

Shareholders' Agreement relating to Southern Waters Limited

PARTIES

Central Otago District Council

Clutha District Council

Gore District Council

Waitaki District Council

Southern Waters Limited

CONTENTS

SCHEDULE 1	1
AGREEMENT DETAILS	1
SCHEDULE 2	1
TERMS AND CONDITIONS	1
1. DEFINITIONS AND INTERPRETATION	1
2. ESTABLISHMENT OF COMPANY	4
3. PURPOSE OF COMPANY	5
4. BOARD AND DIRECTORS	5
5. SHAREHOLDERS' RIGHTS AND OBLIGATIONS	5
6. STAKEHOLDERS' REPRESENTATIVE GROUP	6
7. LOANS AND GUARANTEES BY SHAREHOLDERS	7
8. STATEMENT OF EXPECTATIONS	8
9. WATER SERVICES STRATEGY	8
10. SIGNIFICANCE AND ENGAGEMENT POLICY	9
11. REPORTS AND BUDGETS	9
12. SHARES	10
13. ADMISSION OF NEW SHAREHOLDERS	11
14. TERM AND TERMINATION	11
15. CONSEQUENCES OF TERMINATION	11
16. SUSPENSION OF RIGHTS	11
17. DISPUTE RESOLUTION	12
18. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS	14
19. NOTICES	14
20. GENERAL	15
SCHEDULE 3	17
Reserved Matters	17
SCHEDULE 4	19
Stakeholders' Representative Group – Terms of Reference	19
SCHEDULE 5	22
Constitution	22
SCHEDULE 6	23
Part A: Transfer Principles	23
Part B: Form of Transfer Agreement	24

PARTIES

Central Otago District Council
("CODC")

Clutha District Council
("CDC")

Gore District Council
("GDC")

Waitaki District Council
("WDC")

Southern Waters Limited
("Company")

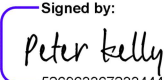
BACKGROUND

- A. Under the implementing legislation for Local Water Done Well, all councils in New Zealand have been mandated to develop a financially sustainable and regulatory compliant model for delivering water services to their communities.
- B. Following public consultation, each of the Shareholding Councils has resolved to establish the Company as a council-controlled organisation jointly owned by each of the Shareholding Councils for the purpose of providing such water services.
- C. Each Shareholding Council will transfer all relevant rights, assets, resource consents, obligations and debts relating to its water services infrastructure, and responsibility for providing those water services, to the Company on an agreed date and under the terms of a Transfer Agreement.
- D. The Shareholding Councils will continue to monitor the performance of the Company in providing Water Services to their communities, including through a joint committee of representatives from each Shareholding Council and mana whenua and rural water stakeholders (known as the Stakeholders' Representative Group).
- E. The Company will meet all relevant Treaty settlement obligations and other agreements, including joint management agreements, that apply across the Service Areas. This agreement does not change any existing commitments to mana whenua or iwi from any Shareholding Council.
- F. The parties now enter into this agreement to record their respective relationships with each other. The Company is party to this agreement to record certain obligations owed to it by, and owed by it to, the Shareholding Councils.

- G. Other councils may become parties to this agreement subject to unanimous approval of the Shareholding Councils.
- H. The terms and conditions of this agreement are set out in Schedule 1 (Agreement Details) and Schedule 2 (Terms and Conditions) together with the further Schedules that are referred to in Schedules 1 and 2.

SIGNATURES

CENTRAL OTAGO DISTRICT COUNCIL

By:  Signed by:
526963367233444

Signature of Authorised Signatory

Peter Kelly

Name of Authorised Signatory

CLUTHA DISTRICT COUNCIL

By:  DocuSigned by:
66FB198F767E47A

Signature of Authorised Signatory

Steve Hill

Name of Authorised Signatory

GORE DISTRICT COUNCIL


By:  Signed by:
D0E6DA4F5D3A419...

Signature of Authorised Signatory

Deborah Lascelles

Name of Authorised Signatory

WAITAKI DISTRICT COUNCIL


By:  Signed by:
ACEC53EE10E04D7

Signature of Authorised Signatory

Alex Parmley

Name of Authorised Signatory

SOUTHERN WATERS LIMITED

By:  Signed by:
F73462AC04C74B1...

Signature Director

Bruce Gemmell

Name of Director

SCHEDULE 1
AGREEMENT DETAILS

<p>Service Area(s) for determination of "Business Day"</p> <p><i>(Clause 1.1, Schedule 2)</i></p>	<p>The Service Area specified in the Transfer Agreement of each Shareholding Council.</p> <p>At the date of this agreement the Services Areas are the Districts of Central Otago, Clutha, Gore and Waitaki.</p>										
<p>Service Area(s) for provision of "Water Services"</p> <p><i>(Clause 1.1, Schedule 2, and Schedule 6)</i></p>	<p>The Service Area specified in the Transfer Agreement of each Shareholding Council.</p> <p>At the date of this agreement the Services Areas are the Districts of Central Otago, Clutha, Gore and Waitaki.</p>										
<p>Initial share issue and shareholding</p> <p><i>(Clause 2.1, Schedule 2)</i></p>	<p>Total Shares to be issued on incorporation: 400 A Shares</p> <p>Initial Shareholders:</p> <table border="1" data-bbox="592 1077 1318 1249"> <thead> <tr> <th>Shareholder</th> <th>Number of Shares</th> </tr> </thead> <tbody> <tr> <td>CODC</td> <td>100 A Shares</td> </tr> <tr> <td>CDC</td> <td>100 A Shares</td> </tr> <tr> <td>GDC</td> <td>100 A Shares</td> </tr> <tr> <td>WDC</td> <td>100 A Shares</td> </tr> </tbody> </table>	Shareholder	Number of Shares	CODC	100 A Shares	CDC	100 A Shares	GDC	100 A Shares	WDC	100 A Shares
Shareholder	Number of Shares										
CODC	100 A Shares										
CDC	100 A Shares										
GDC	100 A Shares										
WDC	100 A Shares										
<p>Price payable for each share issued</p> <p><i>(Clause 2.2, Schedule 2)</i></p>	<p>\$0.01</p>										
<p>Name of Company</p> <p><i>(Clause 2.3, Schedule 2)</i></p>	<p>Southern Waters Limited</p>										
<p>Registered office and address for service of Company</p> <p><i>(Clause 2.3, Schedule 2)</i></p>	<p>c/- Central Otago District Council</p> <p>1 Dunorling Street, Alexandra 9320</p>										
<p>Initial business set up activities</p> <p><i>(Clause 3.3, Schedule 2)</i></p>	<p>Establishing an operational company and transferring responsibility for Water Services from each Shareholding Council into the Company, including by entering into the Transfer Agreements, having the</p>										

	Company assume debt and other obligations and applying for funding from the LGFA.
Initial Director <i>(Clause 4.2, Schedule 2)</i>	Initial Director: <div style="background-color: #cccccc; padding: 2px;">Director</div> Bruce Gemmell
Establishment of Stakeholders' Representative Group <i>(Clause 6.1, Schedule 2)</i>	Yes The Stakeholders' Representative Group will be established and will operate in accordance with the SRG Terms of Reference included in Schedule 4 (as amended from time to time in accordance with those Terms).
Failure to attend Shareholders Council meeting <i>(Clause 6.7, Schedule 2)</i>	Two
Other matters to be included in the Statement of Expectations <i>(Clause 8.4, Schedule 2)</i>	The initial Statement of Expectations will include: <ul style="list-style-type: none"> • A local pricing principle so that no consumer pays more than the consumer would have under an in-house model for the same level of service and investment unless it is mutually beneficial for affected Service Areas to establish a common price. • Recognition of rural water as a distinct service. • An expectation that the Company will collaborate with other water organisations and councils to maximise efficiency and effectiveness. • Other matters as may be agreed by the SRG, including how the Company is required to conduct its relationship with the Shareholders' communities and with Hapū, Iwi and other Māori organisations.

<p>Time period before publication to provide the agreed Statement of Expectations to the Board and the SRG</p> <p><i>(Clause 8.5, Schedule 2)</i></p>	<p>Up to four weeks.</p>	
<p>Principles for share issue</p> <p><i>(Clause 12.5, Schedule 2)</i></p>	<p>A Shares (voting) will be issued in equal number to each Shareholding Council.</p> <p>B Shares (non-voting) will be issued to Shareholding Councils on completion of their Transfer Agreement based on the principle of allocation proportional to the Net Asset Value of a Shareholding Council's assets that have been transferred to the Company pursuant to the Transfer Agreement. The allocation of B Shares will be reviewed on the admission of any new Shareholding Council in line with this principle.</p>	
<p>Interest rate payable on payment default</p> <p><i>(Clause 16.3(a), Schedule 2)</i></p>	<p>Bill Rate plus 3% per annum.</p>	
<p>Place of arbitration</p> <p><i>(Clause 17.4(c), Schedule 2)</i></p>	<p>Alexandra</p>	
<p>Address for notices</p> <p><i>(clause 19.1, Schedule 2)</i></p>	<p>CODC</p>	<p>CDC</p>
	<p>1 Dunorling St. Alexandra, 9320</p> <p>Email: peter.kelly@codc.govt.nz</p> <p>Attention: Peter Kelly</p>	<p>1 Rosebank Ter, Balclutha 9230</p> <p>Email: steve.hill@cluthadc.govt.nz</p> <p>Attention: Steve Hill</p>
	<p>GDC</p>	<p>WDC</p>
	<p>29 Bowler Avenue, Gore, 9710</p> <p>Email: dlascelles@goredc.govt.nz</p> <p>Attention: Debbie Lascelles</p>	<p>20 Thames Street, Oamaru, 9400</p> <p>Email aparmley@waitaki.govt.nz</p> <p>Attention: Alex Parmley</p>

	Company	
	c/- CODC 1 Dunorling St. Alexandra, 9320 Email: peter.kelly@codc.govt.nz Attention: Peter Kelly	
SRG membership <i>(Schedule 4)</i>	<p>Subject to the terms of this agreement, each Shareholding Council will appoint two SRG Members to the SRG, one of whom must be an elected member of the relevant Shareholding Council.</p> <p>Mana whenua and rural water representatives will be appointed and approved in accordance with clause 6.</p> <p>Quorum for meetings of the SRG: SRG Members representing 75% of the Shareholding Councils by number.</p>	

SCHEDULE 2
TERMS AND CONDITIONS

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

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

"A Share" means a fully paid ordinary voting share in the Company, having the rights set out in the Constitution.

"Alternate" means in relation to an SRG Member, an alternate to that SRG Member appointed to attend and vote at meetings of the Stakeholders' Representative Group but only where the relevant SRG Member is unable to do so.

"B Share" means a fully paid ordinary non-voting share in the Company, having the rights set out in the Constitution.

"Board" means the board of Directors of the Company, as constituted from time to time.

"Business" means the provision of Water Services, or services that are related to, or necessary for, the provision of Water Services, including in accordance with the LG(W.S) Act, this agreement and the Water Services Strategy.

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

"Companies Act" means the Companies Act 1993.

"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.

"Constitution" means the constitution of the Company in the form set out in Schedule 5, as amended or replaced from time to time.

"Deed of Amendment" means the Deed of Amendment and Cost Sharing entered into between CODC, CDC, GDC and WDC.

"Director" means a director of the Company for the time being.

"Event of Default" in respect of a Shareholder means where a Shareholder:

(i) materially breaches any of the obligations under this agreement and:

- (aa) that breach or failure is capable of remedy, but the Shareholder 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; or
- (bb) that breach or failure is not capable of remedy; or
- (ii) is re-organised (other than a solvent reorganisation), dissolved, abolished or subject to Ministerial intervention.

"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.

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

"LGA" means the Local Government Act 2002.

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

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

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

"Net Asset Value" has the meaning in the Transfer Agreement.

"New Debt" means debt incurred by the Company to the LGFA after Completion of the relevant Shareholder's Transfer Agreement (excluding any debt incurred to pay another Shareholder's Completion Amount or water infrastructure debt).

"Ordinary Resolution" has the meaning in the Constitution.

"Parties" means the parties to this agreement and **"Party"** means any one of them.

"Reserved Matters" means the matters listed in Schedule 3.

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

"Service Area" has the meaning set out in Schedule 1.

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

"Shareholder" or **"Shareholding Council"** means a shareholder in the Company and includes any council that becomes a shareholder after the date of this agreement.

"Significance and Engagement Policy" has the meaning in the LG(WS) Act.

"SRG Member" means a member of the SRG appointed in accordance with this agreement.

"Special Resolution" means a resolution that is approved in writing by:

- (i) in the case of a resolution of Shareholders, Shareholders (or SRG Representatives of Shareholders) who together hold at least 75% of the total number of A Shares then on issue; or
- (ii) in the case of the SRG, at least 75% of the total number of SRG Members.

"Stakeholders' Representative Group" or **"SRG"** means the committee formed pursuant to clause 6.1.

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

"Term" means the term of this agreement as described in clause 14.1.

"Terms of Reference" means the terms of reference of the Stakeholders' Representative Group in the form set out in Schedule 4 as amended from time to time by agreement of the Shareholders.

"Transfer Agreement" means the agreement to be entered into between each Shareholding Council and the Company in accordance with the requirements of the LG(WS) Act in the form, or a similar form, to the transfer agreement set out in Part B of Schedule 6 and having regard to the Transfer Principles.

"Transfer Principles" are as set out in Part A of Schedule 6.

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

"Water Service Provider" has the meaning in the LG(WS) Act.

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

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

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

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

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;

- (d) words in this agreement have the same meaning as in the Companies Act unless inconsistent with the context;
- (e) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (f) a reference to a clause or schedule is to a clause or schedule of this agreement;
- (g) 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;
- (h) references to the word 'include' or 'including' are to be construed without limitation;
- (i) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (j) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (k) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (l) 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
- (m) 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 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.

1.4 **Inconsistency with LG(WS) Act and LGA:** The parties must comply with their respective obligations under the LG(WS) Act and the LGA and, if there is any inconsistency between this agreement and the obligations of the parties under the LG(WS) Act and the LGA from time to time, the obligations of the parties under that legislation will prevail and this agreement will be deemed to be amended accordingly.

2. ESTABLISHMENT OF COMPANY

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

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

2.3 **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.

2.4 **Special Resolution to adopt Constitution:** The Shareholders adopt the Constitution as the constitution of the Company with effect on and from the date of this agreement. This clause 2.4 will take effect as a special resolution in writing for the purposes of sections 32(1) and 122(1) of the Companies Act.

3. PURPOSE OF COMPANY

- 3.1 **Purpose:** The purpose of the Company is to carry on the Business.
- 3.2 **Objectives:** The objectives of the Company, as a Water Service Provider, are set out in section 17 of the LG(WS) Act.
- 3.3 **Initial business set up:** The Shareholders will work together to procure the initial business set up, including the operational steps and transactions described and summarised in Schedule 1.

4. BOARD AND DIRECTORS

- 4.1 **Appointment:** All Directors and the Chair and Deputy Chair of the Board will be appointed and removed by the SRG in accordance with the Constitution, the requirements of the LG(WS) Act and any matrix of necessary skills developed and approved by the SRG from time to time.
- 4.2 **Existing Directors:** As at the date of this agreement, the Director named in Schedule 1 is the sole Director. The Director will hold office only until the Stakeholders' Representative Group has been established and appointed Directors in accordance with this agreement, but will be eligible for reappointment.
- 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 Stakeholders' Representative Group and to the Chief Executives (or equivalent) of each of the Shareholders.
- 4.4 **Compliance:** The Parties must procure that each Director receives a copy of this agreement and the Constitution and undertakes to enforce and observe their terms in his or her capacity as a Director, whether pursuant to a deed of covenant, his or her terms of appointment or engagement, relevant service contract or employment agreement (as the case may be) or otherwise.

5. SHAREHOLDERS' RIGHTS AND 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 a 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 that transaction or matter is approved in writing by the Shareholders who together hold more than the required percentage of all Shares held by the Shareholders, as listed in Schedule 3.
- 5.2 **Duty to comply with Constitution:** Each Shareholder shall 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, the LG(WS) Act and the Companies Act.
- 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 **Obligations of the Company:** The Company has been made a Party to this agreement in order to bind it to, and allow it to enforce, the provisions of this agreement. Where any provision of this agreement requires the Company to perform and observe obligations, each Shareholder agrees to do all things necessary to cause the Company to perform and observe those obligations.
- 5.6 **Records:** The Shareholders shall have, on providing reasonable written notice to the Board, full and complete access to the business records and accounts of the Company at all reasonable times for the purpose of inspection or audit, but not so as to unreasonably interfere with the operations of the Company. The Shareholder inspecting the business records shall be entitled to take copies of or extracts of the business records.

