

Shareholders' Agreement

Northland Inc Limited

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Shareholders' Agreement

Dated the day of 2021

Parties

Northland Regional Council

Far North District Council

Kaipara District Council

Northland Inc Limited, a limited liability company incorporated and registered in New Zealand with company number 857377.

Introduction

This agreement sets out the terms between the Parties in relation to the management and ownership of the Company and the Activities, and the rights and obligations of the Shareholders. As at the date of this agreement, each of Northland Regional Council, Far North District Council and Kaipara District Council own 40 fully paid up ordinary shares in the capital of the Company.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this agreement:

Activities means the activities and purpose to be carried on by the Group, being the implementation of economic development activities and supporting investment in Northland.

Affiliate means any person that directly or indirectly controls a Party, including if that person possesses (directly or indirectly) the power to:

- (a) appoint a majority of the directors or trustees of that Party (or any persons who may carry out a similar function in relation to that Party); or
- (b) direct or cause the direction of the management or affairs of that Party, whether through the ownership of voting securities, by contract or otherwise.

AMINZ means the Arbitrators' and Mediators' Institute of New Zealand Inc., an incorporated society in New Zealand with registered number 379524.

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

Board Quorum means, subject to clause 5.7, not less than one half of the Directors then in office.

Business Day means any day (other than a Saturday, Sunday or public holiday, as that term is defined in section 5(1) of the Holidays Act 2003) on which registered banks are open for general banking business in Northland, New Zealand.

Chairperson means the chairperson of the Board appointed in accordance with clause 5.8.

Change of Control means any change in the ownership or control of 50% or more of the voting power of a Shareholder.

Companies Act means the Companies Act 1993.

Company means Northland Inc Limited, a limited liability company incorporated and registered in New Zealand with company number 857377.

Confidential Information means any non-public financial, business or commercial information relating to the Activities, any Group Company or any other Party which a Party may receive or obtain as a result of or in connection with this agreement.

Constitution means the constitution of the Company, as set out in schedule 2.

Deed of Accession means a deed of accession in substantially the form set out in schedule 1.

Defaulting Party means any Shareholder that has committed an Event of Default.

Director means any director for the time being of the Company.

Dispute means a dispute or disagreement between any Parties that arises out of or relates to this agreement.

Disputing Parties means any Parties that are involved in a Dispute.

Distribution has the meaning given to that term in section 2(1) of the Companies Act.

Dividend has the meaning given to that term in section 53 of the Companies Act.

Encumbrance means:

- (a) any charge (whether fixed or floating), mortgage, debenture, pledge, lien, hypothecation, title retention, deferred purchase option, right of pre-emption or right of first refusal; and
- (b) any other security interest (as that term is defined in section 17 of the Personal Property Securities Act 1999) or third party right (whether legal or equitable),

but excludes any right of pre-emption or right of first refusal created pursuant to this agreement and/or the Constitution.

Event of Default means any of the events specified at clause 17.1.

Financial Year means a financial accounting period of 12 months commencing on 1 July and ending on 30 June each year.

FMCA means the Financial Markets Conduct Act 2013.

FMCA Disclosure Exemption means an exclusion from the full and detailed disclosure requirements under the FMCA and Financial Markets Conduct Regulations 2014.

Group means the Company and any Related Company of the Company, each member being a **Group Company**.

Intellectual Property means all intellectual property, proprietary and industrial rights arising in connection with the Activities (whether existing in statute, at common law or in equity), including:

- (a) all copyright (including in source code and object code), know-how, trade secrets, methods (including business methods), technical and non-technical information, processes and procedures (including management processes and procedures), rights in databases, characteristics, trade marks, trade names, business names, domain names, inventions, patent rights, design rights, discoveries, algorithms and formulae;
- (b) all designs (including software and website designs), design details and specifications, concepts, evaluations (including risk evaluations), models and presentation materials, working drawings, sketches and photographs;

- (c) all improvements, enhancements, modifications or adaptations to any of the foregoing rights, including those created by or on behalf of any Party;
- (d) the right to sue for passing off;
- (e) all allied, similar and associated rights, whether registered or unregistered, registrable or unregistrable; and
- (f) all applications to register, and any renewals of, any of the foregoing rights.

Joint Committee means a joint committee formed by the Shareholders in accordance with section 30 of schedule 7 of the Local Government Act 2002 in relation to the operation of the Company and the Activities.

Management Accounts means unaudited accounts which shall incorporate a profit and loss statement, cash flow statement and balance sheet.

Minimum Transfer Condition means a condition specified by the Transferor in a Transfer Notice that, unless all or not less than a specified number of Transfer Shares are purchased, the Transferor shall not be bound to transfer any of the Transfer Shares.

New Securities means any new Shares or other securities issued by the Company that are convertible into, or that carry the option or right to subscribe for, new Shares.

Offer Expiry Date means the expiry date for an offer of New Securities or Transfer Shares (as applicable) specified in an Offer Notice.

Offer Notice means a written notice given by the Board under:

- (a) clause 9.2 regarding an offer of New Securities; or
- (b) clause 10.3 regarding an offer of Transfer Shares.

Ordinary Resolution has the meaning given to that in section 105(2) of the Companies Act.

Parties means the parties to this agreement from time to time, including those who became or become a party to this agreement by signing a Deed of Accession, and **Party** means any one of them.

Pro-rata Entitlement means, in relation to a Shareholder, an entitlement calculated according to the proportion that such Shareholder's Shares bear to the total number of Shares then on issue in the Company.

Purchase Application means a written application by a Remaining Shareholder to purchase all or any Transfer Shares under clause 10.5.

Quarter means a quarterly period ending on 31 December, 31 March, 30 June and 30 September each year.

Related Company has the meaning given to that term in section 2(3) of the Companies Act, but with that meaning extended by reading section 2(3) of the Companies Act as if "company" included any body corporate (wherever incorporated or formed).

Related Parties means, in relation to a Party:

- (a) any director, officer or employee of, or professional adviser to, that Party;
- (b) any Affiliate of that Party; and
- (c) any Related Company of that Party.

Remaining Shareholders means all Shareholders other than the Transferor in the case of clause 10.

Shareholder means any person whose name is entered in the Share Register as the holder (whether individually or jointly) for the time being of at least one Share.

Share Register means the share register of the Company, as kept and maintained in accordance with section 87 of the Companies Act.

Shares means fully paid ordinary shares in the Company.

Statement of Intent means a written plan for the Activities approved by the Joint Committee and as may be amended by the Joint Committee from time to time.

Subscription Application means a written application by a Shareholder to subscribe for New Securities under clause 9.4.

Subsidiary has the meaning given to that term in section 5(1) of the Companies Act.

Transfer Notice means a notice given by a Transferor under clause 10.2 regarding the transfer of Transfer Shares.

Transferor means any Shareholder that makes, or proposes to make, a transfer of Shares.

Transfer Shares means any Shares that a Transferor proposes to sell.

Valuer means an independent, suitably qualified person who is experienced in the valuation of companies similar to the Company.

