

**OVERVIEW OF CONSTITUTION AND
SHAREHOLDERS AGREEMENT FOR PROSPECTIVE
SHAREHOLDERS
TAIRĀWHITI COMMUNITY COMMISSIONING
LIMITED**

Draft for Community and Shareholder consultation

12 May 2026

TAIRĀWHITI COMMUNITY COMMISSIONING

OVERVIEW OF CONSTITUTION AND SHAREHOLDERS AGREEMENT FOR PROSPECTIVE SHAREHOLDERS

Invitation

1. A working group representing iwi, social services providers, philanthropic and community development organisations, and regional collectives (**Working Group**) is collaborating to submit a Community-led Commissioning bid to the Social Investment Agency (**SIA**). The Working Group will establish a new legal entity, a charitable company, to submit the bid and act as the commissioning entity and the place-based initiative for Tairāwhiti. The charitable company will be owned by organisations in the community.
2. Your organisation has been invited to consider taking a shareholding in the charitable company. This information pack provides information to assist with that decision.

The vision

3. Across Tairāwhiti, iwi, communities, service providers, local and central government, and community organisations share a common aspiration: that all our people enjoy a high quality of life at every stage of their lives.
4. At the heart of this vision is a thriving future for the families and tamariki mokopuna of Tairāwhiti, supported by safe homes, healthy environments, outstanding learning opportunities, support when needed, great jobs, strong cultural and social infrastructure, and a resilient and inclusive local economy. It is a future where most people are able to contribute positively to a region that is an above average contributor to our nation.
5. In this future, communities are strong and self-determining. As a result, social services are less needed, but when required, decision-making sits close to the people it affects. Tairāwhiti stands out in leadership, innovation and intergenerational wellbeing.
6. In Tairāwhiti, we have long championed community-led solutions including community commissioning and place-based initiatives, implemented local commissioning and led the nation in evidence on social services barriers. We have engaged with successive governments on devolved decision rights and delivery models that place control closer to those affected. We have a proven track record of regional collaboration, innovation and delivery, especially where the system has enabled flexibility. We have worked innovatively within the current system, commissioning services and providing agencies with reliable evidence of barriers created by existing service models. We are ready as region to use our knowledge and experience to commission services that successfully create wellbeing for families.

The opportunity

7. SIA was established on 1 July 2024 as a central agency to lead, develop and demonstrate a social investment approach in action. The agency reports to the Minister for Social Investment, Hon Nicola Willis who leads the social investment work programme along with a group of Social Investment Ministers.
8. SIA is making new investments in organisations with the infrastructure and capacity to help test and scale the social investment approach at pace. This work will pave the way for changes that will benefit the wider social sector. The potential impact is high; for example, the total government investment in the Tairāwhiti region is estimated to exceed \$1.4 billion (not including investment from all other groups in the region).

9. SIA's Community-led Commissioning model provides for devolution of decision-making authority for social service investment to local leaders. The model empowers communities to tailor solutions to their specific needs, supporting local collectives (including regional organisations, iwi, hapū, philanthropists and non-government entities) to design and deliver services to meet local needs.
10. Community commissioning therefore provides an opportunity to reverse decades of declining prosperity and wellbeing and lift both to where they should be. Tairāwhiti will share the rewards of the wellbeing increases that will result from our collective work. We have a shared responsibility to take this opportunity.

SIA's process

11. SIA will invite community collectives to submit Expressions of Interest (**EOI**) for the Community-led Commissioning Pathway in mid-2026 (exact date to be confirmed). The purpose of the EOI process is to shortlist collectives demonstrating strong community leadership and readiness to undertake commissioning activities within their region. It is expected that, across Aotearoa/New Zealand, two collectives will be awarded funding for the initial Discovery and Design phase to develop a commissioning framework. SIA will then, in 2027, implement a Request for Proposals process for regional collectives to bid for substantive commissioning contracts. The Tairāwhiti region has a reasonable prospect of being one of the two collectives awarded funding for the Discovery and Design phase.
12. SIA is still to confirm the exact date for the opening and closing of the initial EOI process. The Working Group understands that the EOI process will open mid-year. While exact dates are still to be confirmed, the Working Group anticipates that timeframes will be tight and urgent. The Working Group aims to finalise all company, shareholder, and initial director details and incorporate the company as soon as possible.

What is the overview of Tairāwhiti's proposal?

13. The Working Group's proposal is committed to establishing a Tairāwhiti commissioning model based upon three key components:
 - a single, community-owned, transparent and accountable regional commissioning entity;
 - a comprehensive investment approach that optimises current spending, prioritises holistic, whanau-led wellbeing and preventative investment; and
 - a comprehensive and ethical data and evidence system supporting accountability and continuous learning and improvement.
14. An overview of the proposal is as follows:
 - A community-owned charitable company will be formed to undertake commissioning and place-based initiatives in Tairāwhiti.
 - The company will be highly functioning and professional. It will have a strong governance structure and a skilled backbone office who will deliver transparency and rigour to the commissioning process.
 - The entity will set priorities based on evidence, insights and whanau narratives. Depending on the scale of services moving to community commissioning, several key providers will shift to new contracts focused on holistic outcomes.
 - Initial commissioning priorities will be:
 - housing;

- education support (attendance and learning support);
 - community health services; and
 - employment support.
15. Housing, education, health and employment are key foundations of a good life and contributors to a virtuous wellbeing cycle. Importantly, the Working Group regards these priorities as doorways through which whanau can access a wide range of holistic support services. If there are issues of family violence, addictions, basic health needs or financial management, support will be available either directly from, or via, those housing, health and education providers.

