schedule 3 of this Agreement.
- 9.4 **Amalgamation of Local Authorities:** In the event of an amalgamation or any other change in the governance structure of a Shareholder, the Shareholders will meet and discuss the effect of the amalgamation on the shareholding structure of the Company and will exercise their voting rights to ensure that the shareholding percentages for the Shares remain reasonable as agreed by all Shareholders.

10. TERM AND TERMINATION

- 10.1 **Term:** This agreement commences on the date signed by all parties and continues until the first date on which:
- (a) only one Shareholder owns all Shares;
 - (b) none of the Shareholders hold Shares; or
 - (c) the date on which the Company is removed from the Companies Register.

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 **Liquidation:**

- (a) Where this agreement terminates under clause 10.1(b) or 12.1, the Shareholders must, without delay, take all necessary steps to appoint a liquidator to the Company.
- (b) Any liquidator must be agreed by the Shareholders within 10 Business Days of the terminating event under clause 10.1(b) or 12.1, or failing agreement, shall be chosen on the application of any Shareholder by the President for the time being of the New Zealand Law Society or his or her nominee.
- (c) On liquidation, after meeting any prior claims, any Company land and any Company assets affixed to any land or buildings will be transferred to the local authority in whose District that land or building is located, or to a person or entity nominated by that local authority.
- (d) On liquidation, after meeting any prior claims, any Company physical assets which are not attached to land or buildings (such as vehicles, plant and information technology equipment) will be allocated between the shareholders based on the relative number of Class B shares, provided that:
 - (i) If the proportional allocation based on Class B Shares would result in a Shareholder being entitled to a fraction of any physical asset, that Shareholder's entitlement to that specific asset will be rounded to the nearest whole number; and
 - (ii) Notwithstanding the proportional allocation in clause 11.2(d) and the rounding in clause 11.2(d)(i), where a physical asset is ordinarily used exclusively within one Shareholder's district and not in any other Shareholder's district, that asset will be transferred to that Shareholder or to a person or entity nominated by that Shareholder.
- (e) On liquidation, after meeting any prior claims (including any debt owed to the Shareholders), the residual value of the Company's net assets will be distributed to the Shareholders based on each Shareholders' Class B Shareholding provided that if liquidation occurs before Class B Shares are issued, the relative entitlements of Shareholders to assets on liquidation will be determined based on the relative Net Asset Value of the water services assets, liabilities and responsibilities that would have been used to determine Class B Share allocations.

11.3 Survival: Termination of this agreement will not affect the rights and obligations of the Shareholders set out in clauses 11, 13, 14, 15 and 16 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 voting) are suspended and the Default Shares are not to be counted for the purpose of determining a quorum for a Shareholders' meeting; and

- (b) 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, other than any such Shareholder which is a Related Party of 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 either party does not pay any amount payable under this agreement on the due date for payment (**Due Date**) that party shall pay to the other party interest (both before and after judgment) on that amount. That interest:

- (a) shall be paid at 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.

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 **Dispute:** If a Shareholder claims that a dispute has arisen, it shall advise the other Shareholders in writing. If the Shareholders are not able to resolve the dispute by negotiation, the matter shall be referred to an independent mediator. If the Shareholders do not agree on a mediator, then the mediator will be appointed by the New Zealand Dispute Resolution Centre.

13.2 **Reference to arbitration:** If the dispute is not able to be resolved through negotiation and mediation, any Shareholder may refer such dispute to binding arbitration.

13.3 **Ongoing compliance:** During a dispute, each Shareholder must continue to perform its obligations under this agreement. However, this does not preclude the ability of a Shareholder to withdraw or terminate this agreement where provided for elsewhere within this agreement.

13.4 **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.

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

- 13.6 **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. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS

- 14.1 **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.

- 14.2 **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.

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

15. NOTICES

- 15.1 **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: by personal delivery, by electronic means or by posting it in a prepaid envelope or package addressed to the recipient at his or her last known address,

- 15.2 **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.

- 15.3 **Time of service:** Notices are deemed served at the following times:

- (a) when given personally, on delivery;

- (b) when sent by post or document exchange, five Business Days after (but exclusive of) posting; and
- (c) when sent by email, at the time of transmission, if (in the event receipt is disputed) the sender produces a printed copy of the email which evidences that the email was sent to the email address of the recipient.

Any notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first Business Day after that day.

16. GENERAL

- 16.1 **No partnership, joint venture:** Nothing in this agreement shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between any of the Shareholders, and a Shareholder may not make, or allow to be made, any representation that any such relationship exists between any of the Shareholders. A Shareholder shall not have authority to act for, or to incur any obligation on behalf of, any other Shareholder, except as expressly provided for in this agreement.
- 16.2 **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.
- 16.3 **Board action:** Wherever this agreement requires the Board to do anything, each Shareholder shall take all steps available to it to ensure that the Director or Directors appointed by that Shareholder takes all necessary steps to do that thing.
- 16.4 **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; or
 - (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 shall together constitute a binding agreement between the Shareholders.
- 16.5 **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.
- 16.6 **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.
- 16.7 **Further assurance:** Each Shareholder shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.

16.8 **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.

16.9 **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.

16.10 **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.

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

16.12 **Waivers:**

- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the Shareholder 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.

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

SCHEDULE 3

Reserved Matters

The Company will not enter into any transaction or matter which is a Reserved Matter unless the entry into of that transaction or matter is approved in writing by Shareholders who, in total, hold at least the percentage of Shares shown below.

Matter or transaction	Approval threshold
Board	
Appointment of jointly appointed board members	All of the Shareholders
Removal of any board member	All of the Shareholders
Setting remuneration of directors	Special Resolution
Statement of Expectations	
Approval of the Statement of Expectations	All of the Shareholders
Material transactions	
"Major transactions" as that term is defined in the Companies Act.	Special Resolution
Decision to enter into, amend or terminate any transfer agreements with local authorities and/or other water organisations	All of the Shareholders
Decisions relating to price differentiation/ harmonisation between Districts	All of the Shareholders
Any decision to operate outside of the geographical area administered by the Kaikōura and Hurunui District Councils (other than the existing water supply arrangements for the Ashley Water Supply scheme in the Waimakariri District)	All of the Shareholders
Any decision to invest in, lend money to, or guarantee the debt of any other organisation (other than directly related to providing water services to that organisation)	Special Resolution
Changes to structure	
Any alteration to, or revocation of, the Constitution.	Special Resolution
Any issue of Shares	All of the Shareholders
Any issue of Shares or securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	All of the Shareholders
Any alteration of rights, privileges or conditions attaching to the Shares	All of the Shareholders
Any arrangement, dissolution, corporate reorganisation, ¹ liquidation, merger or amalgamation of the Company	All of the Shareholders
Any transfer by the Company of Shares held by the Company or any purchase or other acquisition by the Company of its own Shares;	All of the Shareholders
Any consolidation, division, or subdivision of Shares.	All of the Shareholders

¹ The reference to corporate reorganisation excludes operational reorganisation.

Any cancellation, buy-back or reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	All of the Shareholders
The giving of any financial assistance for the purpose of, or in connection with, the purchase of Shares.	All of the Shareholders
Making a Material change in the nature of the Company's business or engaging in business activities other than the Business.	All of the Shareholders
Starting or settling any legal or arbitration proceedings, except in the ordinary course of business.	All of the Shareholders
Any decision for the liquidation, winding-up, dissolution, restructuring or assignment to its creditors or any similar transaction of the Company.	All of the Shareholders