WDC means Whangarei District Council.

1.2 Interpretation

The following rules of interpretation apply in this agreement:

- (a) References to **persons** include natural persons, companies, and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
- (b) References to the **Parties** include their respective executors, administrators, successors and permitted assignees.
- (c) All **headings** and **subheadings** have been inserted for convenience only and will not affect the interpretation of this agreement.
- (d) References to **this agreement** means this agreement, including its schedules and introduction, as amended and/or replaced from time to time.
- (e) References to **clauses** and **schedules** are to those in this agreement, except where specified otherwise.
- (f) References to a **paragraph** in a schedule is to a paragraph of that schedule.
- (g) References to the words **including**, **include** or similar words do not imply any limitation and are deemed to have the words **without limitation** following them.
- (h) A **gender** includes each other gender and the **singular** includes the plural and vice versa.
- (i) An obligation **not to do anything** includes an obligation not to suffer, permit or cause that thing to be done.
- (j) References to **time** and **dates** are to time and dates in New Zealand.
- (k) References to a **statute** or **statutory provision** means a New Zealand statute or statutory provision as amended, consolidated and/or replaced from time to time.
- (l) References to **\$** are references to New Zealand dollars.
- (m) References to **written** or **in writing** shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).

- (n) No **rule of construction** (including the contra proferentem rule) applies to the disadvantage of a Party because that Party (or its relevant advisor) was responsible for the preparation of this agreement or any part of it.

2. The Activities

2.1 Primary objective

The primary objective of the Group is to carry on the Activities.

2.2 Conduct of the Company

The Activities will be conducted in accordance with this agreement and on the basis of the Statement of Intent, noting that the Company is intending to benefit the Northland community and not to make a profit.

2.3 Special resolution to adopt Constitution

The Shareholders hereby revoke the Company's existing Constitution and adopt the Constitution as the constitution of the Company with effect on and from the date of this agreement. This clause 2.3 will take effect as a special resolution in writing for the purposes of sections 32(1) and 122(1) of the Companies Act.

3. Parties' Rights and Obligations

3.1 Rights attaching to Shares

Subject to the provisions of this agreement, the Constitution and the terms on which a Share is issued, a Share confers on the holder:

- (a) **right to vote:** the right to one vote on a poll at a meeting of Shareholders on any resolution, including any resolution to:
- (i) appoint or remove a Director (subject to clause 4) or an auditor;
 - (ii) adopt a Constitution (if the Company does not have one);
 - (iii) alter the Constitution (if the Company has one);
 - (iv) approve a major transaction (as that term is defined in section 129(2) of the Companies Act);
 - (v) approve an amalgamation under the Companies Act; and
 - (vi) put the Company into liquidation;
- (b) **Dividends:** the right to an equal share in Dividends authorised in accordance with this agreement; and
- (c) **distribution of surplus assets:** the right to an equal share in the distribution of the Company's surplus assets.

3.2 General obligations

Each Shareholder shall do or cause to be done all things necessary or desirable in its capacity as a Shareholder to carry out this agreement, including (to the extent permitted by law) by:

- (a) **voting:** exercising (or procuring the exercise of) voting rights at Shareholders' meetings and/or Board meetings (as applicable); and
- (b) **signing documentation:** signing (or procuring the exercise of) written Shareholders' and/or Board resolutions, consents, waivers or other documents,

to carry out and to cause to be carried out this agreement. For the avoidance of doubt, in complying with its obligations under this clause 3.2 no Shareholder or Director shall be required to act in breach of any legal or fiduciary duty owed to the Company.

3.3 **Obligations of the Company**

The Parties acknowledge that the Company has been made a Party 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.

4. **Directors**

4.1 **Appointment and removal of Directors**

All appointments and any removal of a Director shall be made by the Joint Committee for as long as the Joint Committee remains in existence. If there is no Joint Committee all appointments and any removal of a Director will be made by Ordinary Resolution.

4.2 **Term of Appointment**

Each Director shall be appointed for a term of up to 3 years, subject to removal in accordance with clause 4.1 and at the end of that term will automatically resign.

4.3 **Notice requirement**

All appointments and removals of Directors pursuant to this clause 4 must be made by written notice to the Company, with a copy of the notice promptly delivered to the Shareholders. No appointment, removal or replacement will become effective until such notice is received by the Company, unless the notice specifies a later time at which the appointment, removal or replacement will take effect.

4.4 **Director compliance with this agreement and the Constitution**

The Joint Committee must procure that each Director:

- (a) **receives this agreement and the Constitution:** receives a copy of this agreement and the Constitution; and
- (b) **enforcement:** undertakes to enforce and observe its terms, and the terms of the Constitution, on behalf of the Company in his or her capacity as a Director.

5. **The Board**

5.1 **Powers of the Board**

Except as otherwise specifically provided in this agreement, the Board has full power to direct the activities of the Company in the conduct of the Activities.

5.2 **Delegated authorities**

The Board may grant a set of delegated authorities for the day-to-day operation and management of the Activities.

5.3 **Board meetings**

If at any time the Company has more than one Director, the Board shall meet at least once every Quarter at such time and place as the Directors may agree to in writing.

5.4 **Notice of Board meetings**

A Director may convene a Board meeting by giving not less than five Business Days written notice to every Director. The notice must:

- (a) **postal or email address:** be sent to the postal or email address that the Directors provide to the Company for the purpose of receiving notices;
- (b) **date, time and place:** specify the date, time and place of the meeting; and
- (c) **matters to be discussed:** include an indication of the matters to be discussed at the meeting.

Any irregularity in the notice of a Board meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors agree to waive the irregularity.

5.5 **Board Quorum**

No business may be transacted at a Board meeting unless a Board Quorum is present.

5.6 **Manner of holding Board meetings**

Board meetings may be conducted by telephone conference, video conference or any similar means of electronic, audio or audio-visual communication. Accordingly, Directors participating in a Board meeting via such means shall be deemed to be present in person at the meeting and shall be entitled to be counted in the Board Quorum and to vote.

5.7 **Lack of Board Quorum and adjournment**

If the Directors required to constitute a Board Quorum are not present (whether in person or by any of the methods specified in clause 5.6) within 30 minutes after the time appointed for holding the Board meeting, the following shall apply:

- (a) **Adjournment:** The Board meeting shall be adjourned to the next Business Day following that Board meeting at the same time and place.
- (b) **Adjourned meeting:** If at the adjourned meeting a Board Quorum is not present within 30 minutes after the time scheduled for the meeting, the Directors present shall then constitute a Board Quorum.

5.8 **Chairperson**

The Board may elect one of the Directors as Chairperson, who shall hold office until he or she resigns or the Board elects another Chairperson in his or her place.

5.9 **Voting at Board meetings**

Subject to the provisions of this agreement, at Board meetings:

- (a) **simple majority:** any question arising or any resolution proposed must be decided by a simple majority of the votes cast by the Directors present;
- (b) **one vote per Director:** each Director is entitled to one vote;
- (c) **no casting vote for Chairperson:** the Chairperson (where one has been elected) shall not have a casting (or second) vote in the event of an equality of votes; and
- (d) **manner of voting:** a Director present is presumed to have agreed to, and voted in favour of, a Board resolution unless that Director expressly abstains from or votes against the resolution.