Why was a charitable company selected as the structure for commissioning?

16. Our proposed governance and leadership approach for community commissioning is built on four principles:
- **Community ownership:** the entity is owned by the community through a shareholding structure that reflects our community and interests. This ensures that the breadth of local perspectives is taken into account.
 - **Skills based, locally committed governance:** the entity is governed by an independent, skills-based board elected by shareholders.
 - **Fit for purpose legal structure:** a legal structure which supports robust governance, accountability, simplicity, transparency and cost-efficiency will be established.
 - **Strategic prioritisation driven by whanau voice, data, and insights:** strategic decision-making is driven and improved by whanau voice, data and insights.
17. The Working Group considered a wide range of potential structural options including charitable trusts, ordinary trusts and companies, incorporated societies, joint ventures, and whether the commissioning entity could be “piggy-backed” onto an existing entity. Having considered all options, the Working Group decided that a charitable company was the best fit to achieve the stated principles.

Charitable company snapshot

Company name	Tairawhiti Community Commissioning Limited (as a placeholder)
Number of Shares	100 issued on incorporation A second issue of a further 900 shares (1000 total) no later than 12 months following incorporation
Consideration (price)	Nil – shares will be issued for nil consideration, with shareholders not liable for calls on shares or funding obligations
Shareholders	Shares and Shareholders divided into three sectors: Iwi Sector (45% shares), Social Services Provider Sector (45% shares), Philanthropy Sector (10% shares). Shareholders must fulfil certain criteria to be eligible to hold shares. Shareholdings within each Sector will be divided equally among Shareholders.
Directors	Directors must be independent, professional, and appropriately skilled. Directors will be elected through a formal board appointments process with certain criteria to be met. There will be an initial establishment board of 3 directors. Subsequent boards will comprise 5 directors.
Company purpose	The company's charitable purpose: <i>The purposes of the Company are exclusively charitable within the meaning of s5(1) of the Charities Act 2005.</i> <i>Without limiting the generality of clause 3.1, the Company's charitable purposes include:</i> <i>(a) to relieve poverty and hardship by commissioning, funding, collaborating and supporting through evidence based decision-making initiatives that directly assist individuals or communities experiencing social, economic, or material disadvantage;</i> <i>(b) to advance education by commissioning, funding, and supporting programmes that improve access to learning, skills development, capability building, and knowledge for the public benefit; and</i> <i>(c) to advance community wellbeing and achieve whanau self-reliance by commissioning, funding, and supporting services and initiatives that are beneficial to the community and which are analogous to purposes recognised by New Zealand law as charitable,</i> <i>within the Tairāwhiti Region.</i>
Governing documents	In addition to Companies and Charities law, the company will be governed by its Constitution and a Shareholders Agreement.

Timeline for incorporation

18. The Working Group aims to incorporate the company by mid-year, in anticipation of the company submitting an EOI to SIA shortly thereafter. Important company details must be finalised to meet this deadline. The following information will help your organisation to consider the shareholding invitation and the steps required to give effect to that decision.

Shareholding sectors

19. The commissioning entity will be owned by the community through three shareholding groups:
- **Iwi Sector (45%):** *“the representative entities of iwi with rohe in the Tairāwhiti Region who fulfil the Shareholder Eligibility Criteria”.*
 - **Social Services Provider Sector (45%):** *“any non-government entities who: (a) fulfil the Shareholder Eligibility Criteria; and (b) provide education, support, intervention, advocacy, and social services in the Tairāwhiti Region in any or all of the following areas: social housing, child wellbeing, health, education and training (post compulsory education), family and sexual violence, addiction, budgeting and legal advice, justice, aged care and elder support services (not including residential facilities), disability, employment support, mental health and wellbeing, youth services, community development and navigation, and whanau ora”.*
 - **Philanthropy Sector (10%):** *“any entities with philanthropic, community wellbeing, or community economic development purposes who fulfil the Shareholder Eligibility Criteria”.*
20. To be a shareholder, your organisation must fall within the definition of one of these Sectors. A shareholder holds shares in one Sector only.
21. The number of shareholders in the Social Services Provider Sector will be capped at 30 in total to avoid the dilution of shareholdings.

Shareholder Eligibility Criteria

22. A shareholder must also fulfil the Shareholder Eligibility Criteria, ie:
- (a) be incorporated and have legal personality;
 - (b) represent interests in the Sector in which the person holds shares or intends to hold shares;
 - (c) have its registered office and place of business in the Tairāwhiti Region with its business or services delivered in the Tairāwhiti Region;
 - (d) have a majority of officers on its governance board or committee resident in, or if not resident then able to demonstrate a connection and commitment to, the Tairāwhiti Region;
 - (e) demonstrate commitment to advancing the wellbeing of the people and communities of the Tairāwhiti Region;
 - (f) be reputable and trustworthy;
 - (g) be solvent and transparent.

Number of shares

23. The company will be incorporated with 100 shares. These will be divided into three parcels. The Iwi Sector and Social Services Sector will have 45 shares each. The Philanthropy Sector will have 10 shares.

24. Not all organisations will be ready to take up shares in the coming weeks. To accommodate those organisations who would like shares but aren't quite ready, there will be a "second issue" of shares within 12 months of the company's incorporation. The board will run a process to invite or call for interest from prospective shareholders and, once eligibility has been confirmed, will approve the issue of a second tranche of 900 shares. These shares will be divided pro rata among the "new" shareholders and the existing shareholders. This will maintain the proportionality between the 3 sectors (45%, 45%, and 10%) and shareholders will continue to hold equal shareholdings (or as close as possible to equal shareholdings) within each sector.