6. STAKEHOLDERS' REPRESENTATIVE GROUP

- 6.1 **Establishment and Terms of Reference:** Promptly after the date of this agreement, the Shareholders will jointly establish, maintain and operate a Stakeholders' Representative Group in accordance with the Terms of Reference to provide overarching governance of the Company, including:
- (a) in relation to the appointment of Directors to the Board of the Company;
 - (b) to assist the Shareholders to fulfil their obligations under this agreement;
 - (c) where the Company has any obligation to consult with the Shareholders under the LG(W.S) Act or other applicable law, to allow the Company to meet such obligation by consulting with the representatives of the Shareholders appointed to the SRG; and
 - (d) to consider and, if thought fit, approve Reserved Matters.
- 6.2 **Appointment of Shareholders' SRG Members:** Each Shareholder will appoint two members to the Stakeholders' Representative Group, at least one of whom must be an elected member of that Shareholder. A Shareholder may appoint an Alternate for a SRG Member appointed by it from time to time but an Alternate for an elected member of a Shareholder must be another elected member. If at any time there are more than four Shareholding Councils, the number of SRG Members appointed by each Shareholder and mana whenua shall be reduced to one and each Shareholder and Te Rūnanga o Ngāi Tahu (or the SRG on its behalf) must remove any additional SRG Member appointed by it.
- 6.3 **Replacing a Shareholders' SRG Member:** Each Shareholder's appointed SRG Member and/or Alternate may be removed or replaced (or both) from time to time by that Shareholder providing written notice to the Company.
- 6.4 **Delegations to a Shareholders' SRG Member:** Each Shareholder will delegate to its appointed SRG Member, and his or her Alternate, the responsibilities and powers necessary to participate in the SRG and to carry out the Responsibilities set out in the Terms of Reference.
- 6.5 **Authority of Stakeholders' Representative Group:** Subject to the delegations under clause 6.4, the Shareholders agree that any matter for a Shareholder under this agreement may be exercised by its appointed SRG Member or his or her Alternate.
- 6.6 **Attendance of Stakeholders' Representative Group meetings:** Each Shareholder shall ensure that its appointed SRG Member or his or her Alternate attends each meeting of the SRG.
- 6.7 **Failure to attend:** If a Shareholder's appointed SRG Member or his or her Alternate is not present at the number of consecutive meetings of the Stakeholders' Representative Group set out in Schedule

1, then that Shareholder will be required, on notice by any other Shareholder, to replace that Shareholder's appointed SRG Member and/or Alternate, as the case may be.

6.8 **Resignation of SRG Member:** A SRG Member may resign from office by notice in writing to the Company.

6.9 **Mana Whenua representatives:** The Shareholders acknowledge that wai is a taonga, central to tikanga, identity and wellbeing, and that any discussion about water involve mana whenua. Accordingly, the Stakeholders' Representative Group shall, promptly after its establishment:

- (a) convene and agree a process for engaging with Te Rūnanga o Ngāi Tahu for the purposes of this clause 6.9;
- (b) engage with Te Rūnanga o Ngāi Tahu to develop and prepare a proposal for up to two representatives of mana whenua (subject to clause 6.2) to be appointed to the Stakeholders' Representative Group including protocols for selection, appointment, approval (in accordance with the LGA) and replacement of those representatives; and
- (c) present the proposal to each of the Shareholders for consideration and approval.

6.10 **Rural Water representative:** The Shareholders acknowledge the existence of an extensive network of rural water schemes in the Service Area and their desire that rural water is recognised as a distinct service to be considered in governance, planning and operational decisions. Accordingly, the Stakeholders' Representative Group shall, promptly after its establishment:

- (a) convene and agree a process for engaging with selected stakeholders in rural water schemes for the purposes of this clause 6.10;
- (b) engage with selected stakeholders (or representatives of them) to develop and prepare a proposal for one representative of rural water scheme interests to be appointed to the Stakeholders' Representative Group including protocols for selection, appointment, approval (in accordance with the LGA) and replacement of those representatives; and
- (c) present the proposal to each of the Shareholders for consideration and approval.

7. LOANS AND GUARANTEES BY SHAREHOLDERS

7.1 **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:

- (a) in accordance with the Deed of Amendment;
- (b) as required under clause 7.2; or
- (c) with the express prior agreement of such Shareholder.

7.2 **LGFA:** The Shareholders agree that, in order for the Company to achieve its objectives, the Company will need to borrow from the LGFA and they each agree to do all things necessary to support the Company and ensure that it is approved for and obtains such borrowing by the LGFA Board, including:

- (a) ensuring that each Shareholder is a guaranteeing member of LGFA (unless waived by LGFA);

- (b) providing a guarantee (or similar, as required by the LGFA) for the Company's debt liabilities to the LGFA; and
- (c) entering into such other documentation as may be required by the LGFA.

7.3 **Liability for Guarantees:** If the Shareholders are obliged to provide a guarantee or similar in respect of the Company's debt liabilities to the LGFA pursuant to clause 7.2, the guarantee shall be joint and several unless otherwise required by LGFA but, as between Shareholders, liability shall be borne in proportion to each Shareholder's Agreed Proportionate Amount. For this purpose:

Agreed Proportionate Amount means, in respect of a Shareholder, the aggregate of:

- (a) that Shareholder's Completion Amount (as set out in their Transfer Agreement);
- (b) any of that Shareholder's water infrastructure debt not included in its Completion Amount but which is later repaid by the Company in accordance with the Transfer Agreement or otherwise by agreement between the Company and the Shareholder; and
- (c) that Shareholder's proportion of any New Debt (based on its proportionate holding of B Shares at the time the New Debt is incurred);

or any other proportion agreed between the Shareholders and LGFA to allocate Shareholder liability.

8. STATEMENT OF EXPECTATIONS

- 8.1 **Preparation:** The Shareholders (through its representatives appointed to the SRG) will be responsible for preparing and adopting the Statement of Expectations in accordance with, and within the time periods required by, the LG(WS) Act.
- 8.2 **Process:** 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 SRG 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 the process for preparing the next Statement of Expectations.
- 8.3 **Publication:** The SRG will ensure that the agreed process is published on the website of one or more of the Shareholders in accordance with the LG(WS) Act.
- 8.4 **Content:** 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.
- 8.5 **Circulation:** No later than the period set out in Schedule 1 before the publication date, or an alternative date agreed by the SRG, the agreed Statement of Expectations will be circulated to the Board and the SRG.
- 8.6 **Compliance:** The Company will give effect to the Statement of Expectations, and the Board must take the Statement of Expectations into account when setting the Company's Water Services Strategy.

9. WATER SERVICES STRATEGY

- 9.1 The Company must prepare a Water Services Strategy in accordance with:

- (a) Part 4 of the LG(WS) Act; and
- (b) the Significance and Engagement Policy,

and taking into account the Statement of Expectations as soon as practicable after the date of this agreement and adopt it before 1 July 2027.

- 9.2 The initial Water Services Strategy must cover the period of at least 10 consecutive financial years.
- 9.3 Until the Water Services Strategy is adopted by the Company the relevant parts of the long-term plan of each Shareholding Council remain in force and shall be implemented by the Company.
- 9.4 The Company must provide:
- (a) a draft initial Water Services Strategy to each of the Shareholding Councils no later than 1 March 2027; and
 - (b) each subsequent draft Water Services Strategy no later than 1 March in the financial year before the first financial year to which the draft strategy relates (unless otherwise agreed with the Shareholders).
- 9.5 Each Shareholding Council will have the right to provide comments on each draft Water Services Strategy (either direct or through its representatives appointed to the SRG).
- 9.6 The Company must consider any comments the Shareholding Councils provide on the draft Water Services Strategy within a reasonable period after the draft Water Services Strategy is provided to each Shareholding Council as advised by the Company (being not less than 20 Business Days unless a shorter period is approved by all Shareholding Councils) .
- 9.7 The Company may amend its Water Services Strategy subject to giving written notice to Shareholding Councils of the proposed amendment and compliance with clauses 9.5 and 9.6 and its Significance and Engagement Policy and the LG(WS) Act.

10. SIGNIFICANCE AND ENGAGEMENT POLICY

- 10.1 The Company must prepare a Significance and Engagement Policy in accordance with Part 2 of the LG(WS) Act that takes into account the Transfer Agreements as soon as is practicable.
- 10.2 When preparing or amending its Significance and Engagement Policy, the Company must engage with the Shareholders through the SRG (and other persons and communities as specified in the LG(WS) Act) and obtain approval of Shareholders to the final Significance and Engagement Policy through the SRG.
- 10.3 The Company may amend the Significance and Engagement Policy at any time subject to clause 10.1 and must amend the Significance and Engagement Policy when the Company receives or returns responsibilities under a transfer agreement with a Shareholder (excluding the Transfer Agreements).

11. REPORTS AND BUDGETS

- 11.1 The Company must prepare and adopt a water services annual budget in accordance with the LG(WS) Act.

- 11.2 The Company must, in relation to each Financial Year, prepare and adopt a water services annual report in accordance with the LG(WS) Act and an annual report under the Companies Act (which may be combined) and provide it to Shareholders. The water services annual report must contain a report by the Auditor-General as required under the LG(WS) Act.
- 11.3 The Company must in each Financial Year prepare and adopt a water services half-yearly report and provide that report to its Shareholders in accordance with the LG(WS) Act.
- 11.4 The Company must prepare and provide to Shareholders any additional plans or reports required by a Shareholder by written notice in accordance with the LG(WS) Act.

12. SHARES

- 12.1 **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 agreement, the Constitution and LG(WS) Act. In any event, a Shareholder must transfer all of its A Shares and B Shares together.
- 12.2 **No Security Interest:** A Shareholder must not grant a Security Interest over any of its Shares.
- 12.3 **Share Rights A Shares:** A Shares confer on the holder the right to one vote on a poll at a meeting of the Company on any resolution but do not confer any right to a dividend or distribution.
- 12.4 **Share Rights B Shares:** B Shares do not confer on the holder any right to vote on any resolution nor any right to a dividend or distribution other than a right to receive an in specie distribution of relevant Water Services infrastructure and related assets (or a distribution of equivalent consideration) in accordance with a transfer agreement made in accordance with the LG(WS) Act upon:
- (a) the Shareholder ceasing to be a Shareholder;
 - (b) disestablishment of the Company; or
 - (c) the Shareholder establishing, or becoming a shareholder in, a further water organisation under the LG(WS) Act.
- 12.5 **Share issue:** Subject to approval of the Shareholders in accordance with clauses 5.1 and 13.1, the Board may issue Shares in accordance with the Constitution and the principles set out in Schedule 1.
- 12.6 **Waiver of pre-emptive rights:** Each Shareholding Council waives any pre-emptive rights (including under the Companies Act) in respect of the issue of new Shares (including B Shares to an existing Shareholding Council) where the Shares are issued in accordance with this agreement and the Constitution.
- 12.7 **Amalgamation of Local Authorities:** Without limitation to clause 16, 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.
- 12.8 **B Shares:** On the Completion Date of each Transfer Agreement, the Company will issue B Shares to the relevant Shareholding Council, to be held by that Shareholding Council on the terms set out in this agreement and the Constitution. The Company will issue B Shares to the Shareholding Council(s) based on the Net Asset Value and otherwise in accordance with the Transfer Agreement.

13. ADMISSION OF NEW SHAREHOLDERS

- 13.1 **Reserved Matter:** Other than Share issues expressly provided for in this agreement (including the issue of B Shares to each of CODC, CDC, GDC and WDC on completion of their respective Transfer Agreements), the admission of new Shareholders (and the issue of new Shares to that shareholder), will be a Reserved Matter and subject to the unanimous approval of existing Shareholding Councils.
- 13.2 **New Shareholder:** Any application by a local or regional authority to become a Shareholding Council will be considered first by the Board and then presented to the SRG, together with the Board's recommendation and any proposed conditions to admission of the new shareholder.
- 13.3 **Accession:** Any new shareholder approved by the SRG must:
- (a) accede to this agreement on its existing terms;
 - (b) enter into a Transfer Agreement in a form approved by the SRG;
 - (c) agree to provide any guarantee required by the LGFA (on the same terms as existing Shareholders); and
 - (d) comply with any further conditions of entry established by the Board and approved by the SRG.

14. TERM AND TERMINATION

- 14.1 **Term:** This agreement commences on the date signed by all Parties and continues until the first date on which:
- (a) in respect of a particular Shareholding Council, that Shareholding Council no longer holds any Shares;
 - (b) only one Shareholder owns all Shares;
 - (c) none of the Shareholders holds Shares; or
 - (d) the date on which the Company is liquidated or otherwise wound up.

15. CONSEQUENCES OF TERMINATION

- 15.1 **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.
- 15.2 **Survival:** Termination of this agreement will not affect the rights and obligations of the Shareholders set out in clauses 1, 15, 17, 18, 19 and 20 which are intended to survive the termination of this agreement.

16. SUSPENSION OF RIGHTS

- 16.1 **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 (nor the Defaulting Shareholder) 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.

16.2 **Non-Defaulting Shareholder:** For the purposes of clause 16.1:

- (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 who together hold more than half of the Shares held by all Non-Defaulting Shareholders.

16.3 **Default interest:** If any Party does not pay any amount payable under this agreement on the due date for payment ("**Due Date**") that Party shall pay to the other Parties 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.

16.4 **Other remedies:** Clauses 16.1 and 16.3 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.

17. DISPUTE RESOLUTION

17.1 **Notice in writing:** If a Shareholder claims that a dispute has arisen, that Shareholder must give written notice to the other Shareholders (copied to the Board). The written notice must specify the nature of the dispute.

17.2 **Negotiation:**

- (a) On receipt of a notice delivered in accordance with clause 17.1 and before any Shareholder may refer a dispute to mediation, the SRG Members must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
- (b) If any SRG Member considers that the dispute is not being resolved in a timely manner, such SRG Member may serve written notice on the other SRG Members to escalate the

dispute to the Mayors or equivalent (where the SRG Members are not the Mayor 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 17.2, any SRG Member may submit the dispute to mediation.

17.3 Mediation:

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

17.4 Arbitration

- (a) If the dispute has not been resolved within 40 Business Days (or within such other period as agreed by the Shareholders) of the dispute being referred to mediation, any Shareholder (the "**Initiating Party**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other Shareholders (copied to the Board) (together with the Initiating Party, the "**Disputing Parties**") for final resolution in accordance with the provisions of this clause 17.4 and in accordance with the provisions of the Rules of Arbitration of the New Zealand Dispute Resolution Centre, as amended or modified from time to time ("**NZDRC Rules**").
- (b) The arbitral panel shall consist of one arbitrator. The arbitrator will be appointed by the agreement of the Disputing Parties or, failing agreement within 10 Business Days of the date of the Arbitration Notice, in accordance with the NZDRC Rules.
- (c) The seat of arbitration shall be as set out in Schedule 1 and the arbitration shall be conducted in the English language.
- (d) The award of the arbitration shall be in writing and must include reasons for the decision.
- (e) The award of the arbitration shall be final and binding on the Disputing Parties. No Party may appeal to the High Court under Clause 5 of the Second Schedule of the Arbitration Act 1996 on any question of law arising out of an award.
- (f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.

- (g) Neither the existence of any dispute nor the fact that any arbitration is pending hereunder shall relieve any of the Disputing Parties or the Company of their respective obligations under this agreement.

17.5 **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.

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

17.7 **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.

18. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS

18.1 **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.

18.2 **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 in writing 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.

18.3 **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 announcement or media release in connection with the Shareholder's own involvement with, or policies in relation to, the Company.

19. NOTICES

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

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

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

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

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, five Business Days after it is posted.
- (c) If it is sent by email, when it is received in readable form addressed in the manner specified above.
- (d) 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.

20. GENERAL

20.1 **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.

20.2 **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.

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

20.4 **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 shall together constitute a binding agreement between the Shareholders.

20.5 **Entire agreement:** This agreement and the Deed of Amendment contain everything the Parties have agreed in relation to the subject matter this agreement deals with. No Party can rely on any other

earlier written agreement or anything said or done by or on behalf of another Party before this agreement or the Deed of Amendment were executed.

- 20.6 **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.
- 20.7 **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.
- 20.8 **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.
- 20.9 **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.
- 20.10 **Costs:** Except as otherwise set out in this agreement or the Deed of Amendment, 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.
- 20.11 **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.
- 20.12 **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.
- 20.13 **Governing law:** This agreement is governed by the laws of New Zealand.

SCHEDULE 3

Reserved Matters

Reserved matters for SRG approval		
Appointment, removal and replacement of Directors (other than filling a vacancy in accordance with the Constitution)		Special Resolution of SRG
Appointment, removal and replacement of the chairperson and any deputy chairperson of the board of Directors		Special Resolution of SRG
Matter or transaction		Required Approval
Changes to the Business	"Major transactions" as that term is defined in the Companies Act.	Special Resolution of Shareholders
	Making a material change in the nature of the Company's business or engaging in business activities other than the Business.	Special Resolution of Shareholders
	Any arrangement, dissolution, reorganisation, liquidation, merger or amalgamation of the Company	Special Resolution of Shareholders
Changes to rights of Shareholders	Any alteration to, or revocation of, the Constitution.	Special Resolution of Shareholders
	Any issue of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares to existing Shareholders.	Special Resolution of Shareholders
	Any alteration of rights, privileges or conditions attaching to the Shares	Special Resolution of Shareholders
	Any consolidation, division, or subdivision of Shares.	Special Resolution of Shareholders
	Any material amendment to a Transfer Agreement.	Special Resolution of Shareholders
Admission of new Shareholders	The admission of a new Shareholder or any issue of Shares, securities that are convertible into Shares, or options to acquire Shares to any person who is not a party to this agreement	Unanimous resolution of Shareholders
	The giving of any financial assistance for the purpose of, or in connection with, the purchase of Shares.	Unanimous resolution of Shareholders
Departure of Shareholders	Any cancellation, buy-back or reduction of Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares.	Unanimous resolution of Shareholders
	Any purchase or other acquisition by the Company of its own Shares.	Unanimous resolution of Shareholders

Shareholder statutory obligations	Adopting the Statement of Expectations	Special Resolution of Shareholders
	Approving the Company's Significance and Engagement Policy	Special resolution of Shareholders
	Approving the total sum available to the Board to make remuneration payments to Directors	Special resolution of Shareholders

"Special Resolution" means a resolution that is approved in writing by:

- (i) in the case of a resolution of Shareholders, Shareholders (or SRG Representatives of Shareholders) who together hold at least 75% of the total number of A Shares then on issue; or
- (ii) in the case of the SRG, at least 75% of the total number of SRG Members.

SCHEDULE 4

Stakeholders' Representative Group – Terms of Reference

Purpose

The Company is a council-controlled organisation, jointly established by the Shareholding Councils for the purpose of providing water services to their communities. The relationship between the Shareholding Councils is governed by a Shareholders' Agreement. Pursuant to that agreement, the Shareholding Councils have agreed to form the Stakeholders' Representative Group ("SRG") as a joint committee of Shareholders with, subject to Shareholding Council approval, mana whenua and rural water stakeholder members.