5.10 **Written Board resolutions**

- (a) **Written resolution in lieu of Board meetings:** In accordance with section 7, schedule 3 of Companies Act, a Board resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is valid and effective as if it had been passed at a Board meeting duly convened and held.
- (b) **Assenting by email:** Without limitation, a Director may assent to a written Board resolution by email or other electronic means.

6. Shareholders' Meetings

6.1 Proceedings at Shareholders' meetings

The provisions of schedule 1 of the Companies Act shall govern proceedings at Shareholders' meetings, provided that no business may be transacted at a Shareholders' meeting unless a quorum of Shareholders (as that term is defined at clause 6.2 below) is present.

6.2 Quorum of Shareholders

For the purposes of clause 6.1, **quorum of Shareholders** means such number of Shareholders who between them are able to pass any resolutions to be submitted at a Shareholders' meeting.

7. Joint Committee Approval

7.1 Matters requiring Joint Committee Approval

The following matters affecting the Company and the Activities shall require Joint Committee Approval before being undertaken, or agreed to be undertaken, by the Company:

- (a) **Significant financial commitments:** The entry into any financial commitment exceeding \$500,000.
- (b) **Significant asset acquisitions and disposals:** The acquisition or disposition of any assets valued in excess of \$100,000.
- (c) **Long term contracts:** The entry into any agreements involving a term exceeding 3 years.
- (d) **Remuneration of Directors:** The remuneration of Directors, and any increase in the remuneration of such persons.
- (e) **Changes to the Activities:** Any changes to the Activities or the way the Activities are conducted, operated or carried on.
- (f) **Loans:** The making or providing of any loan or other financial facility.
- (g) **Incurring debt:** The incurring of any indebtedness or obligation in the nature of borrowing under any loan, guarantee or other financial facility.
- (h) **Establishing a subsidiary:** the establishment of a subsidiary as defined in the Companies Act.
- (i) **Issuing New Securities:** The issue of any New Securities.

7.2 Major transactions

For the avoidance of doubt, the matters requiring Joint Committee Approval under clause 7.1 are in addition to, and not in substitution for, the major transaction provisions under section 129 of the Companies Act.

7.3 Pre-approval in Statement of Intent

If any of the matters set out in clause 7.1 are expressly contemplated in, or proposed to be undertaken by, the Company in the then current Statement of Intent, then the Company may undertake that matter or those matters without having to obtain Joint Committee Approval.

8. Group Governance

8.1 Subsidiaries

The Company may at any time have one or more Subsidiaries. The Parties will procure that the affairs of the Group are carried on in a manner that is consistent with the provisions of this

agreement.

8.2 Joint Committee Approval in respect of certain actions of Group Companies

The obligation to obtain Joint Committee Approval under clause 7.1 shall, in the event that the Company has any interest in any Subsidiary, be deemed to apply to the business or actions taken by any such Subsidiary as well as by the Company as if references to the Company were also references to each and every Subsidiary.

8.3 The board of Group Companies

The Company will (to the extent permitted by law) procure that the board of directors of each Group Company is the same as the Board (unless the Board resolves otherwise).

9. Issue of New Securities

9.1 Pre-emptive rights

The Shareholders shall have the pre-emptive rights in respect of the issue of New Securities set out in this clause 9.

9.2 Offers of New Securities

If the Company issues or proposes to issue New Securities, the Company must first offer those New Securities to all Shareholders by delivering an Offer Notice containing the following information:

- (a) **Details of the offer:** Details of the number and subscription price of the New Securities on offer.
- (b) **Terms of issue:** The terms of issue of the New Securities.
- (c) **Invitation:** An invitation for the Shareholders to make a Subscription Application.
- (d) **Offer Expiry Date:** The Offer Expiry Date, which must be a reasonable time period as determined by the Board.
- (e) **Pro-rata Entitlement:** The Pro-rata Entitlement of each Shareholder in respect of the New Securities on offer.
- (f) **Additional subscription:** An invitation for the Shareholders to indicate if they are willing to subscribe for New Securities in excess of their Pro-rata Entitlement, and, if so, the number of additional New Securities that they are willing to subscribe for.
- (g) **Competition for New Securities:** A statement that, if there is competition among the Shareholders for the New Securities on offer, the Company will allocate the New Securities on the basis set out in clause 9.6.

9.3 FMCA Disclosure Exemption

It may be a condition of any offer of New Securities under this clause 9 that each Shareholder accepting such offer must provide evidence reasonably satisfactory to the Board that an FMCA Disclosure Exemption applies to it. For the avoidance of doubt, any offer which includes this condition will satisfy the pre-emptive requirements in this clause 9 notwithstanding that some Shareholders may not be eligible to accept such offer.

9.4 Subscription Applications

Following receipt of an Offer Notice, any Shareholder may make an irrevocable Subscription Application before the Offer Expiry Date. Each Subscription Application must state the following:

- (a) **Number of New Securities desired:** The number of New Securities that the Shareholder wishes to subscribe for, which may be all or part of the Shareholder's Pro-rata Entitlement.

- (b) **Additional New Securities:** Whether the Shareholder is willing to subscribe for New Securities in excess of its Pro-rata Entitlement, and, if so, the number of additional New Securities that it is willing to subscribe for.

9.5 **Deemed rejection of offer**

If no Subscription Application has been received by the Company from a Shareholder by 5.00pm on the Offer Expiry Date, that Shareholder will be deemed to have rejected the offer of New Securities in full.

9.6 **Allocation of New Securities**

No later than five Business Days after the Offer Expiry Date, the Board must allocate the New Securities to the Shareholders that made a Subscription Application on the following basis:

- (a) **Pro-rata Entitlement:** The Shareholders that applied for all or less than their Pro-rata Entitlement of New Securities shall be allocated the New Securities applied for in their Subscription Application.
- (b) **Additional subscriptions:** The Shareholders that stated in their Subscription Application that they wish to purchase a specific number of New Securities in excess of their Pro-rata Entitlement shall be allocated any remaining New Securities that have not been allocated under clause 9.6(a) according to the proportion that such Shareholder's Shares bear to the aggregate number of Shares of all Shareholders that wish to subscribe for New Securities in excess of their Pro-Rata Entitlement, provided that no Shareholder shall be allocated more New Securities than it applied for.
- (c) **Rounding:** Fractional entitlements shall be rounded to the nearest whole number of New Securities.

9.7 **Notice of allocation of New Securities**

No later than five Business Days after the Board has made the allocations of New Securities under clause 9.6, the Board must notify each Shareholder that has made a Subscription Application of:

- (a) **allocation:** its allocation of New Securities;
- (b) **price payable:** the total price payable for those New Securities;
- (c) **subscribers:** the names of the other Shareholders that made a Subscription Application (if any) and the number of New Securities allocated to them; and
- (d) **unallocated New Securities:** the number of New Securities that are yet to be allocated (if any).