Division of shares within Sectors

25. Shareholders within each Sector will divide the Sector's share allocation equally among them (or as close as possible to equal). For example:
- (a) if there are 3 shareholders in the Iwi Sector, they will divide the initial 45 shares (450 shares after the second issue) equally between them (15 or 150 shares each);
 - (b) if there are 2 shareholders in the Philanthropy Sector, they will divide the 10 (or 100) shares equally between them (5 or 50 shares each);
 - (c) if there are 3 shareholders in the Philanthropy Sector, they will not be able to divide the 10 shares equally between them but must get as close as possible to that; for example, 2 shareholders will receive 3 shares each and one will 4 shares (to be decided among themselves);
 - (d) if there are 18 shareholders in the Social Services Provider Sector, they will divide 450 shares equally between them (25 shares each);
 - (e) if there are 20 shareholders in the Social Services Provider Sector, they will not be able to divide 450 shares equally between them but must get as close as possible to that; for example, 10 shareholders will receive 22 shares and 10 will receive 23 shares. They will have to decide among themselves who will receive 22 shares and who will receive 23 shares.
26. These are examples only. The division of shares in each Sector will not be known until the number of eligible organisations taking up shareholding is known.

What does it mean to be a shareholder in a charitable company? What are the benefits?

- The shareholders are the owners of the company. They own a "piece" of the company in proportion to the shares they hold.
- Shareholders have the right to make important decisions relating to the company. These rights are set out in the Companies Act and the company constitution and include:
 - adopting, altering, or revoking a constitution;
 - approving the alteration of shareholder rights;
 - approving a major transaction;
 - electing and removing directors;
 - approving an amalgamation;
 - putting the company into liquidation;
 - approving the issue of new shares;
 - approving the transfer of shares;

- the approval of director remuneration;
- the approval of the company's strategic plan, annual report and financial statements.
- Shareholders have the right to participate in shareholder decisions by voting at general meetings, by written resolution in lieu of a meeting, or by postal/electronic vote (Constitution, clause 11.1). Some shareholder decisions require an ordinary resolution (a simple majority); others require a special resolution (75% of those voting) (Constitution, clause 11.3).
- Shareholders have the right to attend the company's general meetings and receive the company's annual report and audited financial statements (Constitution, clauses 12.1-12.4, Shareholders Agreement, part 11).
- Voting at general meetings will occur by way of voice, show or hand, or another method approved by the chairperson (eg, to accommodate online attendees). These methods of voting allow for one vote per shareholder and are suitable for straightforward or administrative types of decisions.
- Voting may also occur by poll, in which case votes are counted in accordance with the number of shares held. A poll must be held if requested by at least 5 shareholders, or shareholders holding not less than 10% of total shares, or if required by the chairperson of the meeting. Voting by poll is suitable for more significant types of shareholder decisions.
- Shareholders have the benefit of limited liability. The company has separate legal personality and takes on the risk of doing business. Shareholders are not liable for the company's debts and obligations. (Shareholders Agreement, clauses 2.9-2.12)
- Shareholders in the commissioning entity will, through the exercise of their shareholder rights and their representation of community, have an important role in shaping the company's vision for the benefit of Tairāwhiti.
- Shareholders who are providers may, along with other providers, apply to the company for commissioning contracts. Being a shareholder does not disqualify a provider from participating in commissioning.

What do shareholders not do?

- The company's profits must be used to further the company's charitable purpose (Constitution, clause 3.3) and therefore:
 - Shareholders of a charitable company do not have the right to receive dividends (Constitution, clause 9.1).
 - Shareholders and related persons cannot profit personally from the company's business (Constitution, clauses 3.4-3.7).
- Shareholders are not liable for any calls on shares and are not required to capitalise (fund) the company or guarantee its obligations.
- Shareholders do not manage the company. They do not make operational decisions or get involved in day-to-day business. The company must be managed by, or under the direction or supervision of, the board of directors. It follows that shareholders will not be involved in making any commissioning decisions – this will be the responsibility of the board and management.

What are the risks of being a shareholder?

27. The effect of limited liability (see above) means that there are few, if any, commercial or financial risks to shareholding. As noted, shareholders are not liable for any calls on shares and are not required to capitalise the company or guarantee its obligations. However:
- Shareholders may be liable for directors duties under the Companies Act 1993 if they become “deemed directors”; ie, step into the board’s role and participate in management decisions. This risk is mitigated if shareholders stick to the decision-making powers reserved to them under the Act and the Constitution.
 - Shareholders will be responsible for any obligations they incur outside of their capacity as a shareholder (eg, as a contractor). For example, shareholders must comply with the Shareholders Agreement and will be liable for any breach of it.
 - Shareholders may have some reputational risk if the company experiences operational, financial, or regulatory difficulties or becomes insolvent or is sued or liquidated.
 - While most of the company administration will be completed by the company’s backbone office, shareholders will need to invest some time and resource in the administration of their shareholding. For example, shareholders must ensure that the decisions they make as shareholders are approved by their respective boards or committees, that paperwork is completed on time, that a representative or proxy is appointed to attend shareholder meetings, and that they participate in the election of directors to the board.

Governance

28. The company will be governed by an independent, skills-based board of directors. The board will develop and oversee strategy, oversee the operations of the company (including final decisions on commissioning), and ensure it fulfils its charitable purposes and legal obligations.