The purpose of the SRG is to support the coordination of multiple council interests and operate as the liaison between the Company (and its Board) and the Shareholding Councils and stakeholders and between the Shareholding Councils and stakeholders themselves, including in particular to:

- appoint, oversee, inform and guide the Board; and
- provide a forum for the representatives of the Company's Shareholders and stakeholders to meet, discuss and co-ordinate decision making on relevant issues and, through their representatives, exercise their respective powers in respect of the Company.

The SRG will exercise its powers and decision making at all times in accordance with applicable provisions of the LGA and other relevant legislation.

Responsibilities

The SRG will be responsible for (and each Shareholding Council will delegate to the SRG Member(s) appointed by it its responsibilities and powers in relation to) the following matters:

- Receiving and considering the half-yearly and annual reports of the Company;
- Provide comments on any draft Water Services Strategy (but reserving the rights of each Shareholding Council to provide comments directly);
- Receiving and considering such other information from the Company as the Stakeholders' Representative Group may request on behalf of the Shareholders and/or receive from time to time;
- Undertaking performance and other monitoring of the Company and the Board;
- Providing co-ordinated feedback, and recommendations as needed, on any matters requested by the Board or any Shareholder;
- Overseeing preparation and approval of the Statement of Expectations (which shall recognise rural water as a distinct service) in accordance with the Shareholders' Agreement and the LG(WS) Act, having considered recommendations and feedback from each Shareholding Council and the Board;
- Agreeing when Shareholder meetings, or resolutions in lieu of Shareholder meetings, are required, without prejudice to Shareholder and Board rights to call meetings under the Company's Constitution;

- Seeking and interviewing candidates for the Company's Board as needed and making Director appointments and/or removals;
- Approving a remuneration framework for the Board;
- Appointing the chairperson and any deputy chairperson of the Board;
- Providing recommendations to the Shareholders regarding changes to the Shareholders' Agreement or the Constitution; and
- Considering and determining any Reserved Matters (as defined in the Shareholders' Agreement).

Membership

The membership of the Stakeholders' Representative Group will comprise the persons set out in clauses 6.2 (Shareholder Council representatives) , 6.9 (mana whenua representatives) and 6.10 (rural water representative) of the Shareholders' Agreement.

At least one representative appointee of each Shareholder must be an elected member of the appointing Shareholder.

Chairperson

The initial Chairperson and Deputy Chairperson of the Stakeholders' Representative Group will be elected by Special Resolution of the Stakeholders' Representative Group once all Stakeholders' Representative Group Representatives have been appointed.

A Chairperson and Deputy Chairperson of the Stakeholders' Representative Group may be appointed, removed or replaced from that office by Special Resolution of the Stakeholders' Representative Group.

A Chairperson and Deputy Chairperson of the Stakeholders' Representative Group will cease to hold office if that person ceases to be a member, or eligible to be a member, of the Stakeholders' Representative Group.

Subject to the above, each Chairperson and Deputy Chairperson of the Stakeholders' Representative Group will hold office until the first meeting of the Stakeholders' Representative Group held after each triennial general election under the Local Electoral Act 2001, but will be eligible for reappointment.

Decision-making

The Stakeholders' Representative Group will strive to make all decisions by consensus.

If a consensus on a particular matter before the Stakeholders' Representative Group is not able to be reached, each member of the Stakeholders' Representative Group has a deliberative vote.

If a matter before the Stakeholders' Representative Group is:

- a Reserved Matter that requires approval by Shareholders;
- a matter that is required under the LG(WS) Act, the Companies Act or any other legislation to be approved or considered by Shareholders; or

- relates to the exercise of any power conferred on Shareholders under the LG(WS) Act, the Companies Act or any other legislation,

only the SRG Members who are representatives of a Shareholder will have a deliberative vote.

In the situation where there is an equality of votes cast on a matter, the Chairperson does not have a casting vote and therefore the matter subject to the vote is defeated and the status quo is preserved.

The SRG may further delegate its powers to a sub-committee of the SRG (which may include persons other than SRG Members) on such terms as the SRG may determine by Special Resolution.

Standing Orders

The CODC Standing Orders 2022, as amended or replaced from time to time) (**CODC Standing Orders**) are adopted and incorporated by reference as the standing orders of the SRG and any sub-committee of the SRG, to the extent they are consistent with applicable legislation and with this Agreement and unless otherwise modified or replaced by the SRG. For this purpose, references in the CODC Standing Orders to “Council” or “committee” are deemed to be references to the SRG.

SCHEDULE 5

Constitution

Constitution of Southern Waters Limited

CONTENTS

1. DEFINITIONS AND INTERPRETATION	2
2. CAPACITY AND OBJECTIVES	4
3. WATER ORGANISATION REQUIREMENTS	5
4. SHARES	5
5. CALLS ON SHARES	5
6. LIEN OVER SHARES	6
7. TRANSFER OF SHARES	6
8. DISTRIBUTIONS	8
9. COMPANY ACQUIRING ITS OWN SHARES	8
10. SHAREHOLDER MEETINGS	8
11. DIRECTORS	8
12. INTERESTS OF DIRECTORS	11
13. NOTICES	12
14. LIQUIDATION	13
15. METHODS OF CONTRACTING	13
SCHEDULE 1	14
Rules for Shareholder Meetings	14
SCHEDULE 2	17
Rules for Board Proceedings	17

1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, unless the context otherwise requires:

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

"Business Day" means a day (other than a Saturday, a Sunday or a public holiday) on which registered banks are open for business in Otago and Southland regions, New Zealand.

"Chair" means the chair of the Board appointed in accordance with clause 11.7.

"Companies Act" means the Companies Act 1993.

"Company" means Southern Waters Limited.

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

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

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

"LGA" means the Local Government Act 2002.

"LGOIMA" means the Local Government Official Information and Meetings Act 1987.

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

"Local Authority" has the meaning set out in 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" has the meaning given to it in the Shareholders' Agreement.

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

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

"Shareholder" means any person for the time being registered in the Company's share register as the holder of one or more Shares in the Company.

"Shareholders' Agreement" means the shareholders' agreement relating to the Company to be entered into between the Company and the Shareholders within six months of the date of this Constitution (as amended from time to time).

"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.

"Stakeholders' Representative Group" or **"SRG"** has the meaning set out in the Shareholders' Agreement.

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

"Subsidiary" has the meaning set out in the Companies Act.

"Water Organisation" has the meaning set out in section 4 of the LG(WS) Act.

"Water Services" has the meaning set out in section 4 of the LG(WS) Act, and for the purposes of this document shall include the water supply services, wastewater services, and/or stormwater services transferred by the territorial authorities that established the Water Organisation in accordance with the Transfer Agreement between each territorial authority and the Water Organisation.

"Water Services Annual Budget" has the meaning set out in section 220 of the LG(WS) Act.

"Water Services Annual Report" has the meaning set out in section 220 of the LG(WS) Act.

"Water Services Strategy" has the meaning set out in section 220 of the LG(WS) Act.

1.2 **Interpretation:** In this Constitution, the following rules of interpretation apply, unless the context requires otherwise:

- (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 Constitution 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 Constitution;

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

1.3 If there is any conflict:

- (a) between a provision of this Constitution and the provisions of the Shareholders' Agreement, the terms of the Shareholders' Agreement will prevail (other than to the extent prohibited by the Companies Act) and the Shareholders must pass such resolutions as may be necessary to amend the provisions of this Constitution to make it consistent with the Shareholders' Agreement;
- (b) between a provision in this Constitution and a mandatory provision in the Companies Act, the LG(WS) Act, LGOIMA or the LGA, then the mandatory provision in the Companies Act, the LG(WS) Act, LGOIMA or the LGA will prevail; and
- (c) between:
 - (i) a provision in this Constitution and a provision in the Companies Act which is expressly permitted to be altered by this Constitution; or
 - (ii) a word or expression defined or explained in the Companies Act and a word or expression defined or explained in this Constitution,

then the provision, word or expression in this Constitution will prevail.

2. CAPACITY AND OBJECTIVES

2.1 As at the date of its incorporation, the Company is a Water Organisation.

2.2 As specified in section 46 of the LG(WS) Act, the Company must not do anything other than provide Water Services, or provide services that are related to, or necessary for, the provision of Water Services.

- 2.3 The objectives of the Company, as a water service provider, are set out in section 17 of the LG(WS) Act.
- 2.4 Subject to this Constitution, the Shareholders' Agreement, the Companies Act, the LG(WS) Act and the LGA, the Company has full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.

3. WATER ORGANISATION REQUIREMENTS

- 3.1 The Company must comply with:
- (a) all of the obligations and requirements that apply to a Water Organisation and water service provider under the LG(WS) Act and any other legislation;
 - (b) all applicable statutory and regulatory obligations relating to Māori and the Treaty of Waitangi, including those set out in the LGA and LG(WS) Act; and
 - (c) the applicable parts of the LGOIMA (Parts 1 to 7).

4. SHARES

- 4.1 **Pre-emptive Rights:** Section 45 of the Companies Act does not apply to the issue of Shares by the Board.
- 4.2 **Issue of Shares:** Subject to this Constitution, the Shareholders' Agreement and the LG(WS) Act, the Board may:
- (a) issue Shares at any time, to any person listed in clause 7.4(b) or any other person permitted to hold Shares in accordance with the LG(WS) Act and in such numbers as it thinks fit;
 - (b) issue Shares in different classes which have different rights;
 - (c) issue Shares which are redeemable (as defined in section 68 of the Companies Act); and
 - (d) divide existing Shares into different classes which have different rights,
- provided that no Shares may be issued unless the issue is first approved by Special Resolution.

5. CALLS ON SHARES

- 5.1 **Board may make calls:** The Board may make calls on any Shareholder in respect of any money unpaid on their Shares, and not previously made payable at a fixed time, by prior written notice to the relevant Shareholder specifying the time and date for payment (such time and date to be no earlier than 10 Business Days after the notice is given to the relevant Shareholder). The relevant Shareholder must comply with the terms of any call made by the Board. A call may be payable by instalments. The Board may revoke or postpone a call.
- 5.2 **Interest and expenses:** A person who fails to pay a call on the due date must pay:

- (a) interest on that money from the day payment was due to the day of actual payment at a rate fixed by the Board; and
- (b) all expenses which the Company has incurred or may incur because of non-payment,

provided that the Board may waive payment of all or part of that interest or those expenses.

5.3 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.

6. LIEN OVER SHARES

6.1 **Existence and subject matter of lien:** If a Shareholder fails to pay any call on the due date, the Board may at any time by written notice to the Shareholder require payment of the unpaid amount together with any amount payable under clause 5.2. Such notice must specify a further date (not earlier than 10 Business Days from the date of the notice) by which payment is required to be made, and must state that if such payment is not made on or before the specified date, clause 6.2 will apply.

6.2 **Company has first lien:**

- (a) The Company has a first lien over:
 - (i) each Share and the proceeds of sale of the Share; and
 - (ii) all distributions made in respect of the Share,for:
 - (iii) all unpaid calls owing in respect of the Shares and any amount payable under clause 5.2; and
 - (iv) sale expenses owing to the Company in respect of the Shares.
- (b) The registration of any transfer of a Share will not operate as a waiver of any lien the Company may have on that Share, unless notice to the contrary is given by the Company to the transferee.

7. TRANSFER OF SHARES

7.1 **Right to transfer:** Subject to any restrictions set out in this clause 7, the LG(W.S) Act and the Shareholders' Agreement, a Share may be transferred by entry of the name of the transferee in the share register for the Company following receipt by the Company of a validly signed form of transfer.

7.2 **Prior approval required:** No Shareholder may sell, assign, transfer or dispose of, directly or indirectly, the legal or beneficial ownership of any of its Shares except in accordance with the provisions of this clause 7 and unless such sale, assignment, transfer or disposal:

- (a) has first been approved in writing by all Shareholders; or

(b) is a permitted transfer in accordance with clause 7.4.

7.3 **No delay:** The Board may not exercise any powers conferred by this Constitution to refuse or delay the registration of any sale, assignment, transfer or disposal of Shares completed in accordance with clause 7.2.

7.4 **Permitted transfers:** Subject to the LG(WS) Act, the restrictions in this clause 7 do not apply to the following transfers:

(a) the transfer of Shares from the trustees of any consumer trust to:

- (i) the new trustees of that trust;
- (ii) the Local Authority/ies for the Service Area where the beneficiaries of that trust reside; or
- (iii) another consumer trust established for the purpose of providing water services to the public; and

(b) the transfer of Shares by a Local Authority to:

- (i) another Local Authority
- (ii) any successor Local Authority to that Local Authority; or
- (iii) a consumer trust established for the purpose of providing water services to the public.

7.5 **Board may refuse to register:** The Board may refuse or delay the registration of any transfer of a Share to any person if:

- (a) the transfer would result in a breach of law, this Constitution or the Shareholders' Agreement;
- (b) any money payable on that Share is due for payment and has not been paid;
- (c) the Company has an unsatisfied lien on that Share or the proceeds of sale of that Share;
- (d) the transferee is a person without legal capacity to contract or the transfer has not been properly executed;
- (e) the transfer is not accompanied by proof (reasonably required by the Directors) of the right of the transferor to make the transfer;
- (f) the Directors acting in good faith determine that registration of the transfer would not be in the best interests of the Company; or
- (g) the transfer document is not in the usual or common form or otherwise in the form prescribed by the Board from time to time (if any),

provided that the Board must at all times comply with section 84 of the Companies Act.

8. DISTRIBUTIONS

8.1 **Distributions:** The Board, if satisfied on reasonable grounds that the Company will, immediately after the Distribution, satisfy the solvency test under section 4 of the Companies Act, may, subject to:

- (a) the Companies Act and the LG(WS) Act;
- (b) the Shareholders' Agreement and the terms of issue of the relevant Shares; and
- (c) the prior approval of Shareholders by Special Resolution,

authorise Distributions by the Company at times, and of amounts, and in such form, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

9. COMPANY ACQUIRING ITS OWN SHARES

9.1 **Company may acquire its own Shares:** The Company may purchase or otherwise acquire its own Shares where this is consistent with the terms of the Shareholders' Agreement or, if outside the scope of what is provided for in the Shareholders' Agreement, only if it has first been authorised to do so by unanimous resolution of Shareholders in which case the Shares purchased or otherwise acquired shall be deemed to be cancelled immediately on acquisition.

10. SHAREHOLDER MEETINGS

10.1 **Annual meeting:** The Board must hold an annual Shareholders' meeting in accordance with section 120 of the Companies Act unless in the case of any annual meeting, everything required to be done at that meeting (whether by way of resolution or otherwise) is done by written resolution in accordance with section 122 of the Companies Act.

10.2 **Special meetings:** A special Shareholders' meeting:

- (a) may be called at any time by the Board; and
- (b) must be called by the Board on the written request of the SRG.

10.3 **Proceedings at Shareholders' meetings:** The provisions of the First Schedule to the Companies Act as modified by this Constitution, including the rules set out in Schedule 1, govern proceedings at Shareholders' meetings.

11. DIRECTORS

11.1 **Number of Directors:**

- (a) The maximum number of Directors will be 7.
- (b) The minimum number of Directors will be 3 (provided that the Company may have 1 Director until such time as the SRG has appointed not less than 3 Directors under clause 11.2).

11.2 **Appointment and removal by Stakeholders:**

- (a) The SRG may appoint up to the number of Directors set out in clause 11.1, by notice in writing to the Company. Directors may be removed and replaced in the same way.
- (b) The Shareholders and the Company shall promptly take such steps as may be necessary to effect the appointment, replacement or removal of any individual (including if a Director fails to vacate office when required to do so) in accordance with this clause 11.2 if applicable, including, in the case of the Shareholders, by exercising their voting rights in the relevant Shareholders' meeting (or by way of written resolution).

11.3 **Appointment and removal by Board:** Where there is a vacancy on the Board, the Appointments and Accountability Committee established by the Board (or, where the Board so determines, the full Board), may, by majority vote, appoint a person to fill that vacancy, but any Director appointed under this clause shall only hold office until the next meeting of the SRG at which the appointment or removal of Directors is formally considered .

11.4 **Director eligibility:** A person must not be appointed as a Director if the person is disqualified from being a director under the LG(W.S) Act or the Companies Act.

11.5 **Term of Appointment:**

- (a) No person may be appointed as a Director for a term of more than 3 consecutive years ("**Term**").
- (b) A Director may be reappointed at the expiry of his or her Term of appointment, provided that no Director may be appointed for a total term of more than 9 years.

11.6 **Vacation of office:** A Director vacates office if that Director:

- (a) resigns by written notice of resignation to the Company. The notice is to be effective when it is received at that address or at a later time specified in the notice;
- (b) is removed from office in accordance with clause 11.3;
- (c) becomes disqualified from being a Director in accordance with clause 11.14; or
- (d) dies.

11.7 **Appointment of Chair and deputy Chair:**

- (a) The SRG may appoint the Chair and any deputy Chair by notice in writing to the Company. The Chair or any deputy Chair may be removed or replaced in the same way.
- (b) If there is a vacancy and the SRG has not appointed a replacement Chair, the Board may appoint a Chair by majority vote of the Board to hold office pending such appointment by the SRG.
- (c) The Chair and any deputy Chair will hold office until:
 - (i) they cease to be a Director of the Company; or

- (ii) a new Chair or deputy Chair is appointed by the SRG.

11.8 Powers of the Board:

- (a) Subject to clause 11.8(b) and any restrictions in the Companies Act, the LG(WS) Act, the Shareholders' Agreement or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.
- (b) The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company except to the extent that this Constitution, the Shareholders' Agreement, the Companies Act or the LG(WS) Act expressly requires those powers to be exercised by the Shareholders or any other person.