9.8 **Issue of New Securities to third parties**

Following completion of the procedure set out in clauses 9.2 to 9.7, the Board may issue any New Securities that have not been subscribed for by Shareholders to any third party provided that the terms of issue are no more favourable to that third party than the terms which were offered to the Shareholders, but otherwise on such terms as the Board may determine.

9.9 **Deed of Accession**

It is a condition precedent to the issue of any Shares by the Company to any person who is not a Party that such person signs and delivers to the Company a Deed of Accession.

9.10 **Exclusion of pre-emptive rights**

For the purposes of this clause 9, the Constitution and the Companies Act, the pre-emptive rights of the Shareholders in relation to the issue of New Securities shall not apply where:

- (a) **unanimous written agreement of all Shareholders:** all of the Shareholders agree in writing;

- (b) **Share consolidations or subdivisions:** the Company issues Shares to all Shareholders for nil consideration under any pro-rata bonus issue of Shares, or any consolidation or subdivision of the Shares, that affects all Shareholders equally.

10. Share Transfer Restrictions

10.1 Pre-emptive rights on the transfer of Shares

The Parties shall have the pre-emptive rights in respect of the transfer of Shares set out in this clause 10. Accordingly, a Transferor may only transfer, or attempt or offer or agree to transfer, any direct, indirect, legal or beneficial interest (whether arising at law or in equity) in any Transfer Shares in accordance with this clause 10.

10.2 Transfer Notice

The Transferor must give an irrevocable Transfer Notice to the Board, which must appoint the Board as the Transferor's agent for the proposed sale and specify the following:

- (a) **Number of Transfer Shares:** The number of Transfer Shares that it wishes to sell.
- (b) **Sale price:** The sale price, which must be \$2 per Share.
- (c) **Terms:** Any terms of sale, which must be set out with sufficient certainty to enable a binding contract to be formed with transferees of the Transfer Shares.
- (d) **Minimum transfer:** Any Minimum Transfer Condition.
- (e) **Existing offers:** Whether the Transferor has received any offers or interest regarding the purchase of the Transfer Shares from any person (including, for the avoidance of doubt, from any Shareholder). If so, the Transferor must provide the names of such person or persons and full details of their offer or stated interest.

10.3 Offer of Transfer Shares

Within 10 Business Days of receipt of a Transfer Notice, the Board must give an Offer Notice to all Shareholders (other than the Transferor), which shall include the following:

- (a) **Transfer Notice contents:** The contents of the Transfer Notice.
- (b) **Pro-rata Entitlements:** The Pro-rata Entitlement of each Shareholder in respect of the Transfer Shares on offer.
- (c) **Invitation:** An invitation for those Shareholders to:
 - (i) apply to purchase the Transfer Shares at the sale price specified in the Offer Notice; and
 - (ii) indicate if they are willing to purchase Transfer Shares in excess of their Pro-rata Entitlement, and, if so, the number of additional Transfer Shares that they are willing to purchase.
- (d) **Offer Expiry Date:** The Offer Expiry Date, which must be determined by the Board and be at least 20 Business Days after the date of the Offer Notice.
- (e) **Competition for Transfer Shares:** A statement that, if there is competition for the Transfer Shares among the Shareholders, the Transfer Shares will be allocated on the basis set out in clause 10.7.

10.4 FMCA Disclosure Exemption

It may be a condition of any offer of Transfer Shares under this clause 10 that each Shareholder accepting such offer must provide evidence reasonably satisfactory to the Board that an FMCA Disclosure Exemption applies to it. For the avoidance of doubt, any offer which includes this

condition will satisfy the pre-emptive requirements in this clause 10 notwithstanding that some Shareholders may not be eligible to accept such offer.

10.5 Purchase Applications

Following receipt of an Offer Notice, any Remaining Shareholder may make an irrevocable Purchase Application to the Board on or before the Offer Expiry Date. Each Purchase Application must state:

- (a) **Number of Transfer Shares desired:** the number of Transfer Shares that the Remaining Shareholder wishes to purchase, which may be all or part of the Shareholder's Pro-rata Entitlement; and
- (b) **Additional Transfer Shareholders:** whether the Remaining Shareholder is willing to purchase Transfer Shares in excess of its Pro-rata Entitlement, and, if so, the number of additional Transfer Shares that it is willing to purchase.

10.6 Deemed rejection of offer

If no Purchase Application has been received by the Board from a Remaining Shareholder by 5.00pm on the Offer Expiry Date, that Remaining Shareholder will be deemed to have rejected the offer set out in the Offer Notice in full.

10.7 Allocation of Transfer Shares

No later than five Business Days after the Offer Expiry Date, the Board must allocate the Transfer Shares to the Shareholders that made a Purchase Application on the following basis:

- (a) **Pro-rata Entitlement:** The Shareholders that applied for all or less than their Pro-rata Entitlement of Transfer Shares shall be allocated the Transfer Shares applied for in their Purchase Application.
- (b) **Excess Transfer Shares:** The Shareholders that stated in their Purchase Application that they wish to purchase a specific number of Transfer Shares in excess of their Pro-rata Entitlement shall be allocated any remaining Transfer Shares that have not been allocated under clause 10.7(a) according to the proportion that such Shareholder's Shares bear to the aggregate number of Shares of all Shareholders that wish to purchase Transfer Shares in excess of their Pro-Rata Entitlement, provided that no Shareholder shall be allocated more Transfer Shares than it applied for.
- (c) **Rounding:** Fractional entitlements shall be rounded to the nearest whole number of Transfer Shares.

10.8 Notice of allocation of Transfer Shares

No later than five Business Days after the Board has made the allocations of Transfer Shares under clause 10.7, and provided that the Minimum Transfer Condition (if any) has been satisfied or waived in writing by the Transferor, the Board must notify each Shareholder that has made a Purchase Application of:

- (a) **allocations:** its allocation of Transfer Shares;
- (b) **price payable:** the total price payable for those Transfer Shares;
- (c) **Shareholders that made a Purchase Application:** the names of the other Shareholders that made a Purchase Application (if any) and the number of Transfer Shares allocated to them; and
- (d) **unsold Transfer Shares:** the number of unsold Transfer Shares (if any).

10.9 Company buyback right

Following completion of the procedure set out in clauses 10.1 to 10.8, if not all of the Transfer Shares have been accepted for purchase by the Shareholders in accordance with those provisions,

or if the Minimum Transfer Condition has not been satisfied, the Company may, subject to the Companies Act and no later than 10 Business Days after the Offer Expiry Date, purchase and cancel or hold as treasury stock, any or all of the Transfer Shares not accepted for purchase at a price of \$2 per Share.