Establishment board

29. A board of 3 initial directors will be elected to complete establishment tasks. They will be appointed for a term of approximately one year. At least 2 initial directors must be resident in Tairāwhiti. (Constitution, clauses 14.1-14.7; Shareholders Agreement, clauses 8.1-8.3)
30. The initial directors must be identified before the company is incorporated because they will be named in the application to the Companies Office. The Working Group will arrange a formal process, in line with the election process in the draft Shareholders Agreement, for prospective shareholders to elect the initial directors. The proposed election process is summarised below (para [30]).

Subsequent boards

31. Subsequent boards will have 5 directors elected by shareholders. A default term of 3 years will apply unless the shareholders decide by ordinary resolution to impose a shorter term (which may include staggered terms). At least 4 directors must be resident in Tairāwhiti. (Constitution, clauses 14.1-14.7; Shareholders Agreement, clause 8.1)

The process to elect directors

32. The process to elect directors is set out in the Shareholders Agreement, Schedules 2-3. There are 4 steps (clause S2.3):
- The board will convene an independent appointments panel.

- The appointments panel will run the process for the election of directors and will provide appointment recommendations to the shareholders.
 - The shareholders will vote to elect the directors or a chairperson at an election meeting or via a postal election. An independent scrutineer will confirm the outcome of the election.
 - The company will attend to formal appointment notices and filing with the Companies Office.
33. The voting method will be “first past the post”; ie, each shareholder will have the right to select, on a voting form, up to the maximum number of candidates as there are positions to be filled (clause S2.18). A shareholder may select less than the maximum number but cannot select more.
34. Each candidate selection will carry the votes or a tally equivalent to a shareholder’s number of shares. The tally will be scrutinised and the count confirmed by the independent scrutineer. For example, in an election for three director vacancies in which 5 candidates have applied for appointment:
- All shareholders receive notices and voting forms.
 - The voting forms will identify the name of the shareholder but are otherwise the same for all shareholders, regardless of the number of shares held. The forms will set out the voting instructions and list the candidates and the maximum number that may be selected.
 - Shareholders will make their selections – in this example, up to 3 selections - and return the voting forms as instructed.
 - The scrutineer will check each shareholder’s share parcels against the company’s share register and then tally the share numbers against the selections on the voting forms.
 - The scrutineer will then certify and announce the outcome of the election.

Director attributes

35. The relevant factors for assessment of a director candidate are (clause S2.9):
- prior experience as a director or experience in any other governance role;
 - commitment to the Tairāwhiti Region;
 - place of residence;
 - knowledge of and experience in the social services sector and charitable and not-for-profit organisations, particularly in the Tairāwhiti Region;
 - knowledge of, and experience with, central and local government agencies;
 - the need for conflicts of interest to be minimised; and
 - the need for a wide range of skills, experience, and diversity on the board.
36. A person will be disqualified from holding the office of director for the usual reasons; ie, resignation, removal, disqualification under the Companies or Charities Act, or incapacitation. In addition to this, a person will be disqualified if a current officer or employee of a shareholder, a contractor to the company, or has held any of these positions in the previous 3 financial years. (Constitution, clause 14.10)

Transparency and accountability

37. Strict conflicts of interest rules will apply to directors. They (or their firm, if relevant) cannot act in a professional capacity for the company. They must not hold any other office and cannot enter into any transaction with the company (Constitution, clauses 17.5-17.7).
38. The standard disclosure and interest rules for charitable entities apply. Interests must be disclosed and entered on the interests register. An interested shareholder or director or associated person cannot take part in or influence a decision relating to the interest. (Constitution, clauses 17.7-17.10)
39. Directors are entitled to remuneration for their services. The amount will be determined by an ordinary resolution of shareholders at an annual meeting. Directors are also entitled to reimbursement of reasonable expenses. (Constitution, clauses 17.1-17.4)

Conflicts of interest

40. A robust conflicts system will be implemented. A person will be disqualified from being a director if they are a current officer or employee of a shareholder, a current officer or employee of a contractor to the company, or have been, at any time in the past three financial years, an officer or employee of a shareholder or a contractor to the company.

Operations

41. The Board will be supported by a “backbone” office providing secretariat services including company and operational administration, strategy, and policy support (including data analysis and research and insights development), workforce development and engagement support. This backbone office will come from the merger of Manaaki Tairāwhiti into the commissioning entity, bringing with it experience and intellectual property from the 10 years of Manaaki Tairāwhiti operations. The commissioning entity will be Tairāwhiti’s place based initiative (PBI) with the work that also entails.

Information required to incorporate company

42. The information required to incorporate a company are:
 - (a) a reserved company name;
 - (b) the number of shares on incorporation;
 - (c) shareholder details (with consents);
 - (d) director details (with consents and personal details);
 - (e) registered office, address for service, and address for communications;
 - (f) tax registration details;
 - (g) annual return filing month;
 - (h) constitution (not mandatory but recommended).
43. If your organisation decides to take up a shareholding in the commissioning company, the following details will be required to complete incorporation:
 - (a) the full legal name of your organisation;
 - (b) its registered address; and
 - (c) the number of shares to be held.
44. A shareholder consent form will need to be completed, signed by an authorised signatory, and filed with the Companies Office within a set timeframe. The draft Shareholders Agreement and draft Constitution also need to be approved.

45. Prospective shareholders must therefore ensure that, within tight deadlines, their boards/committees have met to consider and approve:
- the draft Constitution and Shareholders Agreement;
 - the invitation to take up a shareholding; and
 - an authorised signatory to complete a shareholder consent form and liaise with the Working Group to complete the incorporation process.

What are the next steps?