11.9 Shareholder Reserved Matters: Notwithstanding clause 11.8(b), but subject to any restrictions in the LG(WS) Act, the Board must not, and must not cause the Company to enter into any transaction or matter that is a Reserved Matter, unless first approved by the Shareholders in accordance with the Shareholders' Agreement.

11.10 Proceedings of the Board: The provisions of the Third Schedule to the Companies Act as modified by this Constitution, including the rules set out in Schedule 2, govern proceedings at meetings of Directors.

11.11 Directors' duties: In addition to the duties set out in the Companies Act, the Directors must assist the Company to meet the objectives set out in clause 2.3, to give effect to the Statement of Expectations in accordance with, and to meet any other requirements set out in, the LG(WS) Act.

11.12 Directors to act in good faith: A Director, when exercising powers or performing duties, must act in a manner which that Director believes to be in the best interests of the Company (notwithstanding that it may not be in the best interests of any particular Shareholder) provided that Director must not exercise such powers or perform such duties in a manner which is inconsistent with section 17 of the LG(WS) Act.

11.13 Indemnity and insurance of Directors and employees: The Company may indemnify and effect insurance in accordance with any part or all of section 162 of the Companies Act provided that:

- (a) the Board must ensure that particulars of any indemnity given to, or insurance taken out for, any director, or employee of the Company are immediately entered in the interests register; and
- (b) the Board may impose any conditions in relation to any indemnity or insurance if the conditions do not contravene the Companies Act.

For the purposes of this clause 11.13 "director" includes any former director, "employee" includes any former employee and "Company" includes any related company.

11.14 Disqualification of Directors: A person will be disqualified from holding the office of Director if he or she:

- (a) is or becomes disqualified from being a Director under any provision of the Companies Act or the LG(WS) Act; or
- (b) dies; or
- (c) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- (d) is an undischarged bankrupt.

11.15 Remuneration of Directors:

- (a) The Shareholders shall determine, by Special Resolution, the total sum available to the Board each year to make remuneration payments in accordance with clause 11.15(b).
- (b) The Board may not authorise any form of remuneration to be paid to a Director without Board approval and unless such payment is made and authorised in accordance with the provisions of the Companies Act and the Special Resolution passed in accordance with clause 11.15(a).
- (c) The Board may authorise the reimbursement by the Company of reasonable travelling, hotel and other expenses incurred by Directors in attending Board meetings, Shareholder meetings or in relation to any other affairs of the Company.

11.16 Other offices with company held by Director:

- (a) Any Director may act by himself or herself or by the Director's firm in a professional capacity for the Company, and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor of the Company.
- (b) A Director may hold any other office or place of profit in the Company (other than the office of auditor) in conjunction with the Director's office of Director for such period and on such terms (as to remuneration and otherwise) as the Board may determine, subject to the necessary reporting disclosures and avoidance of conflicts of interest.

12. INTERESTS OF DIRECTORS

12.1 Disclosure of interests: A Director must disclose particulars of any interest in a transaction or proposed transaction of the Company in accordance with section 140 of the Companies Act.

12.2 Interested Directors: As set out in section 139 of the Companies Act, a Director is "interested" in a transaction to which the Company is a party if:

- (a) the transaction relates to a dispute between the Company and the Shareholder that appointed the Director ("**Director's Shareholder**"), or the enforcement of remedies available to the Company against the Director's Shareholder, including

under any agreement or arrangement between the Company (whether by itself or with one or more other parties) and the Director's Shareholder;

- (b) they are a party to the transaction or may derive a material financial benefit from it;
- (c) they have a material interest in another party to the transaction;
- (d) they are a director, officer or trustee of another party to the transaction;
- (e) they are a director, officer or trustee of a person who may derive a material financial benefit from the transaction;
- (f) they are a parent, child or spouse, civil union partner, or de facto partner of a person described in clause 12.2(a); or
- (g) they are otherwise directly or indirectly materially interested in the transaction.

12.3 **Interested Directors may act:** A Director who is interested in a transaction entered into, or to be entered into, by the Company must not do any of the following:

- (a) sign a document relating to that transaction on behalf of the Company; or
- (b) do any other thing in their capacity as a Director in relation to that transaction,

provided that a Director may vote, sign documents and otherwise do any other thing in their capacity as a Director with regard to any matter relating to the following:

- (c) any payment or other benefit of the kind referred to in section 161 of the Companies Act in respect of that Director in accordance with clause 11.15;
- (d) the entry into an indemnity or insurance arrangement in respect of that Director in their capacity as a director of the Company in accordance with clause 11.13; or
- (e) transactions in which a Director is interested solely in their capacity as a director of a Subsidiary of the Company.

12.4 **Interests register review:** The Board shall review the interests register at the beginning of every Board meeting.

12.5 **No prohibition re quorum:** No prohibition under this clause 12 will prevent the attendance of a Director at a Board meeting from counting for quorum purposes.

13. NOTICES

13.1 **Service:** Notices may be served by the Company upon any Director or Shareholder, either 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 (or, in the case of a company, its registered office). A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share, or to such other person as or the joint Shareholders may in writing direct.

13.2 **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.

14. LIQUIDATION

14.1 If the Company is liquidated, the liquidator may, with the approval of the Shareholders by Special Resolution and any other approval required by the Companies Act or the LG(W.S) Act, but subject to the requirements of the Shareholders' Agreement (as notified by any Shareholder to the liquidator) and, if applicable, the rights or restrictions attached to the different classes of shares issued by the Company:

- (a) enter into a transfer agreement with the Shareholders to distribute to the Shareholders in kind the whole or any part of the assets of the Company; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that the Shareholders are not compelled to accept any Shares or other securities on which there is any liability.

15. METHODS OF CONTRACTING

15.1 A deed which is to be entered into by the Company may be signed on behalf of the Company by:

- (a) two or more Directors;
- (b) a Director, and any person authorised by the Board, whose signatures must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with section 181 of the Companies Act.

15.2 Subject to clause 15.1, an obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by two people acting under the express or implied authority of the Company.

15.3 Subject to clause 15.1, any other obligation or contract may be entered into on behalf of the Company in writing or orally by two people acting under the express or implied authority of the Company.

SCHEDULE 1

Rules for Shareholder Meetings

1. CHAIR

- 1.1 If the Chair is present at the meeting, he or she must chair the meeting.
- 1.2 If there is no Chair or if the Chair is not present at the meeting within 15 minutes of the start time, the Directors present may elect a chair for that meeting, failing which, the Shareholders (or their representatives) present may elect a chair for that meeting.

2. NOTICE OF MEETINGS

- 2.1 Each Shareholder and every Director of the Company must be sent written notice of the time and place of the meeting at least 10 Business Days before the meeting.
- 2.2 The notice must state:
 - (a) the nature of the business to be discussed at the meeting in sufficient detail to enable the Shareholders to form a reasoned judgment in relation to it; and
 - (b) the text of any Special Resolution to be put to the meeting.
- 2.3 An irregularity in a notice of a meeting is waived if:
 - (a) the Shareholders attend the meeting without protest as to the irregularity; or
 - (b) if each Shareholder agrees to the waiver.
- 2.4 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. It is not otherwise necessary to give any new notice for an adjourned meeting.
- 2.5 The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings at that meeting.

3. METHODS OF HOLDING MEETINGS

- 3.1 A Shareholders' meeting may be held either:
 - (a) at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual, communication. The Shareholders (or their representatives) participating must constitute a quorum and must all be able to simultaneously hear all participants throughout the meeting.

4. QUORUM

- 4.1 No business may be transacted at a Shareholder meeting if a quorum is not present.
- 4.2 A quorum for a Shareholder meeting is present if a majority of Shareholders (based on the number of Shares held) or their proxies:
- (a) is present; or
 - (b) has completed postal votes (where permitted).
- 4.3 If a quorum is not present within the 30 minutes after the start time for the meeting:
- (a) if the meeting is called under section 121(b) of the Companies Act, the meeting is dissolved;
 - (b) for any other meeting, the meeting is adjourned to:
 - (i) the same day in the following week at the same time and place, or
 - (ii) to another date, time and place to be fixed by the Directors.

5. ADJOURNMENTS

- 5.1 The Chair:
- (a) may adjourn the meeting from time to time and from place to place, but no business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place; and
 - (b) must adjourn the meeting as above if directed to do so by the meeting.

6. VOTING

- 6.1 If a Shareholder meeting is held under rule 3.1(b), unless a poll is demanded, voting at the meeting will be by:
- (a) voting by voice; or
 - (b) voting by show of hands,
- and the chair of the meeting will decide which method is used.
- 6.2 A declaration by the chair of the meeting that a resolution is carried by the necessary majority is conclusive evidence of that fact unless a poll is demanded.
- 6.3 Subject to the Shareholders' Agreement and to any rights or restrictions attached to any Share:
- (a) where voting is by voice or a show of hands, every Shareholder present in person or by representative has one vote; and

- (b) on a poll every Shareholder present in person or by representative has one vote in respect of every Share held by that Shareholder which entitles a Shareholder to vote; and
- (c) in the case of an equality of votes, the chair of the meeting does not have a casting vote.

7. PROXIES AND POSTAL VOTES

- 7.1 Each Shareholder has the right to appoint a representative as its proxy to attend and vote at Shareholder meetings on its behalf. Any such representative so appointed is entitled to attend and be heard at Shareholder meetings and to demand or join in demanding a poll, as if that representative was the relevant Shareholder.
- 7.2 A Shareholder may not cast a postal vote at a Shareholders' meeting unless the Board has previously authorised postal votes for that meeting in which case:
 - (a) the notice of that meeting must state whether postal votes are authorised; and
 - (b) postal voting must be carried out in accordance with clause 7 of the First Schedule to the Companies Act.

8. MINUTES

- 8.1 The Board must ensure that minutes are kept of all proceedings at Shareholder meetings.
- 8.2 Minutes which have been signed correct by the Chair of the meeting are prima facie evidence of the proceedings.

9. SHAREHOLDER PROPOSALS

- 9.1 The Shareholders may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next Shareholder meeting. The provisions of clause 9 of the First Schedule of the Companies Act apply to any notice given under this rule 9.1.
- 9.2 The Chair of a Shareholder meeting will allow a reasonable opportunity for the Shareholders to question, discuss or comment on the management of the Company.

10. OTHER PROCEEDINGS

- 10.1 Except as provided in this Schedule 1, and subject to this Constitution, a Shareholder meeting may regulate its own procedure.

SCHEDULE 2

Rules for Board Proceedings

1. NOTICE OF MEETING

- 1.1 A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause.
- 1.2 At least five Business Days' notice of a meeting of the Board must be given to every Director.
- 1.3 Public notification of meetings must be given in accordance with the LGOIMA. Agendas and reports for meetings must be made available in accordance with the LGOIMA.
- 1.4 An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 1.5 The Company may withhold from publication official information in accordance with the LGOIMA.

2. METHOD OF HOLDING MEETINGS

- 2.1 The Board may meet in person or by any technological means that:
 - (a) allow participating Directors to be in communication with other participating Directors in a manner that is relatively contemporaneous; and
 - (b) ensure the meeting is compliant with the requirements set out in Part 7 of LGOIMA.
- 2.2 Where Directors are not all in attendance in one place but are holding a meeting through such a system of communication that complies with paragraph 2.1 of this Schedule 2:
 - (a) the participating Directors will be taken to be assembled together at a meeting and present at that meeting (including for the purposes of quorum requirements);
 - (b) the meeting will be taken to be held at the place agreed to by the participating Directors so long as at least one participating Director is physically present at that place; and
 - (c) all proceedings at meetings conducted in such a manner will be valid and effective as if conducted at a meeting at which all of them were physically present.

3. QUORUM

- 3.1 At any meeting of Directors:
 - (a) a quorum will only be present if at least a majority of Directors are present; and

(b) any resolution, unless otherwise specified in this Constitution or the Shareholders' Agreement, will be passed if a majority of the votes cast on it are in favour of it.

3.2 If a quorum is not present within 30 minutes of the time appointed for the commencement of the Board meeting, the Board meeting must be adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the chairperson may appoint, and if at the adjourned meeting a quorum is not present within one hour after the time appointed for the commencement of the meeting, the Directors present (regardless of the person who appointed them) will constitute a quorum. No business may be transacted at a meeting of Directors if a quorum is not present.

4. VOTING

4.1 Every Director has one vote.

4.2 The Chair does not have a casting vote.

4.3 Subject to clause 11.9, a resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.

4.4 A Director who abstains from voting is not presumed to have voted in favour of the relevant resolution of the Board.

5. MINUTES

5.1 The Board must ensure minutes are kept of all proceedings at meetings of the Board. Such minutes will be made available to the public in accordance with, and to the extent required by, section 51 of LGOIMA.

6. RESOLUTIONS

6.1 A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

6.2 A resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.

6.3 A copy of all resolutions must be entered in the minute book of Board proceedings.

7. OTHER PROCEEDINGS

7.1 Except as provided in this Schedule 1 and this Constitution, the Board may regulate its own procedure.

SCHEDULE 6

Part A: Transfer Principles

- Each Shareholding Council will transfer all existing water, wastewater, and stormwater services to the Company under the terms of their respective Transfer Agreements on or before 1 July 2027.
- Only assets owned or controlled by a Shareholding Council and which relate primarily to water services may be transferred (unless agreed otherwise by the SRG).
- Each Shareholding Council will supply the Company or its advisers with such information as they may reasonably require and co-operate with the Company and its advisers (including any independent valuer) to enable the Company to undertake due diligence prior to entering into a Transfer Agreement (including to determine the Net Asset Value, the debt of each Shareholding Council to be transferred to the Company in accordance with the principles set out below, and to finalise the terms of the Transfer Agreement).
- As part of the transfer (without limitation):
 - Existing Water Services debt of each of the Shareholding Councils will be transferred to the Company in accordance with an agreed and consistent methodology. The debt to be transferred will be referable to the Three Waters Debt of each Shareholder as most recently previously published by the National Transition Unit or the Department of Internal Affairs and may also include costs incurred by the relevant Shareholder in undertaking a transitional activity agreed by the Board or set out in that Shareholder's Transfer Agreement.
 - The Company will be responsible for preparing the proposed final terms of each Transfer Agreement with a Shareholding Council in accordance with these Transfer Principles. If a Shareholding Council does not agree to the terms of a proposed Transfer Agreement, the Company and that Shareholding Council will negotiate those terms in good faith. If the Company and the Shareholding Council are unable to agree the proposed terms of the Transfer Agreement, the matter in dispute shall be referred to the SRG. Clause 17 of this agreement shall then apply with respect to the matter in dispute, but a representative of the Company must participate in any negotiation, mediation or arbitration under that clause.
 - The ability to set annual budgets, capital programme, revenue requirements and charges will vest in the Company.
 - A review of existing Council staff whose roles substantially relate to the delivery of water services will be undertaken with a view to consulting with any affected staff regarding any restructuring proposal.
 - The Company will be the water services provider registered with Taumata Arowai.
 - Existing resource consents (or their benefit) will be transferred to the Company.
- Each Shareholder will, in the period from the date of this agreement up to the "Completion Date" under their Transfer Agreement, operate its water services in the ordinary course of business in accordance with business practices employed by the Shareholder at the date of this agreement.

Part B: Form of Transfer Agreement

Transfer Agreement

PARTIES

Southern Waters Limited

Water Organisation

[Central Otago][Clutha][Gore][Waitaki] District Council

Council

CONTENTS

1. AGREEMENT.....	3
SCHEDULE 1	5
AGREEMENT DETAILS	5
SCHEDULE 2	8
TRANSFER TERMS AND CONDITIONS	8
1. MATTERS TO BE TRANSFERRED	8
2. MATTERS NOT TRANSFERRED.....	8
3. PURCHASE PRICE	8
4. TAX.....	9
5. EMPLOYEES/CONTRACTORS	9
6. PRE-COMPLETION OBLIGATIONS	10
7. COMPLETION.....	11
8. APPORTIONMENT	12
9. ASSUMED CONTRACTS	14
10. POST-COMPLETION PROVISIONS	15
11. LIABILITY	16
12. WARRANTIES AND INDEMNITIES	16
APPENDIX 1 – MATTERS TO BE TRANSFERRED	18
ASSETS.....	18
OBLIGATIONS	19
A) ASSUMED CONTRACTS	19
RESPONSIBILITIES.....	19
A) STATUTORY RESPONSIBILITIES.....	19
B) OPERATIONAL RESPONSIBILITIES.....	19
C) MANAGEMENT RESPONSIBILITIES.....	20
D) RESOURCE CONSENTS RESPONSIBILITIES.....	20
APPENDIX 2 – MATTERS TO NOT BE TRANSFERRED	21
SCHEDULE 3	22
COMPLETION AMOUNT AND B SHARE DETERMINATION.....	22
SCHEDULE 4	23
SHARED INTEREST AND CHARGING ARRANGEMENTS TERMS AND CONDITIONS	23
1. RELATIONSHIP MANAGEMENT	23
2. MATTERS OF SHARED INTEREST	23
3. CHARGING AND REVENUE COLLECTION ARRANGEMENTS	24
4. GOVERNANCE FOR MANAGING SHARED INTERESTS	24
APPENDIX 1 – SHARED INTEREST ARRANGEMENTS FOR [SOUTHERN WATERS	27
APPENDIX 2 – SHARED INTEREST ARRANGEMENTS FOR [Y].....	28

SCHEDULE 5	29
AD HOC SERVICES AND DELIVERABLES.....	29
1. AD HOC SERVICES	29
2. GENERAL OBLIGATIONS.....	29
3. PAYMENT AND INVOICING.....	32
4. DISENGAGEMENT SERVICES.....	33
APPENDIX 1 – SERVICE ORDER TEMPLATE	35
APPENDIX 2 – RATES CARD AND SERVICES CATALOGUE.....	40
SCHEDULE 6	41
GENERAL TERMS AND CONDITIONS	41
1. TERM	41
2. INFORMATION SHARING, CONFIDENTIALITY AND CO-OPERATION.....	41
3. REVIEW OF AGREEMENT	41
4. HEALTH AND SAFETY.....	42
5. INTELLECTUAL PROPERTY	43
6. LIABILITY AND INSURANCE	44
7. FORCE MAJUERE EVENT.....	44
8. RECORDS.....	44
9. CONFLICTS	45
10. DISPUTE RESOLUTION	45
11. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS.....	47
12. TERMINATION.....	48
13. NOTICES.....	49
14. GENERAL	49
SCHEDULE 7	52
INTERPRETATION AND DEFINITIONS.....	52
1. INTERPRETATION AND DEFINITIONS	52

PARTIES

Southern Waters Limited

("Southern Waters")

[Central Otago][Clutha][Gore][Waitaki] District Council ("Council")

INTRODUCTION

- A. Southern Waters is established to provide water services for the Council and for [Central Otago][Clutha][Gore][Waitaki] District Councils.
- B. The Council is responsible for providing Water Services and is the owner of various drinking water, stormwater, wastewater and other infrastructure and assets, as well as various associated liabilities.
- C. The Council enters into this transfer, interface and services agreement with Southern Waters, pursuant to sections 11 and 14, and Schedule 2, of the LG(WS) Act, to transfer to Southern Waters:
 - (a) specified responsibility for providing Water Services; and
 - (b) specified infrastructure, related assets and other matters that are necessary for Southern Waters to carry out, and be responsible for, providing Water Services in the Service Area.