10.10 Transfer to a third party

Following completion of the procedure set out in clauses 10.1 to 10.9, if not all of the Transfer Shares have been accepted for purchase by the Shareholders in accordance with those provisions, or if the Minimum Transfer Condition has not been satisfied, the Transferor may transfer the Transfer Shares to any third party at any time before the expiry of 6 months after the date of the Offer Notice, provided that:

- (a) **terms:** such transfer is made on terms that are no more favourable to the third party than those set out in the Offer Notice;
- (b) **Board approval:** the Board has approved the transfer in writing (such approval is not to be unreasonably or arbitrarily withheld, conditioned or delayed); and
- (c) **Deed of Accession:** the third party signs and delivers to the Company a Deed of Accession.

10.11 Exclusion of pre-emptive rights

The pre-emptive rights set out in this clause 10 shall not apply:

- (a) **unanimous written agreement of all Shareholders:** where all of the Shareholders agree in writing; or
- (b) **qualifying transfers:** in respect of any transfer of Shares, or any interest in Shares, pursuant to clause 11 (Whangarei District Council).

11. Whangarei District Council

If at any point after the date of this agreement WDC serves a written notice on the Company that they wish to become a shareholder of the Company (**WDC Notice**), each shareholder shall transfer such amount of Shares (being the same amount of Shares for each Shareholder) as required to ensure that WDC becomes an equal shareholder in the Company at a price of \$2 per share (**Transfer**). Subject to WDC providing the Company with a duly executed Deed of Accession, the Transfer will occur on the date that is 10 Business Days from receipt of the WDC Notice.

12. Completion of Share Transfers

12.1 Completion

At completion of a transfer of Shares under this agreement, the Transferor shall transfer such Shares to the transferee:

- (a) **no Encumbrances:** free of any Encumbrances; and
- (b) **share transfer form:** by way of a duly completed share transfer form signed by the Transferor and transferee.

12.2 Registration of Share transfers

A Transferor of a Share shall remain the holder of a Share until the name of the transferee is entered in the Share Register.

12.3 Limited release

Once a transfer of all of a Shareholder's Shares has been registered in the Share Register, that Shareholder will cease to be bound by this agreement. Notwithstanding this, such transfer will not

affect any accrued rights or obligations of any Shareholder, nor will it affect any provision in this agreement which comes into force on, or continues in force, after the transfer.

13. Common Purpose

- 13.1 The Shareholders agree that they will act together in good faith with a common purpose of furthering the Activities of the Company and that they will not take any action that can reasonably consider to be adverse to the interests of the Company.

14. Intellectual Property

14.1 Ownership

The Parties agree that all Intellectual Property:

- (a) **owned by the Company:** shall be and remain owned by the Company; and
- (b) **continuing ownership:** that is created, has been created or will or may be created by or on behalf of any Party prior to, on or after the date of this agreement shall be and remain owned by the Company,

and each Shareholder hereby assigns and transfers to the Company, and the Company accepts an assignment of, all of such Intellectual Property as it has come or will come in existence.

14.2 Enforcement of title

The Shareholders agree to take all actions as may be reasonably required by the Company to perfect or enforce the Company's title to the Intellectual Property, which shall include signing and delivering any document required in order to perfect or enforce such title (including, for the avoidance of doubt, a deed of assignment of intellectual property).

14.3 Enduring effect

The Parties agree that the provisions of this clause 14 shall survive the termination of this agreement. Furthermore, a Party shall continue to be bound by this clause 14 notwithstanding that the Party may have transferred its Shares or otherwise ceased to hold Shares or be a Party.

15. Provision of Accounts and Information

15.1 Financial information

The Board shall, in respect of the Company, prepare (or procure the preparation of) Management Accounts every six months (being 31 December and 30 June) and provide these accounts to Shareholders as soon as reasonably practicable after they are approved by the Board.

15.2 Disclosure of information by Shareholder appointed Directors

A Director may, pursuant to section 145(2)(a) of the Companies Act and without the need for prior Board approval, disclose Company information and/or information in relation to the Activities to the Joint Committee, or if relevant, to the Shareholder that appointed the Director under clause 4.1.

16. Dividends and Distributions

16.1 Dividend and Distribution policy

The Parties agree that it is the intention of the Parties and the Company that no Dividends or Distributions will be declared. Should a Dividend or Distribution be declared at any stage, this will only be with the prior written approval of the Joint Committee, save that if there is no Joint Committee, a Dividend or Distribution may be declared with the approval of 75% or more of the votes of the Shareholders.

16.2 Solvency requirements for Dividends and Distribution

For the avoidance of doubt, no Dividend or Distribution shall be declared by the Company unless the Board is satisfied on reasonable grounds that all applicable legal requirements under the Companies Act have been complied with, including the Company satisfying the solvency test as required by section 52 of the Companies Act.

17. Default

17.1 Events of Default

The following events shall each constitute an Event of Default:

- (a) **Material breach:** A Shareholder committing a material breach of its obligations under this agreement or a series of persistent breaches of this agreement that, when taken in total, constitute a material breach of this agreement.
- (b) **Funding:** A Shareholder not providing any funding to Northland Regional Council's Investment Growth Reserve, or the Company, in the manner required by their respective Long Term Plans.
- (c) **Bankruptcy or insolvency:** A Shareholder becoming bankrupt or insolvent.
- (d) **Receiver, administrator or liquidator appointed:** A receiver, administrator or liquidator being appointed in relation to all or a material part of a Shareholder's assets.
- (e) **Liquidation, dissolution or winding-up:** The making of an order or the passing of a resolution for the liquidation, dissolution or winding-up of a Shareholder.
- (f) **Encumbrances over Shares:** A Shareholder granting, or allowing to subsist, an Encumbrance over its Shares.
- (g) **Change of Control:** Any Change of Control that occurs in respect of a Shareholder.
- (h) **Criminal and fraudulent conduct:** A Shareholder being found guilty in any court of any fraud or dishonesty offence, or committing any act of fraud against any Group Company.

17.2 Notice of Event of Default

Where an Event of Default has occurred or been committed, the Defaulting Party must promptly give written notice to the Board and the other Shareholders of this fact, describing the Event(s) of Default in reasonable detail.

17.3 Information regarding Event of Default and requirement to remedy

Where a notice is given by a Defaulting Party under clause 17.2, or if the Board or any Shareholder becomes aware of an Event of Default, the Board or any Shareholder may by written notice (with a copy promptly delivered to the other Shareholders) require the Defaulting Party to:

- (a) **information:** supply such information that it reasonably requires in order to fully assess the nature of the Event of Default; and
- (b) **remedy default:** remedy the Event of Default, if it is capable of remedy, within 20 Business Days.

17.4 Defaulting Party

For such time as the Event of Default is continuing:

- (a) the Defaulting Party shall not be entitled to exercise any vote in connection with its Shares or give or withhold any consent or other approval contemplated by this agreement;
- (b) any Director appointed by the Defaulting Party shall not be entitled to exercise any vote at a meeting of the Board and, for the avoidance of doubt, any of the matters or transactions

subject to clause 5 may be undertaken without the need to obtain the approval of any such Director.