46. Your next steps are:
- Review this Information Pack and the attached draft Constitution and Shareholders Agreement with your organisation's governing board or committee.
 - Confirm whether your organisation fulfils the Shareholder Eligibility Criteria (see paragraph 22 above).
 - Decide whether your organisation will accept the invitation to become a shareholder in the new commissioning entity. Confirm that decision in accordance with your organisation's rules.
 - Reach out to us if you have any questions. Contact: Judy Campbell, Strategic Advisor, Manaaki Tairāwhiti, admin@manaakitairawhiti.nz.
47. If your organisation accepts the invitation, our contact person will be in touch with you to:
- Confirm that your organisation's eligibility and decision criteria are satisfied.
 - Confirm the share allocations within your sector.
 - Assist you – along with all organisations taking up a shareholding – to participate in a process to finalise and approve the Shareholders Agreement and the Constitution.
 - Assist you – along with all organisations taking up a shareholding – to participate in a formal process to elect the 3 establishment directors for the initial board.
 - Progress the technical steps required to take-up a share allocation (eg, compiling shareholder details and completing shareholder consents).
48. When all paperwork has been completed, the Shareholders Agreement and Constitution finalised and approved, the initial directors elected, and all other company details confirmed – an application will be lodged the Companies Office to incorporate the company. The Companies Office will generate Shareholder and Director Consent Forms, which will be sent to the shareholding organisations and directors for urgent completion. Upon return, the Consent will be filed with the Companies Office, which will confirm when the company is incorporated. An application to Charities Services will follow.
49. As noted, the Working Group aims to finalise all company, shareholder, and initial director details and incorporate the company as soon as possible, in anticipation of the company submitting an EOI to SIA by mid-year. This is a tight deadline. Your organisation's prompt attention to this invitation and the ensuing tasks is therefore important.

**CONSTITUTION
OF
TAIRĀWHITI COMMUNITY COMMISSIONING
LIMITED**

**Draft for Community and Shareholder
consultation**

12 May 2026

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CONSTITUTION OF TAIRĀWHITI COMMUNITY COMMISSIONING LIMITED

DATED: [INSERT DATE]

PART 1: PRELIMINARY

1. INTERPRETATION

Definitions and Guides to Interpretation

- 1.1. Definitions of terms used in this Constitution, and guides to its interpretation, are contained in clause 21.

Effect of Shareholders Agreement

- 1.2. To the extent permitted by law:
- (a) the Constitution is subject to the provisions of the Shareholders Agreement; and
 - (b) in the event of a conflict between the Constitution and the Shareholders Agreement, the provisions of the Shareholders Agreement will prevail over those of the Constitution.

2. CAPACITY AND POWERS

Rights, powers and duties

- 2.1. The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.
- 2.2. Subject to this Constitution, the Shareholders Agreement, the Act, any other enactment and the general law, 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. SPECIAL PROVISIONS - CHARITABLE PURPOSES

Charitable Purposes

- 3.1. The purposes of the Company are exclusively charitable within the meaning of s5(1) of the Charities Act 2005.
- 3.2. Without limiting the generality of clause 3.1, the Company's charitable purposes include:
- (a) to relieve poverty and hardship by commissioning, funding, collaborating and supporting through evidence based decision-making initiatives that directly assist individuals or communities experiencing social, economic, or material disadvantage;

- (b) to advance education by commissioning, funding, and supporting programmes that improve access to learning, skills development, capability building, and knowledge for the public benefit; and
 - (c) to advance community wellbeing and achieve whanau self-reliance by commissioning, funding, and supporting services and initiatives that are beneficial to the community and which are analogous to purposes recognised by New Zealand law as charitable,
- within the Tairāwhiti Region.

Application of income

- 3.3. The income and property of the Company, whether during its life or on its dissolution, will be applied exclusively towards the promotion of the charitable purposes stated in clause 3.2 above, in accordance with the provisions of this Constitution.

Rights, powers and privileges

- 3.4. Any rights, powers and privileges conferred on the Company by section 16(1) of the Act which are inconsistent with the provisions of clause 3.2 above are prohibited.

Prohibition on payments

- 3.5. No amount derived from a business carried on by the Company may be directed or diverted to the benefit or advantage of a person having some control over that business (**related person**) where that related person is able, directly or indirectly, to determine or materially influence either the determination of the nature or extent of the relevant benefit or advantage, or the circumstances in which the relevant benefit or advantage is, or is to be given or received.
- 3.6. For the purposes of clause 3.5, **related person** means a person whose ability to determine or influence the relevant benefit or advantage arises because they are:
- (a) a settlor or trustee of a trust by which the business is carried on; or
 - (b) a Shareholder or Director; or
 - (c) a settlor or trustee of a trust that is a Shareholder; or
 - (d) a person associated with a settlor, trustee, Shareholder, or Director referred to any of subclauses (a) to (c) above.

Associated in relation to any two persons, has the meaning given to **associated persons** in subpart YB of the Income Tax Act 2007. For the purposes of this clause 3.6, two persons are associated if they fall within any of the categories set out in sections YB 1 to YB 21 of that Act.

Prohibition of Directors, Shareholders or Officers benefiting

- 3.7. Any Director, Shareholder or officer of the Company who is or may be in any other capacity interested or concerned directly or indirectly in any property or undertaking in which the Company is or may be in any way concerned or involved shall disclose the nature and extent of that interest to the other Directors, Shareholders and officers and shall not take part in any deliberations of the Directors concerning any matter in which that Director, Shareholder or officer is or may be interested.