1. AGREEMENT

- 1.1 The parties enter into this agreement to record their agreement on the following matters:
 - (a) Schedule 2: The Council has agreed to transfer to Southern Waters, and Southern Waters has agreed to receive the Assets and assume the Responsibilities and Obligations, for the consideration and on the terms and conditions set out in this agreement.
 - (b) Schedule 4: How the parties will work together to effectively and efficiently manage matters of shared interest, and what arrangements will apply for charging and revenue collection for the Water Services that will be performed by Southern Waters.
 - (c) Schedule 5: The terms on which one party will provide the other party with other ad hoc services and deliverables.
 - (d) Schedule 6: The general terms and conditions which apply to this agreement.
 - (e) Schedule 7: The definitions which apply to this agreement.
-

SIGNATURES

**[CENTRAL
OTAGO][CLUTHA][GORE][WAITAKI]
DISTRICT COUNCIL** By:

Name of Authorised Signatory

Signature of Authorised Signatory

In the presence of:

Signature of witness

Name of witness

Occupation

City/town of residence

SOUTHERN WATERS LIMITED

By:

Signature of Director

Signature of Director

Name of Director

Name of Director

SCHEDULE 1

AGREEMENT DETAILS

Transfer Terms under Schedule 2

Completion Date <i>(Clause 7.1, Schedule 2)</i>	[1 July 2027]
Purchase Price and limitation of liability <i>(Clauses 3.1 and 11.2, Schedule 2)</i>	[\$insert]
List or description of Assets to be transferred (or expressly not to be transferred) under this agreement <i>(Appendices 1 and 2 of Schedule 2)</i>	See Appendices 1 and 2 of Schedule 2.
List or description of contracts to be transferred (or expressly not to be transferred) under this agreement <i>(Appendices 1 and 2 of Schedule 2)</i>	See Appendices 1 and 2 of Schedule 2.
List or description of Responsibilities to be transferred (or expressly not to be transferred) under this agreement <i>(Appendices 1 and 2 of Schedule 2)</i>	See Appendices 1 and 2 of Schedule 2.

Shared Interests and Charging and Revenue Collection Arrangements Terms under Schedule 4

Shared Interest Arrangements <i>(clause 2.2, Schedule 4)</i>	<p>The parties will work together in relation to the following Shared Interest Arrangements set out at the Appendices 1 and [2] to Schedule 4:</p> <ul style="list-style-type: none">• when the Council is performing and exercising its functions, duties, and powers under the Building Act 2004;
--	---

	<ul style="list-style-type: none"> land use planning and resource management planning (including consent processes); and the performance or exercise of any statutory functions in respect of emergency management; and [insert any other statutory functions, duties, and powers of the parties that are relevant] 				
Party to collect Water Charges <i>(clause 3, Schedule 4)</i>	Southern Waters will collect the Water Charges				
Representatives <i>(clause 4.2, Schedule 4)</i>	<table border="1"> <tr> <td> Council: [Insert the respective party representative identified in clause 4.2(b) of Schedule 4 of the agreement – note that as more than one Council is part of Southern Waters, consider each Council appointing the same person] </td> <td> Water Organisation: [Insert the respective party representative identified in clause 4.2(b) of Schedule 4 of the agreement] </td> </tr> </table>	Council: [Insert the respective party representative identified in clause 4.2(b) of Schedule 4 of the agreement – note that as more than one Council is part of Southern Waters, consider each Council appointing the same person]	Water Organisation: [Insert the respective party representative identified in clause 4.2(b) of Schedule 4 of the agreement]		
Council: [Insert the respective party representative identified in clause 4.2(b) of Schedule 4 of the agreement – note that as more than one Council is part of Southern Waters, consider each Council appointing the same person]	Water Organisation: [Insert the respective party representative identified in clause 4.2(b) of Schedule 4 of the agreement]				
Interface Governance Group Members <i>(clause 4.3, Schedule 4)</i>	<table border="1"> <tr> <td colspan="2"> Chair: [Insert Interface Governance Group Chair] </td> </tr> <tr> <td> Council representative(s): [Insert Council Interface Governance Group representative(s)] </td> <td> Water Organisation representative(s): [Insert Water Organisation Interface Governance Group representative(s)] </td> </tr> </table>	Chair: [Insert Interface Governance Group Chair]		Council representative(s): [Insert Council Interface Governance Group representative(s)]	Water Organisation representative(s): [Insert Water Organisation Interface Governance Group representative(s)]
Chair: [Insert Interface Governance Group Chair]					
Council representative(s): [Insert Council Interface Governance Group representative(s)]	Water Organisation representative(s): [Insert Water Organisation Interface Governance Group representative(s)]				

Ad hoc Services and Deliverables Terms under Schedule 5

Summary of Council's provision of Services and Deliverables <i>(Services and Deliverables are provided in full detail in clauses 2 and 4, Schedule 5 and any Service Order)</i>	<p>As at the Commencement Date of this agreement, the summary of Services and Deliverables that Council will provide to Southern Waters under this agreement and Service Orders are:</p> <p>[insert brief description of Services and Deliverables, noting detailed services and deliverables need to be described in the Service Order if not covered under this agreement. To be developed by Transition Adviser. Consider (for example):</p> <ul style="list-style-type: none"> Transitional staffing requirements; Finance functions; Billing and collection of charges; IT services.]
Summary of Southern Waters's provision of Services and Deliverables <i>(Services and Deliverables are provided in full detail in clauses</i>	<p>As at the Commencement Date of this agreement, the summary of Services and Deliverables that Southern Waters will provide to Council under this agreement and Service Orders are:</p>

2 and 4, Schedule 5 and any Service Order)	[insert brief description of Services and Deliverables, noting detailed services and deliverables need to be described in the Service Order if not covered under this agreement]	
Invoice details (clause 3, Schedule 5)	Council	Water Organisation
	[Insert payment contact details, this may be the party representative contact] Email: [Insert email address to be used for invoicing]	[Insert payment contact details, this may be the party representative contact] Email: [Insert email address to be used for invoicing]

General Terms and Conditions under Schedule 6

Commencement Date (Clause 1.1, Schedule 6)	[Insert Commencement Date of this agreement]	
Service Area(s) for determination of "Business Day" (Clause 1.1, Schedule 7)	The Districts of Central Otago, Clutha, Gore and Waitaki.	
Service Area (Background A)	The [Central Otago][Clutha][Gore][Waitaki] District as described pursuant to schedule 2 of the Local Government Act 2002	
Place of arbitration (Clause 10.4(c), Schedule 6)	Alexandra	
Address for notices (clause 13.1, Schedule 6)	Council	Water Organisation
	[insert physical and postal address details of the Council's office] Email: [Insert details] Attention: [Insert details]	[insert physical and postal address details of Southern Waters's office] Email: [Insert details] Attention: [Insert details]

SCHEDULE 2

TRANSFER TERMS AND CONDITIONS

Purpose of Schedule 2: This Schedule 2 provides for the terms of the Transfer of the Assets, Responsibilities, and Obligations from the Council to Southern Waters.

1. MATTERS TO BE TRANSFERRED

1.1 Agreement to transfer:

- (a) **Assets and Obligations:** The Council shall transfer the Assets and Obligations to Southern Waters, and Southern Waters shall:
 - (i) receive the Assets free of any Encumbrances; and
 - (ii) assume the Obligations (including by taking an assignment/novation of the Assumed Contracts under clause 9 of Schedule 2),from the Council, in accordance with this agreement.
- (b) **Statutory responsibilities, functions, duties and powers:** The Council shall transfer the Statutory Responsibilities to Southern Waters, and Southern Waters shall comply with the Statutory Responsibilities as required by this agreement, and the relevant legislation.
- (c) **Operational Responsibilities and Management Responsibilities:** The Council shall transfer the Operational Responsibilities and Management Responsibilities to Southern Waters, and Southern Waters shall comply with the Operational Responsibilities and Management Responsibilities as required by this agreement, and the relevant legislation.
- (d) **Resource Consents Responsibilities:** The Council shall transfer the Resource Consents Responsibilities to Southern Waters, and Southern Waters shall comply with the Resource Consents Responsibilities as required by this agreement, and the relevant legislation.

2. MATTERS NOT TRANSFERRED

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

3. PURCHASE PRICE

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

4. TAX

- 4.1 The parties agree and acknowledge that, pursuant to section 255 of the LG(WS) Act, they are treated as the same person for the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994) and therefore no tax consequences arise in respect of the Transaction contemplated by this agreement.

5. EMPLOYEES/CONTRACTORS

- 5.1 **Identification of affected employees:** Pursuant to clause 1 of Schedule 1 of the LG(WS) Act, the Council will cause its chief executive to identify and notify Southern Waters of the employees of the Council whose employment at the Council relates more to the Water Services being transferred under this agreement than to the functions that the Council will retain after the transfer within [20] Business Days of this agreement. The Council will also notify Southern Waters of any Contractors providing services substantially relating to the Water Services.

- 5.2 **Offer of employment:** Southern Waters shall, within [40] Business Days of the date of this agreement, consult with the Council as to the terms and conditions to be offered to the Employees and Contractors and, unless otherwise agreed with the Council, offer, so that such offer:

- (a) in respect of Employees, meets the requirements of paragraphs (a) to (c) of clause 1(3) of Schedule 1 of the LG(WS) Act; ;
- (b) in respect of Contractors, is a new independent contractor agreement on similar terms to their agreement with the Council; and
- (c) in each case is conditional on Completion occurring and the Employee or Contractor remaining employed or engaged by the Council until Completion,

(the "Offer").

- 5.3 **Acceptance:** The parties shall use all reasonable endeavours to persuade each Employee and Contractor to accept the Offer.

- 5.4 **Termination of employment:** The Council will terminate the employment of each Employee who accepts an Offer with effect from Completion by a notice that meets the requirements set out in the employment agreement of the Employee.

- 5.5 **Access to Employees and Contractors:** The Council will, at such times as reasonably requested by Southern Waters, allow Southern Waters access to:

- (a) each Employee and Contractor to discuss the Offer; and
- (b) subject to obtaining each Employee's and Contractor's consent to disclosure, if required by law, each Employee's employment records (or equivalent for Contractors).

- 5.6 **Southern Waters' Assumed Accrued Employee Benefits:** Southern Waters shall from Completion assume, and indemnify the Council against, all Liability for all Accrued Employee Benefits.

- 5.7 **Return of Employee information:** Where any Employee does not accept an Offer, Southern Waters will, at the option of the Council, return to the Council or destroy all personal information provided to Southern Waters in relation to the relevant Employee (including but not limited to all employment records provided under clause 5.5(b) of Schedule 2).

6. PRE-COMPLETION OBLIGATIONS

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

- (a) operate and conduct the Business in the normal course in accordance with the business practices employed by the Council as at the date of this agreement;
- (b) continue to make such payments and discharge such obligations in a manner consistent with the timing and method of payment or discharge employed by the Council in the 12 month period prior to the date of this agreement;
- (c) promptly notify Southern Waters of any lawsuits, Claims, proceedings (other than normal debt collection proceedings), investigations or material adverse events (excluding any change of law or national economic conditions relating to Water Services generally) which may occur, be threatened, brought, asserted or commenced against it, its directors or employees, involving or affecting the Business, the Assets, the Obligations and/or the Responsibilities; and
- (d) to the extent not already executed, execute a deed of guarantee in favour of LGFA in accordance with the commitment set out in the Shareholders' Agreement.

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

- (a) alter any of the conditions of employment of the Employees (other than in accordance with any union or collective agreement or contractual or normal wage and salary review or bonus policies);
- (b) alter any of the terms of engagement of any Contractor in any material respect;
- (c) agree to amend any of the terms of any Assumed Contract in any material respect; or
- (d) acquire or dispose of any of the Assets other than in the ordinary course of conducting the Business.

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

- (a) is expressly permitted by this agreement;
- (b) is required by law; or
- (c) is approved in writing by Southern Waters.

6.4 **Novation and Counterparty Consents:**

- (a) Prior to Completion, the Council shall use all reasonable endeavours to have each of the counterparties to any Assumed Contracts enter into a deed of novation, on terms acceptable to each of the Council and Southern Waters, to novate the relevant Assumed Contract to Southern Waters with effect from Completion.
- (b) To the extent that a deed of novation is not able to be entered into pursuant to sub-clause (a), then the Council will use all reasonable endeavours to obtain the consent of the relevant counterparty to the Assumed Contracts marked as requiring consent in Appendix 1 of this Schedule 2, to the assignment of that Assumed Contract to Southern Waters, on

terms that are acceptable to both the Council and Southern Waters ("**Counterparty Consents**").

- (c) Southern Waters shall provide such assistance to the Council as it reasonably requests in relation to sub-clauses (a) and (b).
- (d) If:
 - (i) no deed of novation has been entered into in respect of that Assumed Contract; and
 - (ii) where a Counterparty Consent is required in respect of an Assumed Contract, and that Counterparty Consent has not been obtained

on or before Completion, Southern Waters shall not delay or fail to undertake Completion and clause 9 of Schedule 2 will apply.

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

- (a) is necessary for Southern Waters to carry on the Business after Completion in a manner consistent with how the Business was carried on during the 12 months prior to Completion; and/or
- (b) primarily relates to the provision of Water Services,

other than an Excluded Asset ("**Additional Item**"), then the parties may agree to vary this agreement in accordance with clause 14.7 of Schedule 6, for the Additional Item to be added to Appendix 1 of Schedule 2 for consideration determined by the parties consistent with how the consideration was determined for the Assets and Obligations. If the parties cannot agree on such value, the expert determination process in clause 8.2(b) of Schedule 2 will apply, with appropriate changes to reflect the determination required by this clause.

7. COMPLETION

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

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

- (a) Southern Waters shall pay the Completion Amount to the Council in immediately available funds by electronic transfer to a bank account nominated by the Council;
- (b) Southern Waters shall issue B Shares to the Company in accordance with the Shareholders' Agreement, the Constitution and Schedule 3
- (c) legal and beneficial title to, risk to, and possession of, the Assets shall be given by the Council and accepted by Southern Waters, and the Council will deliver all Assets, title to which passes by delivery, at the places set out in Appendix 1 of Schedule 2 or as otherwise notified by the Council to Southern Waters;
- (d) the Council shall take such actions, and sign and deliver to Southern Waters (together with all relevant documents of or evidencing ownership) such documents and other things

necessary, to transfer to Southern Waters full and unencumbered legal and beneficial title to, and possession of, the Assets as Southern Waters may reasonably require;

- (e) Southern Waters assumes the Obligations and shall take such actions, and sign and deliver to the Council such documents and other things necessary, for Southern Waters to assume full responsibility for the Obligations (including as provided for in clauses 6.4 and 9 of Schedule 2), as the Council may reasonably require; and
- (f) Southern Waters assumes the Responsibilities and shall take such actions for Southern Waters to assume full responsibility for the Responsibilities as the Council may reasonably require.

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

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

- (a) effect Completion so far as is practicable having regard to the defaults which have occurred and in so doing either to release, or without releasing (as Southern Waters may elect), the Council from liability to comply as soon as possible with its obligations under that clause;
- (b) fix a new date for Completion, which shall be treated for all purposes as the Completion Date; and/or
- (c) sue for specific performance.

7.5 **Completion under other Transfer Agreements interdependent:** Southern Waters has entered into separate Transfer Agreements with each of [Central Otago][Clutha][Gore][Waitaki] District Council and [Central Otago][Clutha][Gore][Waitaki] District Council on similar terms to this agreement including the same Completion Date. Completion under this agreement is interdependent with, and must occur contemporaneously with completion under each of those agreements. Neither party is obliged to complete under this agreement unless completion under those other agreements occurs contemporaneously. If Completion is delayed to enable contemporaneous completion under those agreements, the Completion Date under this agreement shall be deferred to the next Business Day on which all completions can occur, without prejudice to other rights or remedies.

8. APPORTIONMENT

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

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

- (c) the aggregate of all amounts received by the Council pursuant to any of the Assumed Contracts or in relation to the Assets, which have been received by the Council at the Completion Date in relation to the period after the Completion Date ("**Advance Revenue**");
- (d) the amount of all Apportionable Outgoings:
 - (i) unpaid by the Council at the Completion Date in respect of the period up to and including the Completion Date ("**Accruals**"); and
 - (ii) paid by the Council at the Completion Date in respect of the period after the Completion Date ("**Prepayments**").