17.5 **Mandatory sale**

Unless the Parties agree otherwise in writing, if:

- (a) **not capable of remedy:** a Defaulting Party commits or allows the occurrence of an Event of Default that is not capable of remedy; or
- (b) **not remedied:** a notice is given pursuant to clause 17.3(b) and the Event of Default is not remedied by the Defaulting Party within the required timeframe,

the Board may notify the Defaulting Party that it shall be deemed to have given an irrevocable Transfer Notice in respect of all of its Shares and be required to sell such Shares pursuant to clause 17.6.

17.6 **Terms of sale**

Where a Transfer Notice is deemed to be given under clause 17.5, the Defaulting Party's Shares shall be offered for sale according to the provisions of clause 10, except that the following terms shall apply:

- (a) **Sale price:** The sale price for the Shares must be \$2 per Share.
- (b) **Power of attorney:** The Defaulting Party shall be deemed to have irrevocably appointed any person nominated by the Company to be its duly authorised agent and attorney to sign all necessary transfers on its behalf in respect of the Shares.
- (c) **Rights, benefits and entitlements:** Any Shares transferred will be deemed to be sold by the Defaulting Party with effect from the date of such transfer free from any Encumbrance and with all rights, benefits and entitlements attaching to them.

18. **Dispute Resolution**

18.1 **Negotiation**

All Disputing Parties must use reasonable endeavours to resolve any and all Disputes by negotiation. If a Dispute is settled following negotiations under this clause 18.1, such settlement shall be recorded in writing and be signed by the Disputing Parties, whereupon it shall be final and binding on the Disputing Parties.

18.2 **Mediation**

If the Disputing Parties cannot resolve their Dispute by negotiations under clause 18.1 within 20 Business Days, a Disputing Party may, by written notice to the other Disputing Party or Disputing Parties, require that the Dispute be dealt with by mediation under the following terms:

- (a) **Mediation Protocol:** The mediation shall be conducted in accordance with the Mediation Protocol of AMINZ then in force (or any protocol or mediation agreement which replaces it).
- (b) **Mediator:** The mediation shall be conducted by a mediator and at a fee agreed in writing by the Disputing Parties. Failing agreement between the Disputing Parties within 10 Business Days of the giving of the notice requiring mediation, the mediator will be selected and his or her fee determined by the chairperson for the time being of AMINZ (or his or her nominee).
- (c) **Location:** The mediation shall take place in Northland, New Zealand at such address as determined by the mediator, provided that any Disputing Party may, if permitted by the mediator, attend via telephone conference, video conference or any similar means of electronic, audio or audio-visual communication.

- (d) **Settlement:** If the Dispute is settled at or following mediation under this clause 18.2, such settlement shall be recorded in writing and be signed by the Disputing Parties, whereupon it shall be final and binding on the Disputing Parties.
- (e) **Costs:** The costs of the mediation, excluding the Disputing Parties' own legal and preparation costs, will be shared equally by the Disputing Parties.

18.3 Court or arbitration proceedings

No Disputing Party may initiate or commence court or arbitration proceedings relating to a Dispute unless it has complied with the procedure set out in this clause 18, provided that application may still be made to the courts:

- (a) **interlocutory relief:** for interlocutory relief;
- (b) **debts:** to recover or enforce a debt payable; or
- (c) **enforce settlement:** to enforce a settlement agreed to by the Disputing Parties under clause 18.1 or 18.2.

19. Termination

19.1 Termination of this agreement

Except where this agreement explicitly states otherwise, this agreement will continue in force until:

- (a) **unanimous written agreement:** the date on which the Shareholders unanimously agree in writing that it will terminate;
- (b) **sole ownership:** all of the Shares become owned by one Shareholder or any third party; or
- (c) **dissolution:** the date of dissolution of the Company following its liquidation, whether such liquidation is voluntary or compulsory.

19.2 Accrued rights and obligations on termination

Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

20. Relationship of the Parties

20.1 No partnership or agency

None of the provisions of this agreement will create or constitute, or be deemed to create or constitute (for any purpose whatsoever):

- (a) **no partnership:** a partnership between the Parties (in the legal sense of being partners in a partnership involving profit sharing and joint and several liability); or
- (b) **no agency:** any Party as an agent of any other Party, except where this agreement specifies otherwise.

20.2 Shareholders are not liable for any other Party

Except as set out in this agreement, each Shareholder is responsible and liable for its obligations under this agreement and is not responsible or liable for any obligation of any other Party.

20.3 No authority to bind

Except as provided in this agreement or by written agreement between one or more Parties, no Party will have any authority or power to bind or commit, act on behalf of, represent, or hold itself out as having authority to act as an agent of, the other Parties in relation to any obligations.

21. Prevailing Terms

21.1 Agreement prevails

The terms of this agreement will prevail over anything to the contrary contained in, or that may be in conflict or inconsistent with, the Constitution.

21.2 Constitution to be consistent with this agreement

The Shareholders shall ensure that, at all times, the Constitution is consistent with the provisions of this agreement.

21.3 Actions required

The Parties will (to the extent permitted by law) do everything required to give effect to the terms of this agreement and will, if necessary, amend or replace the Constitution to give effect to the terms of this agreement.

21.4 No deemed amendments to the Constitution

Nothing contained in this agreement shall be deemed to constitute an amendment to the Constitution.

22. Confidentiality

22.1 Confidentiality obligations

Except as permitted in this clause 22, no Party will disclose, communicate or distribute to any third party any Confidential Information.

22.2 Disclosure to Related Parties

Each Party may disclose Confidential Information to its Related Parties, but only where that Party's Related Parties have agreed in writing to comply with that Party's confidentiality obligations under this agreement. The Parties agree that they will be wholly responsible for all acts and omissions of their Related Parties concerning any Confidential Information disclosed to them.

22.3 Limits on obligations

A Party will not have to observe any duty of confidentiality concerning Confidential Information that:

- (a) **prior written consent:** the other Parties all give their prior written consent to the disclosure of;
- (b) **required by law:** is required to be disclosed by law or any legislative or regulatory authority in any competent jurisdiction that has jurisdiction over the Party;
- (c) **listing rules and continuous disclosure:** is required to be disclosed or announced in accordance with the listing rules or continuous disclosure rules of any recognised securities exchange;
- (d) **necessary for performance:** is necessary to be disclosed to enable a Party to perform its

obligations under this agreement; or

- (e) **information in the public domain:** at the time of disclosure is in, or subsequently enters, the public domain otherwise than by breach of any duty of confidentiality under this agreement.

22.4 **Enduring effect**

The restrictions in this clause 22 will continue to apply after the termination of this agreement.

23. **Notices**

23.1 **Written notice**

All notices and other communications to be given under this agreement must be in writing and be addressed to the Party to whom it is to be sent at the physical address or email address from time to time designated by that Party in writing to the other Parties for such purpose.

23.2 **Consent to receipt of notices by electronic means under section 391 of the Companies Act**

Each Shareholder hereby gives notice to the Company that, for the purposes of section 391 of the Companies Act, annual reports, notices and other documents required to be sent to a Shareholder shall be sent by email to the email address from time to time designated by that Shareholder under clause 23.1.