Authority over funded activities

- 3.8. The Company retains full discretion and decision-making authority over the activities it funds through its commissioning activities.
- 3.9. Where the Company commissions a provider to deliver services, the Company and the provider must enter into a written agreement to:
- (a) restrict the provider's use of the commissioning funds to activities consistent with the Company's charitable purposes; and
 - (b) provide the Company with the right to oversee, receive reporting on, and enforce its rights in relation to, the use of the commissioning funds.
- 3.10. Further to clause 3.9, the Company is required to take reasonable steps to monitor and evaluate a provider's use of commissioning funds through regular reporting and may take enforcement action to ensure that the commissioning funds are applied exclusively to the Company's charitable purposes.
- 3.11. The Company must not engage, and must require providers to not engage, in promoting or supporting any political party, political candidate, election campaign, or manifesto.

Amendment

- 3.12. The Shareholders may amend this Constitution by way of Special Resolution in accordance with the Shareholders Agreement and the Act provided, however, that an amendment must not:
- (a) have the effect of causing the Company to cease to exist exclusively for charitable purposes in New Zealand so as to no longer be eligible for tax relief under New Zealand law; or
 - (b) preclude the Company being registered, or maintaining its registration, as a charitable entity under the Charities Act 2005.

Review of governance procedures

- 3.13. The Board must review the Company's governance procedures, including this constitution and any governance policies, at least once every 3 years. When conducting a review, the Board must consider whether the Company's governance procedures:
- (a) are fit for purpose;
 - (b) assist the Company to achieve its charitable purpose; and
 - (c) assist the Company to comply with its legal obligations.

PART II: SHARES

4. ISSUE OF SHARES

Shares

- 4.1. As at the date of incorporation of the Company, there are **100** ordinary Shares in the Company issued for no consideration. Shares have been issued in the following share categories (**Share Categories**):

- (a) Iwi Sector (45 Shares);
- (b) Social Services Sector (45 Shares); and
- (c) Philanthropy Sector (10 Shares).

Company may issue Shares

- 4.2. The Company may issue new Shares only in accordance with clauses 4.5 and 5 of the Shareholders Agreement.

5. PURCHASE OF OWN SHARES

- 5.1. The Company may purchase or otherwise acquire its Shares in accordance with, and subject to, ss58-65, 107, 108, and 110-112C of the Act, and may hold the Shares acquired under ss59 or 112-112C of the Act in accordance with ss67-67CV of the Act.
- 5.2. Notwithstanding clause 5.1 and ss112-112C of the Act, there must be no payment or consideration for a Company purchase or acquisition of any Share.

6. TRANSFER OF SHARES

Transfer must be in accordance with Shareholders Agreement

- 6.1. Shares may be transferred only in accordance with clause 6 of the Shareholders Agreement. Section 45 of the Act (Pre-emptive rights) does not apply.

Entry in Register

- 6.2. Subject to clause 6.1, Shares are transferred by entry of the name of the transferee on the Register.

Signed transfer

- 6.3. For the purpose of transferring Shares, a form of transfer signed by the present holder of the Shares or the holder's personal representative must be delivered to the Company or to the agent of the Company who maintains the Register.

Form of transfer

- 6.4. The form of transfer may be in any usual or common form or any other form approved by the Board.
- 6.5. The form of transfer must be signed by the transferee if registration as holder of the Shares would impose a liability to the Company on the transferee.

Board's right to refuse or delay registration of transfer

- 6.6. The Board, within 30 Working Days of the receipt of a form of transfer of Shares:
- (a) may refuse or delay the registration of the transfer if:
 - (i) the Board considers that to effect the transfer would result in a breach of the law;
 - (ii) the Board considers that it is not in the best interests of the Company to register the transfer; or

- (iii) clause 8.3 has not been complied with or the form of transfer has not been properly executed or does not comply with clauses 6.3-6.5; and
 - (b) must refuse the registration of the transfer if the transfer does not comply with clause 6 of the Shareholders Agreement.
- 6.7. A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within 5 Working Days of the date of the resolution being passed.

Registration of transfer

- 6.8. On receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the Register as holder of the Shares, unless the Board has resolved in accordance with clause 6.6 to refuse or delay the registration of the transfer of the Shares.

7. SHARE REGISTER

Maintain Register

- 7.1. The Company must maintain a Register which records all Shares issued by the Company and which states:
 - (a) whether, under this Constitution or the terms of issue of any Shares, there are any restrictions or limitations on their transfer; and
 - (b) where any document that contains the restrictions or limitations may be inspected.

The Company may appoint an agent to maintain the Register.

Contents of Register

- 7.2. The Register must state, with respect to each Share Category:
 - (a) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last 10 years, a Shareholder;
 - (b) the number of Shares held by each Shareholder within the last 10 years; and
 - (c) the date of any:
 - (i) issue of Shares to; or
 - (ii) repurchase or redemption of Shares from; or
 - (iii) transfer of Shares by or to;each Shareholder within the last 10 years; and in relation to the transfer, the name of the person to or from whom the Shares were transferred.

Directors' duty to supervise Register

- 7.3. It is the duty of each Director to take reasonable steps to ensure that the Register is properly kept and that the transferees' names are promptly entered on it in accordance with this Constitution and the Act.

Register prima facie evidence

- 7.4. Subject to section 91 of the Act (Power of court to rectify share register), the entry of the name of a person in the Register as holder of a Share is prima facie evidence that the legal title to the Share is vested in that person.

Register evidence of rights

- 7.5. The Company may treat the registered holder of a Share as the only person entitled to:
- (a) exercise the right to vote attaching to the Share;
 - (b) receive notices in respect of the Share; and
 - (c) exercise the other rights and powers attaching to the Share.

Trust not to be registered or recognised

- 7.6. No notice of a trust, whether express, implied, or constructive, may be entered on the Register. Except as required by law, no person will be recognised by the Company as holding any Share upon trust or holding any interest in a Share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the Share vested in the registered holder.