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

- (a) approves the Apportionment Statement; or
- (b) does not approve the Apportionment Statement, such notice ("**Dispute Notice**") to specify the matters that Southern Waters disputes or disagrees with ("**Matters in Dispute**"), in which case Southern Waters and the Council must meet within five Business Days of the date of the Dispute Note and attempt to resolve the Matters in Dispute. If the Matters in Dispute are not resolved by Southern Waters and the Council within five Business Days of such meeting then either Southern Waters or the Council may give notice ("**Referral Notice**") to the other referring the Matters in Dispute to a single expert ("**Expert**") for determination in accordance with the following:
 - (i) the Expert will be an accountant with relevant experience appointed by the Council and Southern Waters by mutual agreement, provided that if agreement as to the Expert is not reached within five Business Days after the date of giving the Referral Notice, the Expert will be appointed at the request of a party by the New Zealand Dispute Resolution Centre;
 - (ii) the Council and Southern Waters will together provide to the Expert copies of this agreement, the Dispute Notice and a copy of the Apportionment Statement; and
 - (iii) the Expert will be instructed to:
 - (aa) resolve the Matters in Dispute, in accordance with the accounting treatment used by the Council in their most recent financial statements ("**Accounting Treatment**"), and then, only to the extent necessary, in accordance with NZ GAAP (to the extent not inconsistent with the Accounting Treatment) as at the date of this agreement;
 - (bb) resolve the Matters in Dispute within 20 Business Days of the date of the Referral Notice and issue a decision to each of the Council and Southern Waters; and
 - (cc) if required, adjust the Apportionment Statement and provide a copy to each of the Council and Southern Waters;

- (iv) the decision will be final and binding on the parties;
- (v) referral of the Matter to the Expert will not be an arbitration agreement for the purposes of the Arbitration Act 1996 and the provisions of that Act will not apply to or govern that referral; and
- (vi) the parties will bear their own costs (including legal costs) and an equal share of the costs and expenses of the Expert.

8.3 Difference between Accruals and Prepayments: If:

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

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

- (c) the date on which Southern Waters receives notice from the Council under clause 8.2(a) of Schedule 2; or
- (d) receipt by the party required to make payment under clause 8.3(a) or 8.3(b) of Schedule 2 (as applicable) of the adjusted Apportionment Statement from the Expert pursuant to clause 8.2(b)(iii) of Schedule 2.

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

9. ASSUMED CONTRACTS

9.1 Assignment and Novation:

- (a) Subject to clause 6.4 of Schedule 2 and Completion, and on and with effect from the Completion Date, the Council assigns and Southern Waters accepts an assignment of all of the Council's rights under, benefits of and interests in ("**Benefits**"), and assumes the burden of, the Assumed Contracts ("**Relevant Contract**"), in accordance with this clause 9 of Schedule 2.
- (b) This agreement does not constitute an assignment or an attempted assignment, or novation or attempted novation as the case may be, of a Relevant Contract if an assignment or attempted assignment requires the consent of the counterparty to the Relevant Contract and would constitute a breach of that Relevant Contract if an assignment were made without that consent.

9.2 Consent to transfer of Relevant Contracts:

- (a) If the consent of a third party is to be requested for the assignment as marked in Appendix 1 of Schedule 2 (as applicable), and has not been obtained prior to Completion, the Council must continue to use all reasonable endeavours to obtain that consent by or

as soon as reasonably practicable after Completion, on terms that are acceptable to both the Council and Southern Waters.

- (b) Pending the transfer of any Relevant Contract to Southern Waters under clause 9.1 of Schedule 2, the Council must:
 - (i) hold the Benefits of the Relevant Contract on trust for Southern Waters and account to Southern Waters promptly after receipt by it for the value of any Benefit of the Relevant Contract that arises (or relates to the period) after the Completion Date; and
 - (ii) not agree to any termination, amendment or variation of, or waiver of any of the Council's rights under, the Relevant Contract without the prior written approval of Southern Waters.

9.3 **Performance of Relevant Contracts:**

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

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

10. **POST-COMPLETION PROVISIONS**

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

10.2 **Additional assets and liabilities:** If, within a period of [2 years] after Completion, the Council or Southern Waters identifies any asset or contract held by the Council that:

- (a) is necessary for Southern Waters to carry on the Business after Completion in a manner consistent with how the Business was carried on during the 12 months prior to Completion; and/or
- (b) primarily relates to the provision of Water Services,

other than an Excluded Asset ("**Further Item**"), and gives notice in writing of the Further Asset to the other party then the Council must transfer the Further Item to Southern waters (subject to obtaining any applicable counterparty consent on terms satisfactory to both the Council and Southern Waters), in consideration for the issue by Southern Waters of B Shares for an issue price equal to the value of the Further Item. If the parties cannot agree on whether an asset or contract is a Further Item, or such value, the expert determination process in clause 8.2(b) of Schedule 2 will apply, with appropriate changes to reflect the determination required by this clause.

- 10.3 **Receipt of post-Completion amounts:** On and from Completion, Southern Waters shall be entitled to receive and retain all amounts payable in respect of the Assets and Assumed Contracts. The Council shall make such payments to Southern Waters as are necessary to give effect to the preceding sentence and until such payments are made shall hold the relevant amounts on trust for Southern Waters. The Council shall promptly provide to Southern Waters such information as is necessary to enable Southern Waters to calculate amounts payable under this clause. The Council shall use all reasonable endeavours to ensure that the amount of each payment to be made under this clause is determined, and paid, as quickly as possible.
- 10.4 **Southern Waters to provide information:** Following Completion, Southern Waters shall permit the Council such access to its records as shall be reasonably necessary to enable the Council to complete tax returns and to comply with other statutory obligations of the Council relating to the Business and/or the provision of Water Services.
- 10.5 **Council to provide information:** Following Completion, the Council shall permit Southern Waters to have access to its records, and to take copies thereof, for the purpose of conducting the Business or complying with other statutory obligations of Southern Waters relating to the Business, the Responsibilities and/or the provision of Water Services.

11. LIABILITY

- 11.1 **Consequential loss:** No party will be liable to any other party for any loss of profits, loss of saving, loss of goodwill or any consequential, indirect or special loss or damages arising directly or indirectly from any breach of this agreement or from any negligence or other act or omission.
- 11.2 **Maximum aggregate liability for Claims:** In no event will the Council's aggregate total liability for any Warranty Claims or any other Claims exceed the amount set out in Schedule 1.
- 11.3 **Other limits:** The liability of the Council in respect of any Claim is reduced or extinguished (as the case may be) to the extent that:
- (a) the breach giving rise to the Claim is capable of remedy and, within 30 Business Days after receiving notice of the Claim, the Council remedies the breach to the reasonable satisfaction of Southern Waters; or
 - (b) the Claim is a contingent liability unless and until it becomes an actual liability.

12. WARRANTIES AND INDEMNITIES

- 12.1 **Warranties:** In consideration of Southern Waters entering into this agreement, the Council warrants to Southern Waters, as at the Completion Date, that:
- (a) the Assets:
 - (i) are the absolute property of, and under the control of, the Council; and

- (ii) are not subject to any Encumbrance;
- (b) the Assumed Contracts are valid, binding and enforceable in accordance with their terms, and the Council is not, nor will at Completion be, in breach, in any material respect, of any such contracts; and
- (c) the Council is not in breach, in any material respect, of any of the Responsibilities.

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

- (a) any exception or qualification fairly disclosed in any formal disclosure letter given by or on behalf of the Council to Southern Waters before execution of this agreement by Southern Waters; and
- (b) any matter or thing done or omitted to be done in accordance with any provision of this agreement or at the request, or with the prior approval, of Southern Waters.

12.3 **Southern Waters Acknowledgement:** Southern Waters acknowledges and agrees that:

- (a) the Assets are sold on a strictly "as is where is" basis;
- (b) all express or implied terms, conditions, statements, warranties or representations in relation to the transactions evidenced by this agreement, which are not set out in this agreement, are expressly excluded to the maximum extent permitted by law and Southern Waters waives any claim, and releases the Council from any liability at law, arising out of any of them; and
- (c) Southern Waters has no claim against the Council in respect of, the fitness, quality, condition or state of repair of any of the Assets.

APPENDIX 1 – MATTERS TO BE TRANSFERRED

ASSETS

	Assets	Place of delivery and how delivery will occur
1.	[all water services infrastructure as defined in the LG(WS) Act]	in situ
2.	[particulars of any property and premises to transfer]	[to be finalised depending on whether property is freehold or leasehold or licenced]
3.	[inventory including chemicals, spare parts, supplies, stationery, consumables, stores and other material and supplies used in providing Water Services.]	In situ
4.	[receivables being all amounts owing to the Council from debtors in respect of the supply of Water Services as at Completion (whether or not yet due and payable), and the full benefit of each security, remedy or other right in respect of such amounts as at Completion, excluding those amounts owing which relate exclusively to Excluded Assets.][To be determined whether Receivables will transfer]	
5.	prepayments being all rights and benefits associated with deposits, prepaid expenses and other payments made by the Council before Completion in respect of goods and services to be supplied to the Council for the purpose of its provision of Water Services (including claims for refunds and rights to offset) other than in respect of goods or services comprised in the Excluded Assets.	
6.	the benefit of the Assumed Contracts.	Per clauses 6.4 and 9 of Schedule 2
7.	records being all originals and copies in any form of all books, files, reports, records, registers, correspondence, documents and other material relating exclusively to the provision of Water Services which the Council holds and including: <ul style="list-style-type: none"> a. sales and purchasing records, designs and working papers; b. fixed asset and inventory registers; c. trading and financial records and documents dealing with transactions; d. databases and customer and supplier lists; e. documents recording the Assumed Contracts; g. documents relating to the Council's ownership or tenancy of premises (including signed originals of leases)]; 	

	<ul style="list-style-type: none"> h. a copy (but not originals) of employee, company and financial records, accounts and statements which the Council is required by law to retain; i. all media (including electronic media) containing them, excluding records and information to the extent that they are, or relate to, Excluded Assets or Exclude Obligations or Excluded Matters.	
8.	all registered and unregistered intellectual and industrial property rights and interest relating exclusively to the provision of Water Services including all copyright and copyrighted material and the following:[insert any domain names or trademarks to transfer]	[to be finalised depending on whether registered IP is to be transferred]
9.	all resource consents and all pending applications for resource consents relating to the Water Services to the extent transferrable to Southern Waters.	
10.		

OBLIGATIONS

A) ASSUMED CONTRACTS

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

RESPONSIBILITIES

A) STATUTORY RESPONSIBILITIES

	Statutory Responsibilities	Reference
1.		
2.		
3.		

B) OPERATIONAL RESPONSIBILITIES

	Operational Responsibilities	Reference
1.		
2.		
3.		

C) MANAGEMENT RESPONSIBILITIES

	Management Responsibilities	Reference
1.		
2.		
3.		

D) RESOURCE CONSENTS RESPONSIBILITIES

	Resource Consents Responsibilities	Reference
1.		
2.		
3.		

[To be completed]

APPENDIX 2 – MATTERS TO NOT BE TRANSFERRED

EXCLUDED ASSETS

Excluded Assets	
1.	[query transfer of receivables relating to water services]
2.	bank accounts, cash-in-hand, any credit balance at a bank or financial institution, or other cash equivalents held on the Completion Date.
3.	any foreign exchange contracts.
4.	employee, council and financial records, accounts and statements of the Council which the Council is required by law to retain.
5.	insurance policies held by the Council and the benefit of any claim under them and any prepayments of premium for them.
6.	any tax assets, records or returns of the Council.
7.	any rights of the Council under this agreement.

EXCLUDED CONTRACTS

Excluded Obligations	
1.	any contract of guarantee, indemnity or other obligation to be responsible for the payment of any debt or performance of any obligation by, or the solvency or financial condition of, any person.
2.	any bank or LGFA credit facility.
3.	

EXCLUDED MATTERS

	Excluded Matters	Reference
1.	any liability under or attributable to an Excluded Asset.	
2.	any liability of the Council under any Assumed Contract that arises out of or relates to any breach that occurred prior to Completion.	
3.	any liability of the Council for tax.	
4.	any liability relating to the Council's bank or LGFA credit facilities.	
5.	any liability arising out of any actual or alleged violation by the Council of any law.	
6.	any liability arising out of any proceeding pending or threatened as of Completion or out of any proceeding commenced after Completion and arising out of or relating to any occurrence or event happening prior to Completion.	
7.	any liability of the Council under this agreement.	

[To be completed]

**SCHEDULE 3
COMPLETION AMOUNT AND B SHARE DETERMINATION**

Purpose of Schedule 3: This Schedule 3 sets out the process for determining:

- (a) the Completion Amount payable to the Council which is intended to be an amount equal to:
 - (i) the External Debt of the Council incurred in respect of the Assets so that, from Completion, Southern Waters assumes responsibility for that External Debt;
 - (ii) [establishment costs of the Company that have been borne by the Council so that, on Completion the Council is reimbursed for those costs];
 - (iii) [transitional activity costs that have been borne by the Company so that, on Completion the Council is reimbursed for those costs]
- (b) The number and issue price of B Shares which is intended to represent the Net Asset Value of the Assets less Obligations and the External Debt.

[Note: CODC is to be refunded for the establishment costs under the terms of the Deed of Amendment, most likely by additional debt in Southern Waters but to be confirmed. The associated provisions in each transfer agreement will reflect this.]

SCHEDULE 4
SHARED INTEREST AND CHARGING ARRANGEMENTS TERMS AND CONDITIONS

Purpose of Schedule 4: This Schedule 4 provides for how the parties will work together in relation to:

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

1. RELATIONSHIP MANAGEMENT

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

- (a) **Partnering approach:** The parties wish to build and maintain a strong, enduring, high-trust relationship to enable effective and sustainable delivery of Water Services and Water Services infrastructure to consumers and the community over the long term. The parties will take a relationship-based, strategic partnering approach which incorporates working collaboratively together in good faith, while also acknowledging each other's independence and respective legislative functions and obligations.
- (b) **Have regard to consumers and communities:** The parties acknowledge that the delivery of safe, reliable, resilient, accessible, affordable and efficient Water Services is of significant importance to the consumers and community within the Service Area. While the delivery of Water Services and Water Services infrastructure remains the statutory responsibility of Southern Waters, the parties will at all times have regard to the needs of the consumers and communities in the Service Area where services are delivered, and to the local cultural or environmental factors of the consumers and communities in that Service Area.
- (c) **Engaging with each other:** The parties will engage with each other in the spirit of cooperation, respectful and honest behaviour, and take a 'no surprises' approach to preserve and strengthen the integrity of the relationship.
- (d) **Cooperation:** The parties will act reasonably at all times and consult with each other as early as practicable about anything that may materially affect a party's performance under this agreement or a Service Order, or about any possible or actual breach of the same.

2. MATTERS OF SHARED INTEREST

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

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

2.2 Arrangements: Accordingly, in respect of the Shared Interests, the parties will comply with their obligations under the detailed arrangements for each of the Shared Interests as set out in Appendices 1 to [X] of this Schedule 4 ("**Shared Interest Arrangements**").

- 2.3 **Minimum requirements:** The Shared Interest Arrangements must meet the following minimum requirements:
- (a) the functions, roles, responsibilities and accountabilities of each party are defined;
 - (b) each party can meet their statutory functions, power and duties;
 - (c) any additional services that one party to the other when carrying out its functions, powers and duties will be detailed in a Service Order; and
 - (d) the costs for each party to perform their obligations in respect of the arrangements will lie as they fall, unless otherwise agreed under the arrangement, or a related Service Order.

- 2.4 **Changes to Shared Interest Arrangements:** The Shared Interest Arrangements and any related Service Orders agreed under this clause 2 of Schedule 4 may need to be further developed and amended as the relationship between the parties develops. Either party may make a recommendation to the Interface Governance Group to amend the Shared Interest Arrangements or Service Order, provided that:

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

3. CHARGING AND REVENUE COLLECTION ARRANGEMENTS

- 3.1 **Collection by Southern Waters:** The parties agree that, in accordance with clause 6(1) of Schedule 2 of the LG(WS) Act, the rates, fees and other charges in relation to Water Services will be collected by Southern Waters ("**Water Charges**"), in which case Southern Waters will collect Water Charges in accordance with its powers and statutory obligations under the LG(WS) Act.

- 3.2 **Final decision responsibility:** The:

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

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

4. GOVERNANCE FOR MANAGING SHARED INTERESTS

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

- 4.2 **Appointment of Representatives:**

- (a) Each party appoints the respective person(s) identified in clause 4.2(b) of Schedule 4 to be that party's representative and point of contact who is responsible for management of the relationship between the parties ("**Representative**"). There may be additional Representatives named by one party for different subject areas.
- (b) As at the Commencement Date of this agreement, each party's Representative is set out in the Agreement Details.
- (c) Each party shall ensure that its Representative(s) is reasonably available during normal business hours.
- (d) Each party may replace a Representative by giving notice to the other party. Both parties will ensure that any replacement is a person with similar experience and seniority as the previous named Representative and will provide the contact details of the replacement to the other party.

4.3 **Interface Governance Group Members**

- (a) Each party appoints the respective person(s) identified in this clause 4.3(a) of Schedule 4 to be that party's member(s) of the Interface Governance Group.
- (b) As at the Commencement Date of this agreement, the Interface Governance Group members are as set out in the Agreement Details.
- (c) There shall be no more than two Interface Governance Group members per party at any one time.
- (d) Each party shall ensure that its member(s) are committed and reasonably available to carry out their role in relation to the Interface Governance Group, including attending governance meetings.
- (e) Each party may nominate another person or member to be its alternate and may remove that alternate appointed by them at anytime.
- (f) Each party may replace its member by giving notice to the other party. Both parties will ensure that any replacement is a person with similar experience and seniority as the previous named member and will provide the contact details of the replacement to the other party.