23.3 **Deemed delivery**

Any notice or communication given under this agreement shall be deemed to have been received:

- (a) **by hand:** at the time of delivery, if delivered by hand;
- (b) **by post in New Zealand:** 3 Business Days after the date of mailing, if sent by ordinary post or courier within New Zealand;
- (c) **by post from overseas:** 10 Business Days after the date of mailing, if posted, couriered or delivered overseas; or
- (d) **by email:** if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by a recipient where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.

23.4 **Delivery after 5.00pm or on non-Business days**

Any notice or communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

24. **General Provisions**

24.1 **Entire agreement**

This agreement constitutes the entire agreement and understanding of the Parties relating to the matters dealt with in this agreement and supersedes and extinguishes any previous agreement (whether oral or written) between the Parties in relation to such matters. Nothing in this clause 24.1 operates to limit or exclude any liability for fraud.

24.2 **Capacity**

Each Party warrants and represents to the others that:

- (a) **power and authority:** it has full power and authority to enter into this agreement;

- (b) **authorisation and approvals:** all authorisations and approvals that are necessary or required in connection with the signing by that Party of this agreement, and its assumption of rights and obligations under it, have been obtained; and
- (c) **no breach or default:** the signing, delivery and performance of this agreement does not constitute a breach by that Party of any law or obligation and will not cause or result in any default or breach under any other agreement or arrangement by which that Party is bound.

24.3 **Assignment**

Subject to the terms of this agreement, none of the Parties will assign or transfer, or purport to assign or transfer, any of their rights or obligations under this agreement without the prior written consent of the other Parties.

24.4 **No waiver**

No Party will be deemed to have waived any right under this agreement unless the waiver is in writing and signed by that Party. A failure to exercise or delay in exercising any right under this agreement will not operate as a waiver of that right.

24.5 **Amendments**

This agreement may not be amended or varied in any way unless such amendment or variation is made by deed and signed by each Party.

24.6 **Severability**

If any provision of this agreement is found by a court or other competent authority to be void or unenforceable, such provision will be deemed to be deleted from this agreement and the remaining provisions of this agreement will continue in full force and effect.

24.7 **Costs and expenses**

Except as expressly provided in this agreement, each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, execution and preparation of this agreement (and any documents referred to in it).

24.8 **Rights and remedies**

Unless otherwise expressly provided in this agreement, the rights and remedies set out in this agreement are in addition to, and not in limitation of, any other rights and remedies under or relating to this agreement (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

24.9 **Limitation of liability for trustees**

The liability of any independent trustee of any trust which is or becomes a Party is not unlimited or personal liability and instead shall be limited to the assets of the trust from time to time. A trustee will be deemed to be an independent trustee for the purposes of this clause if he, she or it is not a beneficiary or the settlor of the trust.

24.10 **Counterparts**

This agreement may be signed and delivered in any number of counterparts, including by way of electronic transmission where a Party signs a counterpart and sends it as a PDF to the other Parties, or the Company, by email. All such counterparts, when taken together, shall constitute one and the same instrument and, notwithstanding the date of signing, will be deemed to bear the date of this agreement.

24.11 **Electronic signing**

Any Party may:

- (a) **Party's electronic signature:** sign this agreement by way of application of that Party's

electronic signature; and

- (b) **witness' electronic signature:** have their signature witnessed by way of the application of the witness' electronic signature,

in each case in accordance with Part 4 of the Contract and Commercial Law Act 2017.

24.12 **Governing law and jurisdiction**

This agreement, and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual claims), will be governed by and construed in accordance with the laws of New Zealand and the Parties irrevocably submit to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this agreement or its subject matter or formation or the relationships established by it (including non-contractual claims).

Signatures

Signed and **delivered** as a deed.

Signed for and on behalf of **Northland Inc Limited**

Director

Director

Signed for and on behalf of **Northland Regional Council**

Witness signature

Signature

Witness name

Name

Witness address

Position

Witness occupation

Signed for and on behalf of **Kaipara District Council**

Witness signature

Signature

Witness name

Name

Witness address

Position

Witness occupation

Signed for and on behalf of **Far North District Council**

Witness signature

Signature

Witness name

Name

Witness address

Position

Witness occupation

Schedule 1 | Deed of Accession

Deed of Accession

This deed is made by [new shareholder's name] (the **New Shareholder**) on this day of [year].

Introduction

The New Shareholder wishes to acquire shares in [] Limited (company number []) (the **Company**).

The Company and its shareholders (together, the **Parties**) are party to a shareholders' agreement relating to the Company, dated [insert date] (the **Shareholders' Agreement**). Under the Shareholders' Agreement, the New Shareholder is required to enter into this deed.

Terms of this Deed

1. Shareholders' Agreement

The New Shareholder acknowledges that it has been given a copy of the Shareholders' Agreement and has read it and understands its terms.

2. Accession

With effect from the date of this deed, the New Shareholder agrees that it will become a party to the Shareholders' Agreement and be legally bound by its terms as if it had been named as a party to it and had signed it.

3. Contractual Privity

The New Shareholder agrees that, for the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017, this deed is made and fully intended to confer a benefit on, and be legally enforceable by, the Parties and any other party or parties who may, after the date of this deed, become a party to the Shareholders' Agreement.

4. Governing Law and Jurisdiction

This deed will be governed by, and construed in accordance with, the laws of New Zealand and the New Shareholder irrevocably submits to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this deed.

Execution

Signed and **delivered** as a deed.

[Insert execution clause for the New Shareholder.]

Schedule 2 | Constitution

Constitution

Northland Inc Limited

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Constitution

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this constitution:

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

Companies Act means the Companies Act 1993.

Company means Northland Inc Limited (company number 857377).

Deed of Accession means a deed of accession under which the person signing it agrees to become a party to, and be legally bound by the terms of, the Shareholders' Agreement.

Director means any director for the time being of the Company.

Employee means any employee of the Company.

New Securities means any new Shares or other securities issued by the Company that are convertible into, or that carry the option or right to subscribe for, new Shares.

Northland Region means that region constituted by the Local Government (Northland Region) Reorganisation Order 1989.

Shares means shares in the Company.

Shareholder means any person whose name is entered in the Company's share register as the holder (whether individually or jointly) for the time being of at least one Share.

Shareholders' Agreement means the shareholders' agreement relating to the Company, dated on or about the date of adoption of this constitution and as amended and/or replaced from time to time.

1.2 Interpretation

The following rules of interpretation apply in this constitution:

- (c) **Persons:** References to persons include natural persons, companies and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
- (d) **Clauses:** References to clauses are to those in this constitution.
- (e) **Terms defined in the Companies Act:** Words or expressions defined in the Companies Act shall have the same meaning in this constitution, except where they are defined in clause 1.1.

1.3 Effect of the Companies Act on this constitution

The Company, the Board, and each Director and Shareholder shall have the rights, powers, duties and obligations set out in the Companies Act except to the extent that they are negated or modified, in accordance with the Companies Act, by this constitution and the Shareholders' Agreement (subject to clause 1.4).