8. SHARE CERTIFICATES

Application for Share certificate

- 8.1. A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares.

Issue of Share certificate

- 8.2. The Company must, within 20 Working Days after receiving an application for a Share certificate under clause 8.1, send to the Shareholder a certificate stating the name of the Company, and the Share Category and number of Shares to which the certificate relates.

Transfer to be accompanied by Share certificate

- 8.3. Despite clause 6 of this Constitution and section 84 of the Act (Transfer of shares), where a Share certificate has been issued, a transfer of the Shares to which it relates must not be registered by the Company unless the form of transfer is accompanied by the Share certificate relating to the Shares (or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board).

Surrendered Share certificate

- 8.4. Where Shares to which a Share certificate relates are transferred, and the Share certificate has been sent to the Company to enable registration of the transfer, the Share certificate will be cancelled and no further Share certificate will be issued except at the request of the transferee.

PART III: DISTRIBUTIONS AND SHAREHOLDERS RIGHTS

9. DISTRIBUTIONS

- 9.1. The Company must not make Distributions or Dividends in relation to Shares held by a Shareholder.

10. ISSUE OF STATEMENT OF RIGHTS TO SHAREHOLDERS

- 10.1. The Company must issue to any Shareholder, on request, a statement that sets out:
- (a) the Share Category of Shares held by the Shareholder, the total number of Shares of that Share Category issued by the Company, and the total number of Shares issued by the Company;
 - (b) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the Shares held by the Shareholder; and
 - (c) the relationship of the Shares held by the Shareholder to other Share Categories.
- 10.2. A statement issued under clause 10.1 must state in a prominent place that it is not evidence of title to the Shares or of the matters set out in it.

11. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

Powers reserved to Shareholders

- 11.1. Powers reserved to Shareholders by the Act or by this Constitution may be exercised:
- (a) at an Annual Meeting or a Special Meeting;
 - (b) by a resolution in lieu of a meeting under clause 12.5; or
 - (c) by a postal vote in accordance with clause 13.14 and Schedule 4 of the Shareholders Agreement.
- 11.2. Unless otherwise specified in the Act, this Constitution or the Shareholders Agreement, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

Special Resolutions

- 11.3. When Shareholders exercise a power to approve any of the following, that power may be exercised only by a Special Resolution (refer also to clause 9.3 of the Shareholders Agreement):
- (a) the issue of new Shares and Additional Shares (excluding the issue of Second Shares under clause 4.5, Shareholders Agreement);
 - (b) the creation of an Additional Share Category;
 - (c) the voluntary transfer of Shares;
 - (d) the compulsory transfer of Shares;
 - (e) where a Shareholder is in Default, the taking of action other than the suspension of all rights attaching to the Shareholder's Shares;
 - (f) the removal of a Director (including the Chairperson) from office;

- (g) an alteration to or revocation of this Constitution or the adoption of a new Constitution;
- (h) a Major Transaction;
- (i) an Amalgamation;
- (j) the liquidation of the Company and distribution of surplus assets; or
- (k) the amendment or termination of the Shareholders Agreement.

Any decision made by Special Resolution under this clause may be rescinded only by a Special Resolution, provided that a resolution to put the Company into liquidation cannot be rescinded.

- 11.4. The Shareholders must not amend or delete clauses 17.10 or 20.5 if this would prevent the Company maintaining any approval from the relevant government agency as to the Company's charitable status or would prevent the Company securing or maintaining registration as a charitable entity under the Charities Act 2005.

Management review by Shareholders

- 11.5. A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders.
- 11.6. A meeting of Shareholders may pass a resolution relating to the management of the Company.
- 11.7. Despite section 128 of the Act (Management of company) or any other clause of this Constitution, a resolution relating to the management of the Company passed at a meeting of Shareholders is not binding on the Board.

Minority rights

- 11.8. Where:
- (a) a Shareholder is entitled to vote on the exercise of one or more powers set out in section 106(1)(a), and the proposed alteration imposes or removes a restriction on the activities of the Company, or section 106(1)(b) or (c); and
 - (b) the Shareholders resolved pursuant to section 106 to exercise the power; and
 - (c) the Shareholder cast the votes attached to its Shares registered in the Shareholder's name and having the same beneficial owner against the exercise of the power; or
 - (d) where the resolution to exercise the power was passed under section 122, the Shareholder did not sign the resolution,
- that Shareholder is entitled to require the Company to purchase those Shares in accordance with clauses 5.1 and 5.2.

12. MEETINGS OF SHAREHOLDERS

Annual Meeting

- 12.1. The Board must, in accordance with section 120 of the Act (subject, however, to clause 12.3 below and clause 11 of the Shareholders Agreement), call an Annual Meeting of Shareholders to be held:

- (a) not later than 6 months after the Balance Date of the Company; and
- (b) not later than 15 months after the previous Annual Meeting, or in respect of the first Annual Meeting, not later than 18 months after the date of the Company's incorporation,

at which it presents to the Shareholders, for approval by Ordinary Resolution, its strategic plan, annual report and financial statements as at the end of the relevant Financial Year.

- 12.2. The Company must hold the Annual Meeting on the date on which it is called to be held.
- 12.3. Section 120(5) of the Act (which allows for annual meetings not to be held in certain circumstances) does not apply to the Company.

Special Meetings

- 12.4. A Special Meeting:

- (a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting; and
- (b) must be called by the Board on the written request of Shareholders holding not less than 5% of the Shares.