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

- (a) consider any Compliance Reports submitted to it and propose any recommendations to address any non-compliance identified;
- (b) consider any information sharing issues as referred to at clause 2 of Schedule 6;
- (c) consider and attempt to resolve any issues or disputes referred to it by a party under clause 10 of Schedule 6;
- (d) carry out the review of this agreement under clause 3 of Schedule 6;
- (e) consider and provide a recommendation to each party of any proposed change to this agreement, including any Service Orders; and
- (f) consider such other matters as the parties may agree.

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

- (a) The purpose of the Compliance Report is to ensure that there is transparency as to how the parties are meeting their respective obligations under this agreement. Prior meeting minutes to identify issues can be used to form the basis of the Compliance Report.
- (b) The Representatives must agree on the content of the Compliance Report before delivering to the Interface Governance Group for consideration, however if agreement is not possible, then each Representative may submit its own Compliance Report to the Interface Governance Group.
- (c) The Representatives will determine a process for ensuring that they can meet their obligations under this clause 4.5 of Schedule 4 at least three months before the Compliance Report is due.

4.6 **Meetings of the Interface Governance Group**

- (a) The first chair of the Interface Governance Group is the member named in the Agreement Details and is appointed for the first two years after the Commencement Date. At the end of the first chair's term, the next chair (who shall hold office for a similar term) shall be a member nominated from the other party and so on, so that the chair rotates between the parties.
- (b) The Interface Governance Group shall meet at least once every 6 months and more frequently if required or agreed.
- (c) At the first Interface Governance Group meeting of each year, the location and dates of each meeting for the following calendar year will be set.
- (d) Southern Waters will be responsible for administrative tasks in relation to the Interface Governance Group, such as issuing reminders and an agenda, distributing any material and taking minutes at the meeting.
- (e) Decisions and recommendations of the Interface Governance Group shall be unanimous.
- (f) A quorum of the Interface Governance Group shall be at least one member from each party.
- (g) Where a matter to be discussed by the Interface Governance Group affects the interests of another shareholding council of Southern Waters, the Representatives may agree to meet with the representatives of that shareholding council.

APPENDIX 1 – SHARED INTEREST ARRANGEMENTS FOR [SOUTHERN WATERS

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

- (a) when the territorial authority is performing and exercising its functions, duties, and powers under the Building Act 2004; and*
- (b) land use planning and resource management planning (including consent processes); and*
- (c) the performance or exercise of any other statutory functions, duties, and powers of the parties that are relevant to both parties (for example, emergency management).*

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

- (a) how the parties will engage and work together in relation to land use planning and the provision of and planning for water services;*
- (b) how the Council will work with Southern Waters in relation to its planning process under the Resource Management Act 1991;*
- (c) sharing information for the purposes of each party carrying out its statutory and contractual functions;*
- (d) engaging with the community in relation to planning for growth;*
- (e) how the parties will engage in relation to Southern Waters performing its functions under the Building Act; and*
- (f) how the parties will work together in relation the processes, principles, and scope of assessment to be adopted by Council Resource Consent Planners, Regulatory Engineering in relation to the assessment of resource consents and engineering approvals.]*

APPENDIX 2 – SHARED INTEREST ARRANGEMENTS FOR [Y]

[Placeholder for inserting any other Shared Interest Arrangements.]

SCHEDULE 5

AD HOC SERVICES AND DELIVERABLES

PURPOSE OF SCHEDULE 5: Schedule 5 provides the terms and conditions that apply to Southern Waters providing ad hoc services to the Council, or the Council providing ad hoc services to Southern Waters. Ad hoc services may include services required during a transitional period or on an ongoing basis, and as an example, could include human resources or payroll services, IT services or other back-office services. The parties will enter into a Service Order for the provision of any ad hoc services, or for any services required in relation to a Shared Interest Arrangement under Schedule 4.

1. AD HOC SERVICES

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

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

- (a) that the Service Recipient accepts the proposal, in which case clause 1.3 of this Schedule 5 will apply;
- (b) that the Service Recipient wishes to negotiate the proposal, in which case the parties will promptly negotiate the proposal and, once agreement is reached, clause 1.3 of this Schedule 5 will apply; or
- (c) that the Service Recipient rejects the proposal, in which case the parties will have no further obligation to each other with respect to the proposal or its subject matter.

1.3 **Implementation:** If the Service Recipient accepts the Service Provider's proposal to provide Services and Deliverables as contemplated in clause 1.1 of this Schedule 5, then they will jointly finalise a Service Order relating to such Services or Deliverables. Once executed by both parties, the Service Order will form part of this agreement. Until such time as the Service Order is executed, the Service Provider will not be required to provide any Services or Deliverables, and the Service Recipient will have no obligation to pay any amount, in respect of that proposed Service Order.

2. GENERAL OBLIGATIONS

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

- (a) provide all Personnel, processes and resources required to perform its obligations under this agreement, including to provide the Services and Deliverables;
- (b) comply with the reasonable directions of the Service Recipient;
- (c) as applicable, provide and implement the Services and Deliverables in accordance with the terms of this agreement and each relevant Service Order;

- (d) provide all equipment, tools, materials and other resources necessary for the provision of the Services and Deliverables;
- (e) take full responsibility for the performance of all tasks and activities necessary to provide the Services and Deliverables in accordance with each Service Order, other than tasks or activities specifically identified as being out of scope;
- (f) without limiting the Service Provider's other obligations, keep the Service Recipient advised of the progress of the provision of the Services and Deliverables and changes or possible changes to the scope or timing;
- (g) not damage or adversely affect the property, operations, reputation or goodwill of the Service Recipient or any related entity;
- (h) not disrupt the Service Recipient's operations and other activities, except to the extent reasonably required in order to provide the Services and Deliverables;
- (i) work co-operatively and collaboratively in good faith with the Service Recipient and all other contractors and service providers to the Service Recipient (including third party suppliers) at all times to ensure the Services and Deliverables are delivered to the Service Recipient efficiently, seamlessly and as required by the Service Recipient;
- (j) comply with all its obligations under law and maintain all licences, approvals, consents and permits required in order to provide the Services and Deliverables and otherwise to perform its other obligations under this agreement;
- (k) without limiting the Service Provider's other obligations, promptly notify the Service Recipient in writing of:
 - (i) any breach or likely breach of the Service Provider's obligations under this agreement; and
 - (ii) any matter that may impact on the Service Provider's ability to perform its obligations in accordance with this agreement; and
- (l) without limiting subclauses 2.1(a) to (k) of this Schedule 5 above, exercise that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, reasonable and experienced operator in the same or similar circumstances, with reference to Best Industry Practice.

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

- (a) give the Service Provider notice to immediately remedy the deficiency at the Service Provider's cost;
- (b) withhold any payment due to the Service Provider until the deficiency is satisfactorily remedied; and/or
- (c) if the Service Provider does not remedy the deficiency to the Service Recipient's reasonable satisfaction within a reasonable period after the Service Recipient giving notice under clause 2.2(a) of this Schedule 5, deduct a reasonable amount from any

payment due to the Service Provider to reflect the cost to the Service Recipient to correct the deficiency.

2.3 **Personnel:** The Service Provider must:

- (a) ensure the Services and Deliverables are provided using appropriately experienced, skilled and qualified Personnel who are capable of providing the Services and Deliverables to the standards required under this agreement;
- (b) be responsible for all acts and omissions of its Personnel as if they were the acts or omissions of the Service Provider;
- (c) ensure that all of its Personnel comply with the terms of this agreement and with any of the Service Recipient's relevant policies, procedures and reasonable directions as notified by the Service Recipient; and
- (d) ensure that each Service Provider Personnel is willing to, and does, undergo security and other probity and clearance checks (including a check for criminal convictions) if required by the Service Recipient.

2.4 **Statutory or regulatory functions**

- (a) Notwithstanding any provision in this agreement, the statutory obligations of either party are always paramount and not affected or varied by this agreement. Nothing in, or contemplated by, this agreement will be construed or interpreted as restricting or otherwise affecting the discretion of a party to exercise any of its powers or functions under any law, or to require a party to interfere with or influence the exercise of any power or discretion by any other person.
- (b) Any exercise of (or failure to exercise) a regulatory or statutory function by a party shall not, of itself, constitute an act, omission or breach by that party under this agreement.

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

- (a) only use the system to provide the Services and Deliverables;
- (b) take all reasonable care in using the system, including all hardware, software and applications and observe all relevant license agreements, the other party's policies, security procedures and work practices;
- (c) not interfere with or dispute or cause any damage to the system;
- (d) not permit unauthorised access or use or misuse, damage or destruction by any person;
- (e) not cause the integrity of data and information held on the system to be compromised; and
- (f) follow the policies and procedures of the other party to maintain the accuracy of data and information held within the system.

3. PAYMENT AND INVOICING

- 3.1 **Charges:** The Charges payable by the Service Recipient to the Service Provider for the provision of the Services or Deliverables will be as set out in the applicable Service Order.
- 3.2 **Rates Card:** The Service Provider agrees that the labour rate used to calculate the Charges shall be no more than the amounts set out in the Rates Card, for the corresponding Service Provider Personnel of the relevant role.
- 3.3 **No other amounts payable:** The Charges are the only amounts payable by the Service Recipient for the Services and Deliverables and all other related matters.
- 3.4 **GST:** Unless otherwise agreed on a case by case basis, all Charges are exclusive of GST, which shall (if applicable) be additionally payable by the Service Recipient at the same time as payment of the Charges.
- 3.5 **Withholding tax:** If the Service Recipient is required by law to make a deduction or withholding from any payment made to the Service Provider on account of withholding taxes, payment by the Service Recipient to the Service Provider of the net amount after such deduction or withholding will be a complete and final discharge by the Service Recipient of its obligation to make the relevant payment.
- 3.6 **Expenses:** The Service Provider is responsible for all expenses incurred by it under this agreement, unless otherwise expressly specified in the relevant Service Order or the Service Recipient has given its prior written approval to reimbursement of such expenditure.
- 3.7 **Invoice:** The Service Provider will invoice the Service Recipient for the Charges in respect of the Services and Deliverables, within 90 days of the Service Provider having the right to issue such invoices under the relevant Service Order. Each invoice must be:
- (a) a valid tax invoice for the purposes of the Goods and Services Tax Act 1985;
 - (b) be sent directly to the Service Recipient via email to the email address set out in the Agreement Details; and
 - (c) include all information reasonably required to enable the Service Recipient to validate the claim for payment including:
 - (i) any purchase number, Service Order number or contract number applicable to the invoice;
 - (ii) reference to this agreement (under which the invoice is issued); and
 - (iii) the Charges for and description of each Service and/or Deliverable being invoiced,
- ("Valid Tax Invoice").**
- 3.8 **Payment:** The Service Recipient shall pay each invoice by the 20th day of the month following the month of receipt of the invoice by Service Recipient.
- 3.9 **Disputed invoices:** If the Service Recipient raises any Dispute in relation to an invoice submitted under this clause 3 of Schedule 5, then the Service Recipient must pay the undisputed portion of the Valid Tax Invoice on or before the due date for payment of that invoice, but may withhold payment of the disputed portion until the dispute is resolved.

4. DISENGAGEMENT SERVICES

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

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

4.3 **Disengagement Services:**

- (a) The disengagement services may include the Service Provider:
- (i) continuing performance of the Services and Deliverables to the extent required by the Service Recipient (and the relevant terms of this agreement and the relevant Service Order continue to apply to the performance of the Services and Deliverables in accordance with this clause);
 - (ii) promptly assisting the Service Recipient to prepare a disengagement plan specifying the key tasks to be performed by each party to enable the smooth and orderly end or transition of the provision of the Services and Deliverables and the timeframes for the performance of such tasks;
 - (iii) actioning the disengagement plan within the required timeframes;
 - (iv) delivering to the Service Recipient any documentation or other materials relating to the Services and Deliverables as they exist as at the date of termination;
 - (v) answering questions and providing information relevant to the Services and Deliverables as requested by the Service Recipient;
 - (vi) providing reasonable assistance for the Service Recipient to acquire rights to access and use facilities, equipment, documentation and other resources used by the Service Provider to provide the Services and Deliverables;
 - (vii) arranging or procuring the secondment of suitably qualified Personnel as may be reasonably required by the Service Recipient;
 - (viii) transferring, relocating or disposing of tangible property owned by the Service Recipient from the Service Provider's sites to locations designated by the Service Recipient;
 - (ix) returning to the Service Recipient intellectual property and other intangible property of the Service Recipient;
 - (x) providing training reasonably required by the Service Recipient; and
 - (xi) providing any additional Disengagement Services specified in the relevant Service Order.

4.4 **Charges:** If the Service Provider is required to provide disengagement services, the Service Recipient shall pay a fee for such services, which will be such amount as agreed in the relevant Service Order or, where such fee has not been agreed, the Service Provider may charge a

reasonable fee for the performance of the disengagement services, consistent with the Rates Card. The Service Provider must do all things reasonably practical to minimise any such fee.

- 4.5 **Other rights and remedies:** Nothing in this clause 4 of Schedule 5 limits the Service Provider's or the Service Recipient's rights to recover damages from the other party under this agreement or to pursue any additional or alternative remedies provided by law.

APPENDIX 1 – SERVICE ORDER TEMPLATE

SERVICE ORDER – [SUBJECT NAME]

This Service Order is issued under the transfer agreement between Southern Waters Limited ("**Southern Waters**") and [Central Otago][Clutha][Gore][Waitaki] District Council (**Council**) dated [insert date] ("**Transfer Agreement**").

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

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

Background

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

Term and Services

Topic	Details	
Term of Service Order	This Service Order will remain in effect for [<i>select one</i> [the duration of the Interface and Services Agreement] or [insert term]], unless terminated earlier by agreement or in accordance with the terms of the Transfer Agreement	
Services description/service levels/roles and responsibilities	Refer to Attachment 1 of Schedule 5 - Services description/level of service	
Key Personnel	Name	Role
Service Recipient		
Service Provider		

Pricing and Payment

Pricing

[Insert] OR

[Refer to Attachment 2 – Pricing Terms] OR

[Not applicable]

Due date for payment

[Insert]

[As per the Transfer Agreement, unless the Pricing Terms included in Attachment 2 to this Service Order provide otherwise] OR

[Not applicable]

Special conditions

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

Topic	Special Conditions								
Insurances	<p>[Insert insurance requirements to apply to this Service Order pursuant to clause 6 of Schedule 6. For example: The Service Provider must the following insurance policies for the term of this Service Order and for 3 years following termination or expiry]</p> <table border="1"><thead><tr><th>Insurance type</th><th>Cover</th></tr></thead><tbody><tr><td>Public liability insurance</td><td>[\$X]</td></tr><tr><td>Professional indemnity insurance</td><td>[\$X]</td></tr><tr><td>[Other]</td><td>[\$X]</td></tr></tbody></table>	Insurance type	Cover	Public liability insurance	[\$X]	Professional indemnity insurance	[\$X]	[Other]	[\$X]
Insurance type	Cover								
Public liability insurance	[\$X]								
Professional indemnity insurance	[\$X]								
[Other]	[\$X]								
[Insert]	<p>[Insert any terms that the parties have agreed to that are not reflected in the Interface and Services Agreement or are to amend the Transfer Agreement. For example:</p> <ul style="list-style-type: none">• specific payment terms• amended Liability Cap]								

Attachments

Attachments

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

SIGNED by Southern Waters Limited

Signature of authorised signatory

Name of authorised signatory

**SIGNED by [Central
Otago][Clutha][Gore][Waitaki] District Council**

Signature of authorised signatory

Name of authorised signatory

ATTACHMENT 1 TO SERVICE ORDER
Detailed Services descriptions and Service levels

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

ATTACHMENT 2 TO SERVICE ORDER
Pricing terms

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

APPENDIX 2 – RATES CARD AND SERVICES CATALOGUE

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

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

SCHEDULE 6 GENERAL TERMS AND CONDITIONS

PURPOSE OF SCHEDULE 6: The general terms and conditions that apply to all parts of this agreement are set out under this Schedule 6.

1. TERM

1.1 **Term:** This agreement commences on the Commencement Date and continues until terminated in accordance with clause 12 of this Schedule 6.

2. INFORMATION SHARING, CONFIDENTIALITY AND CO-OPERATION

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

- (a) subject at all times to a party's obligations at law, both parties will use all reasonable endeavours to share information with each other where that information assists a party to carry out its statutory functions, powers and duties;
- (b) where information is shared, the party receiving the information will adhere to any conditions imposed by the other concerning the release and storage of that information;
- (c) the parties will act in good faith and in accordance with the relationship principles set out at clause 1.1 of Schedule 4 when a party reasonably makes a request for information to be shared; and
- (d) where information is in the public domain (other than as a result of an unpermitted act or omission of a party that obtained that information), then any conditions imposed in relation to the release and storage of that information, no longer apply.

2.2 **Managing issues:** Any concern or dispute in relation to a party not sharing information, conditions imposed in relation to the storage or use of that information or the use by a party of information that has been shared, will be referred to the Interface Governance Group and if not resolved will be dealt with under the dispute resolution process at clause 10 of this Schedule 6.

2.3 **Confidentiality:** Each party shall:

- (a) use its reasonable endeavours to identify Confidential Information relating to that party at the time it is supplied to the other party; and
- (b) deal with all Confidential Information in accordance with clause 11 of this Schedule 6.

3. REVIEW OF AGREEMENT

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

3.2 **First review:** The parties have agreed that the first review must occur within 2 years of the date of this agreement so that any learnings from that initial period are captured. As part of the first review the parties will agree the subsequent period of review, and if this is not agreed then the subsequent review will be 5 years after the initial review.

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

- (a) the relationship principles;
- (b) whether the provisions of this agreement and any Service Orders are being complied with and are functioning adequately from a practical perspective;
- (c) the roles and responsibilities of each party set out in the Service Orders to ensure that the objectives of this agreement are being met and that the statutory functions, powers and duties of each party are not being unduly impacted;
- (d) whether additional or amended Services and Deliverables are required under any Service Order; and
- (e) residual issues from the Compliance Reports and any actions from the Interface Governance Group.