1.4 Conflict with the Shareholders' Agreement

The provisions of this constitution shall be construed having regard to the terms of the Shareholders' Agreement, and to the extent that there is any conflict or inconsistency between the terms of this constitution and the Shareholders' Agreement, the provisions of the Shareholders' Agreement shall prevail unless a requirement of the Companies Act is mandatory.

1.5 Conflict with the Companies Act and this constitution

If there is any conflict or inconsistency between the provisions of this constitution and the

Companies Act, the Companies Act shall prevail.

1.6 Effect of Council-Controlled Organisation status

As a Council-Controlled Organisation the Company has the principal objective set out in section 59 of the Local Government Act 2002 and the objectives contained in its Statement of Intent that is required under section 64 of that Act. The Company will carry out its activities, whether within or outside Northland or New Zealand, to promote the Northland Region in order to benefit the community of that region and enhance the economic and social development of that region.

1.7 Statement of Intent

In preparing the Statement of Intent the Board must comply with its obligations under the Local Government Act 2002 and any further requirements, not inconsistent with the statutory obligations that are notified to the Board by local authority shareholders.

2. Shares

2.1 Types of shares

The Company may issue different classes of Shares, including Shares that:

- (f) **redeemable shares:** are redeemable within the meaning of section 68 of the Companies Act;
- (g) **preference shares:** confer preferential rights to distributions of capital or income;
- (h) **voting rights:** confer special, limited or conditional voting rights; or
- (i) **no voting rights:** do not confer voting rights.

2.2 Rights attaching to Shares

Subject to the Shareholders' Agreement, this constitution and the terms on which a Share is issued, a Share confers on the holder:

- (j) **right to vote:** the right to one vote on a poll at a meeting of Shareholders on any resolution, including any resolution to:
 - (i) appoint or remove a Director or an auditor;
 - (ii) adopt a constitution;
 - (iii) alter the constitution;
 - (iv) approve a major transaction;
 - (v) approve an amalgamation under the Companies Act; and
 - (vi) put the Company into liquidation;
- (k) **dividends:** the right to an equal share in dividends authorised in accordance with the Shareholders' Agreement; and
- (l) **distribution of surplus assets:** the right to an equal share in the distribution of the Company's surplus assets.

2.3 Acquisition of own Shares

The Company may purchase or acquire Shares issued by it from one or more Shareholders in accordance with sections 59 to 65, 107, 108 and 110 to 112 of the Companies Act.

2.4 Treasury stock

The Company may hold its own Shares in accordance with sections 67A to 67C of the Companies Act.

2.5 Fractional entitlements

Subject to the Shareholders' Agreement, the Board may deal with any fractional entitlements to Shares in such manner as the Board considers fair and reasonable and in the best interests of the Company.

3. Issue of New Securities

3.1 Pre-emptive rights

Section 45 of the Act will not apply to the Company. All New Securities must be issued by the Company in accordance with the pre-emptive rights and other restrictions in respect of the issue of New Securities set out in the Shareholders' Agreement.

3.2 Deed of Accession

The Board must not issue Shares to any person who is not a party to the Shareholders' Agreement unless such person signs and delivers to the Company a Deed of Accession.

4. Transfer of Shares

4.1 Pre-emptive rights

Any Shareholder that wishes or is required to transfer Shares must comply with the pre-emptive rights and other restrictions and obligations in relation to the transfer of Shares set out in the Shareholders' Agreement.

4.2 Deed of Accession

The Board must not register any transfer of Shares to any person who is not already a party to the Shareholders' Agreement unless such person signs and delivers to the Company a Deed of Accession.

4.3 Share transfers that do not comply with the Shareholders' Agreement

The Board must refuse to register a transfer of any Share if the transfer does not comply with the requirements of the Shareholders' Agreement.

5. Shareholders' Meetings

5.1 Proceedings at Shareholders' meetings

The provisions of schedule 1 of the Companies Act shall govern proceedings at Shareholders' meetings to the extent that any matter relating to Shareholders' meetings is not addressed by the Shareholders' Agreement.

5.2 Notice of Shareholders' meetings

In addition to any other methods permitted by the Companies Act, notice of Shareholders' meetings may be delivered to a Shareholder by email to the email addresses provided by that Shareholder for such purpose.

5.3 Annual meeting of Shareholders

The Board shall not be required to call, and the Company shall not be required to hold, an annual meeting of Shareholders if there is nothing required to be done at that meeting and the Board has resolved that it is in accordance with the interests of the Company in accordance with section 120 of the Act.

6. Directors

6.1 Appointment and removal of Directors

Directors may be appointed and removed by any person that has, or any persons that jointly have, the right to appoint and remove a Director or Directors under the Shareholders' Agreement.

7. The Board

7.1 Proceedings of the Board

The provisions of schedule 3 of the Companies Act shall govern proceedings of the Board to the extent that any matter relating to Board meetings is not addressed by the Shareholders' Agreement.

8. Directors' Remuneration

8.1 Remuneration to be authorised by the Board

Subject to the Shareholders' Agreement and also section 107(1)(f) of the Companies Act, the Board may authorise the payment of remuneration or the provision of other benefits by the Company to a Director for services as a Director, but only if the Board is satisfied that to do so is fair to the Company.

9. Dividends and Distributions

9.1 Board may authorise dividends and distributions

Subject to the Shareholders' Agreement, the Companies Act and this constitution, the Board may authorise a dividend or distribution by the Company at a time and of an amount that it thinks fit.

10. Indemnity and Insurance

10.1 Indemnifying Directors and Employees

The Company may indemnify a Director or Employee for any liability or costs for which a Director or Employee may be indemnified under the Companies Act.

10.2 Insuring Directors and Employees

The Company may effect insurance for a Director or Employee for any liability or costs that the Company may effect insurance for under the Companies Act.

10.3 Interpretation

In clauses 10.1 and 10.2:

- (m) **Director** includes a former Director and any director of any related company of the Company;
- (n) **Employee** includes a former Employee and any employee of any related company of the Company; and
- (o) **effect insurance** includes to pay, whether directly or indirectly, the costs of the insurance.

11. Method of Contracting

11.1 Deeds

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

- (p) **two or more Directors:** by two or more Directors;

- (q) **only Director in office, with a witness:** if there is only one Director, by that Director whose signature must be witnessed;
- (r) **attorneys:** by one or more attorneys appointed by the Company in accordance with section 181 of the Companies Act.

11.2 **Other written contracts**

An obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority.

11.3 **Other obligations**

An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

12. **Alteration or Revocation of this Constitution**

12.1 **Alteration or revocation**

Subject to the Shareholders' Agreement, the Shareholders may only alter or revoke this constitution by a resolution passed by all of the Shareholders.

13. **Third Party Reliance**

13.1 **Compliance with the Shareholders' Agreement**

Wherever this constitution refers to a matter that requires or contemplates compliance with the provisions of the Shareholders' Agreement, a person who is not a party to that agreement may rely conclusively on a document signed by a Director stating that there has been such compliance.