4. HEALTH AND SAFETY

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

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

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

- (a) the Service Provider must:
 - (i) consult, cooperate and coordinate with the Service Recipient to the extent reasonably required by the Service Recipient to ensure that the Service Recipient and the Service Provider will each comply with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this agreement;
 - (ii) perform its, and ensure that its Personnel perform their, obligations under this agreement in compliance with its and their obligations under the Health and Safety at Work Act 2015;
 - (iii) comply with all reasonable directions of the Service Recipient relating to health, safety and security; and
 - (iv) report any health and safety incident, injury or near miss, or any notice issued under the Health and Safety at Work Act 2015, to the Service Recipient to the extent that it relates to, or affects, this agreement.
- (b) The Service Recipient must, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with the Service Provider to the extent required by the Service Recipient to ensure that the Service Recipient and the Service Provider will each comply

with their respective obligations under the Health and Safety at Work Act 2015 as they relate to this agreement.

5. INTELLECTUAL PROPERTY

5.1 Pre-Existing Intellectual Property

- (a) All Pre-Existing Intellectual Property remains the property of the original owner.
- (b) In relation to any Service:
 - (i) the Service Provider grants or agrees to procure the grant to the Service Recipient of a royalty free, unrestricted, perpetual, non-exclusive, transferable, sub-licensable, irrevocable licence to enable the Service Recipient to make use of the Services and Deliverables including to adapt, update or amend any works; and
 - (ii) the Service Recipient grants to the Service Provider a royalty free, unrestricted, perpetual, non-exclusive, transferable, sub-licensable, irrevocable licence to use and copy the Service Recipient's Intellectual Property Rights to the extent required to enable the performance of the Services or Deliverables.

5.2 New Intellectual Property

- (a) Unless otherwise agreed, any New Intellectual Property created as a result of, or in connection with, the provision of the Services and Deliverables shall be owned by the Service Recipient on creation, and the Service Provider shall perform all necessary acts to vest such New Intellectual Property in the Service Recipient.
- (b) Where ownership in New Intellectual Property cannot be vested or the parties agree otherwise, the Service Provider grants or agrees to procure the grant to the Service Recipient of a royalty free, unrestricted, perpetual, non-exclusive, transferable, sub-licensable, irrevocable licence to enable the Service Recipient to make use of the New Intellectual Property Right.
- (c) The Service Provider is not liable for the use of the New Intellectual Property or Pre-existing Intellectual Property other than to the extent reasonably required for the intended purpose relating to the Services and Deliverables.

5.3 **Know how:** Either party may use any generic ideas, know-how, concepts and techniques developed under this agreement or a Service Order or learnt from the other party provided that such use does not infringe the other party's (or its supplier's) copyrights, trademarks, patents or other Intellectual Property Rights and is not in breach of clause 2 of this Schedule 6.

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

6. LIABILITY AND INSURANCE

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

7. FORCE MAJUERE EVENT

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

- (a) changes to legislation;
- (b) interference by a third party; or
- (c) natural disaster,

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

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

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

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

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

8. RECORDS

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

- 8.2 **Period:** Both parties must comply with clause 8.1 of this Schedule 6 during the term of this agreement and for 7 years after this agreement ends.

9. CONFLICTS

9.1 Conflicts of interest:

- (a) Both parties shall use best endeavours to ensure that conflicts of interest do not arise during the Term. If a party thinks that a conflict of interest may arise or has arisen, it shall notify the other party immediately in writing of this conflict and the structures and practices it has put in place to:
 - (i) ensure that the conflict is avoided in practice; or
 - (ii) if avoidance is not practicable, ensure that the effects of the conflict are minimised.
- (b) The Service Provider must maintain a high standard of honesty and integrity at all in times in the performance of this agreement and must not enter into any agreement or arrangement that will, or is likely to:
 - (i) prejudice the Service Provider's ability to meet its obligations under this agreement; or
 - (ii) create a conflict of interest for the Service Provider.

9.2 **Resolve conflict:** Without limiting clause 9.1 of this Schedule 6, the Service Provider must:

- (a) immediately notify the Service Recipient in writing if the Service Provider is, or is likely to be, conflicted in the performance of its obligations under this agreement; and
- (b) take all actions reasonably required by Service Recipient to resolve any such conflict.

9.3 **Managing conflicts:** If the Service Provider does not take the actions required by the Service Recipient under clause 9.2(b) of this Schedule 6, or the Service Recipient considers that it cannot satisfactorily manage the conflict of interest, the Service Recipient, at its sole election, may terminate the relevant Service Order or, if applicable, this agreement, immediately upon written notice to the Service Provider.

10. DISPUTE RESOLUTION

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

10.2 **Negotiation:**

- (a) On receipt of a notice delivered in accordance with clause 10.1 of this Schedule 6 and before any party may refer a dispute to mediation, the Representatives must, in good faith and acting reasonably, do their best to resolve the dispute quickly and efficiently through negotiation.
- (b) If any Representative considers that the dispute is not being resolved in a timely manner, such Representative may serve written notice on the other parties' Representatives to escalate the dispute to the Chief Executives or equivalent (where the Representatives are not the Chief Executive or equivalent) of the applicable parties for resolution.

- (c) If the dispute has not been resolved within 20 Business Days (or within such other period as agreed by the parties) of the date of the notice referred to in clause 10.2 of this Schedule 6, any party may submit the dispute to mediation.

10.3 **Mediation:**

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

10.4 **Arbitration**

- (a) If the dispute has not been resolved within 40 Business Days (or within such other period as agreed by the parties) of the dispute being referred to mediation, any party (the "**Initiating Party**") may refer such dispute to binding arbitration by issuing a written notice ("**Arbitration Notice**") to the other Party or Parties (together with the Initiating Party, the "**Disputing Parties**") for final resolution in accordance with the provisions of this clause 10.4 of this Schedule 6 and in accordance with the provisions of the Rules of Arbitration of the New Zealand Dispute Resolution Centre, as amended or modified from time to time ("**NZDRC Rules**").
- (b) The arbitral panel shall consist of one arbitrator. The arbitrator will be appointed by the agreement of the Disputing Parties or, failing agreement within 10 Business Days of the date of the Arbitration Notice, in accordance with the NZDRC Rules.
- (c) The seat of arbitration shall be as set out in Schedule 1 and the arbitration shall be conducted in the English language.
- (d) The award of the arbitration shall be in writing and must include reasons for the decision.
- (e) The award of the arbitration shall be final and binding on the parties. No party may appeal to the High Court under Clause 5 of the Second Schedule of the Arbitration Act 1996 on any question of law arising out of an award.
- (f) The award shall allocate or apportion the costs of the arbitration as the arbitrator deems fair.
- (g) Neither the existence of any dispute nor the fact that any arbitration is pending hereunder shall relieve any of the Parties of their respective obligations under this agreement.

10.5 **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.

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

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

11. CONFIDENTIAL INFORMATION AND PUBLIC ANNOUNCEMENTS

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

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

- (a) the other parties have consented to the disclosure of the relevant Confidential Information;
- (b) the disclosure is specifically contemplated and permitted by this agreement;
- (c) the disclosure of Confidential Information is to a shareholder of a party, an elected official of such shareholder, a regulatory authority (including to The Water Services Authority – Taumata Arowai) or the Department of Internal Affairs;
- (d) the disclosure of Confidential Information is to an employee, subcontractor, agent or representative who needs it for the purposes of this agreement;
- (e) the disclosure is to a professional adviser in order for it to provide advice in relation to matters arising under or in connection with this agreement;
- (f) the disclosure is required by a court or governmental or administrative authority; or
- (g) the disclosure is required in accordance with clause 11.4 of this Schedule 6.

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

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

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

12. TERMINATION

12.1 **Termination:** This agreement may only be terminated by mutual agreement between the parties, subject to the parties complying with their obligations under the LG(WS) Act, including to ensure that Southern Waters and Council enter into a new transfer agreement where required pursuant to section 15 of the LG(WS) Act.

12.2 **Effect of termination:**

- (a) **Termination of this agreement:** Any termination of this agreement or any Service Order is without prejudice to and will not affect any rights, powers, remedies or obligations of a party that have and before termination or expiry, or limit either party's rights to recover damages from the other party under this agreement or pursue any additional or alternative remedies provided by law.
- (b) **Service Orders continue:** Each Service Order entered into prior to the expiry of this agreement will remain in full force and effect in accordance with its provisions, and the provisions of this agreement will continue to apply in respect of each such Service Order until the expiry date of such Service Order, unless such Service Order is terminated earlier in accordance with the terms of the relevant Service Order or by mutual agreement between the parties.
- (c) **Other consequences of termination of Service Order:** On termination or expiry of one or more Service Order:
 - (i) the Service Provider must refund to the Service Recipient all amounts paid by the Service Recipient for Services or Deliverables not provided;
 - (ii) the Service Provider shall return to the Service Recipient all of the Service Recipient's property;
 - (iii) where one or more Service Order are terminated or expire, the Service Provider shall, on receipt of a written request from the Service Recipient and at the Service Recipient's option, return, destroy, and/or permanently delete from any media in or on which Confidential Information is stored, all Confidential Information in the possession or control of the Service Provider or any Personnel relating to those Service Orders; and
 - (iv) the Service Provider will provide any Disengagement Services as set out in the relevant Service Orders and in accordance with clause 4 of this Schedule 6. Where this applies, the term of this agreement and the relevant Service Orders shall be extended to such time as the Service Provider completes performance of the Services, Deliverables and obligations.

12.3 **Partial termination:**

- (a) Either party may, to the extent practicable, instead of termination of this agreement in full, terminate any affected Service, Deliverable or Service Order in whole or in part. From the relevant termination date, no Charges are payable for the terminated Services, Deliverables or Service Order (as applicable).
- (b) Without limiting any other rights or remedies that either party may have, if at any time a party that has exercised its rights to terminate under clause 12.3(a) of this Schedule 6,

considers that any aspect of the partial termination is not proceeding to its satisfaction, it may by notice to the other party to convert the partial termination to a full termination.

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

13. NOTICES

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

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

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

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

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, five Business Days after it is posted.
- (c) If it is sent by email, when it is received in readable form addressed in the manner specified above.

However, if any notice or communication is given, on a day that is not a Business Day or after 5pm on a Business Day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next Business Day.

14. GENERAL

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

14.2 **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.

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

- (a) an original; or
- (b) a photocopy; or

(c) an electronic copy;

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

- 14.4 **Entire agreement:** This agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written agreement or anything said or done by or on behalf of another party before this agreement was executed.
- 14.5 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.
- 14.6 **Further assurance:** Each party shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.
- 14.7 **Variation:** No variation of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- 14.8 **Assignments and transfer:** A party must not assign or transfer any of its rights or obligations under this agreement without the prior written consent of each of the other parties.
- 14.9 **Costs:** Except as otherwise set out in this agreement or the Deed of Amendment, each party must pay its own costs and expenses, including legal costs and expenses, in relation to preparing, negotiating, executing and completing this agreement and any document related to this agreement.
- 14.10 **No merger:** The provisions of this agreement and anything done under, or in connection with this agreement shall not operate as a merger of any of the rights, powers or remedies of either party under or in connection with this agreement or at law, and those rights, powers and remedies shall survive and continue in full force and effect to the extent that they are unfulfilled.
- 14.11 **Survival:** Following termination of this agreement, the provisions of clauses 2 of Schedule 6 (Information Sharing, Confidentiality and Co-operation), 10 of Schedule 6 (Dispute Process), 12 of Schedule 6 (Termination), 4 of Schedule 5 (Disengagement Services), 5 of Schedule 6 (Intellectual Property), 6 of Schedule 6 (Liability and Insurance), 7 of Schedule 6 (Force Majeure) and 14 of Schedule 6 (General), together with any provisions that by their nature are intended to survive, will remain in full force and effect.
- 14.12 **Waivers:**
- (a) A waiver of any right, power or remedy under this agreement must be in writing signed by the party granting it. A waiver only affects the particular right, obligation or breach for which it is given. It is not an implied waiver of any other right, obligation or breach or an implied waiver of that right, obligation or breach on any other occasion.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement does not amount to a waiver.
- 14.13 **Governing law:** This agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any proceedings arising out of or relating to this agreement.

**SCHEDULE 7
INTERPRETATION AND DEFINITIONS**

1. INTERPRETATION AND DEFINITIONS

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

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

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

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

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

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

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

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

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

- (a) the Assumed Contracts; and
- (b) agreements with the Contractors.

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

"Arbitration Notice" has the meaning given to that term in clause 10.4(a) of Schedule 6.

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

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

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

"Best Industry Practice" means that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, reasonable and experienced operator engaged in providing the relevant Service in the same or similar circumstances, with reference to good international standards and practices.

"B Shares" means B Shares in the Company having the rights set out in the Shareholders' Agreement and the Constitution.

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

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

"Calculation Time" means 5pm on the last Business Day before the Completion Date, or any other time and date that the Council and Southern Waters agree in writing.

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

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

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

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

"Completion Amount" means the sum determined in accordance with Schedule 3.

"Completion Date" means the date specified in the Agreement Details or agreed in writing by the Council and Southern Waters.

"Compliance Report" has the meaning given to that term in clause 4.5 of Schedule 4.

"Confidential Information" means the provisions of this agreement and all other information of a confidential nature (which, where the confidentiality of the information is not expressly stated, shall be determined by the recipient, acting reasonably) obtained by one party from the other party under or in connection with this agreement.

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

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

"Deed of Amendment" means the Deed of Amendment and Cost Sharing dated [x] entered into between CODC, CDC and GDC. **"Deliverables"** means any or the relevant deliverable to be provided by the Service Provider to the Service Recipient under any or the relevant Service Order, or any other thing to be provided, created or developed by the Service Provider to meet the Service Recipient's requirements in accordance with this agreement, including any documentation.

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

"Disputing Parties" has the meaning given to that term in clause 10.4(a) of Schedule 6.

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

"Encumbrance" means:

- (a) a mortgage, debenture, charge, lien, pledge, hypothecation, security interest (as that term is defined in the Personal Property Securities Act 1999), title retention, preferential right or other similar instrument, device or power; or
- (b) an interest by way of security for the payment of a debt or any monetary obligation,

and includes any agreement or arrangement to grant or create any of the above but excludes any Permitted Encumbrance.

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

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

"External Debt" means [to be determined]

"Force Majeure Event" has the meaning given to that term in clause 7.1 of Schedule 6.

"Indemnified Party" has the meaning given to that term in clause 5.4 of Schedule 6.

"Initiating Party" has the meaning given to that term in clause 10.4(a) of Schedule 6.

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

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

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

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

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

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

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

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

"NZDRC Rules" has the meaning given to that term in clause 10.4(a) of Schedule 6.

"Obligations" means:

- (a) any Liabilities in respect of the period after Completion which relate to the Employees and Contractors (provided that such Liabilities are assumed by Southern Waters under clause 2.2 of Schedule 2); and
- (b) any Liabilities in respect of the period after Completion under the Assumed Contracts.

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

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

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

"**Permitted Encumbrance**" means:

- (a) any Obligations or security interest in respect of any Obligations;
- (b) any right of netting or set-off arising by operation of any law in the ordinary course of business;
- (c) any charge or lien created by or arising by operation of any law in the ordinary course of business;
- (d) any retention of title by a supplier in the ordinary course of business.

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

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

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

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

"**Rates Card**" means the rate card set out at Appendix 2 of Schedule 5.

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

"**Relationship Principles**" has the meaning given to that term in clause 1.1 of Schedule 4.

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

"**Representative**" has the meaning given to that term in clause 4.2(a) of Schedule 4.

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

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

"Service Area" has the meaning set out in the LG(WS) Act and, in respect of the Council, has the meaning set out in Schedule 1.

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

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

"Services" means:

- (a) the services and deliverables described in this agreement and/or in any relevant Service Order to be provided by either party, including any associated deliverable and as detailed in the Agreement Details;
- (b) all services reasonably incidental to, or required for the proper performance of, the services described in sub-clause (a) above; and
- (d) all other services agreed in writing by the parties from time to time.

"Service Order" means the relevant document setting out the details of particular Services and Deliverables to be provided by one party to the other, using the template form attached at Appendix 1 to Schedule 5 (Service Order Template), including any applicable appendix or attachment.

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

"Shared Interest Arrangement" has the meaning given to that term in clause 2.2 of Schedule 4.

"Shareholders' Agreement" means the shareholders' agreement relating to the Company between the Company and the shareholding councils of the Company dated [insert date].

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

"Transaction" means the transaction recorded in this agreement.

"Valid Tax Invoice" has the meaning given to that term in clause 3.7 of Schedule 5.

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

"Warranty Claim" means a Claim under any of the Warranties.

"Water Charges" has the meaning given to that term in clause 3.1 of Schedule 4.

"Water Services" has the meaning given to that term 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 1993 unless inconsistent with the context;
- (e) a reference to a party, person or entity includes:
 - (i) an individual, firm, company, trust, partnership, joint venture, association, corporation, body corporate, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person, entity;
- (f) a reference to dollars or \$ is to New Zealand currency and excludes every tax and duty;
- (g) a reference to a clause, schedule, appendix or attachment is to a clause, schedule, appendix or attachment of this agreement;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) references to the word 'include' or 'including' are to be construed without limitation;
- (j) references to any form of law is to New Zealand law, including as amended or re-enacted;
- (k) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (l) an obligation not to do something includes an obligation not to allow or cause that thing to be done;
- (m) "written" and "in writing" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (n) any obligation falling due for performance on or by a day other than a Business Day shall be performed on or by the Business Day immediately following that day; and
- (o) an obligation not to do something includes an obligation not to allow or cause that thing to be done.