Resolution in lieu of meeting

- 12.5. A resolution in writing signed by the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders who together hold not less than 75 per cent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.
- 12.6. For the purposes of clause 12.5, any such resolution may consist of one or more documents in similar form (including letter, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Shareholders entitled to vote on the resolution).
- 12.7. Within 5 Working Days of a written resolution in lieu being passed under clause 12.5, the Company must send to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed:
- (a) a copy of the resolution; and
 - (b) if the resolution was a Special Resolution required by section 106(1)(a), (b), or (c) of the Act (Powers exercised by special resolution), a statement setting out the rights of Shareholders under section 110 (Shareholder may require company to purchase shares).

Chairperson of meetings of Shareholders

- 12.8. If the Chairperson of the Board of Directors is present at a meeting of Shareholders, he or she must chair the meeting.
- 12.9. If the Chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the Directors present may choose one of their number to chair the meeting.

Shareholders entitled to notice of meeting

12.10. The Shareholders entitled to receive notice of a meeting of Shareholders are those Shareholders:

- (a) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register on that date; or
- (b) if the Board does not fix a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.

12.11. A date fixed by the Board under clause 12.10(a) must not precede by more than 30 Working Days nor less than 10 Working Days the date on which the meeting is to be held.

Notice of meeting

12.12. Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting, and to every Director and the auditor of the Company, not less than 10 Working Days before the meeting.

Contents of notice

12.13. The notice referred to in clause 12.12 must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any Ordinary or Special Resolutions to be submitted to the meeting; and
- (c) in the case of a Special Resolution required by clause 11.3(g), (h) or (i), the right of a Shareholder under clause 11.8.

Irregularities in notice

12.14. An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

12.15. The accidental omission to give notice of a meeting of Shareholders to, or the failure to receive notice of a meeting of Shareholders by, a Shareholder does not invalidate the proceedings at that meeting.

Giving of Notice

12.16. Notice of a meeting of Shareholders may be given in the manner provided for the giving of notices to Shareholders under clause 18 of the Shareholders Agreement.

Method of holding meeting

12.17. A meeting of Shareholders may be held by a quorum of the Shareholders:

- (a) being assembled together at the time and place appointed for the meeting;
- (b) participating in the meeting by means of audio, audio and visual, or electronic communication; or
- (c) by a combination of both of the methods described in clauses 12.17(a) and (b).

Adjournments

- 12.18. The chairperson of a meeting of Shareholders may, at the request of those Shareholders present in person or by proxy who are between them able to exercise a majority of the votes able to be cast at the meeting, adjourn the meeting.
- 12.19. The chairperson of a meeting of Shareholders may adjourn the meeting if in his or her opinion the meeting has become so unruly, disorderly or inordinately protracted, that the business of the meeting cannot be conducted in a proper and orderly manner. The chairperson may exercise this power without the consent of the meeting and without giving reasons.
- 12.20. No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 12.21. If a meeting of Shareholders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting must be given in accordance with clauses 12.12 and 12.13.

Minutes

- 12.22. The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Shareholders.
- 12.23. Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.

13. VOTING AT MEETINGS

Quorum

- 13.1. A quorum for a meeting of Shareholders is as provided in clauses 9.5 to 9.6 of the Shareholders Agreement.
- 13.2. Subject to clause 13.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 13.3. If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called under a requisition of Shareholders under clause 12.4(b) the meeting is dissolved; or
 - (b) in the case of any other meeting, the meeting is 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 Directors may appoint (and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present are a quorum).
- 13.4. To avoid doubt, a Shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.

Voting

- 13.5. Nothing in clauses 13.6 to 13.24 applies to an election of Directors, or Chairperson, under clauses 14.3 and 14.4.

- 13.6. In the case of a meeting of Shareholders held under clause 12.17(a), unless a poll is demanded, voting at the meeting will be open to those Shareholders present and voting by whichever of the following methods is determined by the chairperson of the meeting:
- (a) voting by voice; or
 - (b) voting by show of hands.
- 13.7. In the case of a meeting of Shareholders held under clause 12.17(b) or (c), unless a poll is demanded, voting at the meeting will be open to those Shareholders present and voting by any method permitted by the chairperson of the meeting.
- 13.8. A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded in accordance with clause 13.9.
- 13.9. At a meeting of Shareholders, a poll may be demanded by:
- (a) not less than 5 Shareholders having the right to vote at the meeting;
 - (b) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
 - (c) the chairperson of the meeting.
- 13.10. A poll may be demanded either before or after the vote is taken on a resolution.
- 13.11. If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present (in person or by proxy) and voting.
- 13.12. The chairperson of a Shareholders meeting is not entitled to a casting vote.
- 13.13. For the purposes of this clause, the instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.
- 13.14. Notwithstanding the preceding clauses any matter to be decided by the Shareholders may be determined by way of postal vote in accordance with Schedule 4 of the Shareholders Agreement rather than by way of a meeting of Shareholders.

Proxies

- 13.15. A Shareholder may exercise the right to vote at a meeting of Shareholders either by being present or by proxy.
- 13.16. A proxy for a Shareholder is entitled to attend, be counted for the purposes of determining a quorum, be heard, and vote at a meeting of Shareholders as if the proxy were the Shareholder.
- 13.17. A proxy must be appointed by notice in writing signed by, or in the case of an electronic notice, sent by the Shareholder to the Company, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- 13.18. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company not less than 48 hours before the start of the meeting.

Shareholder representative

- 13.19. Each Shareholder must appoint at least one representative, but not more than two representatives, as its agent to attend meetings of Shareholders and deal with other Shareholder matters on its behalf. Where two representatives are appointed, their appointments will be several and the Company and other Shareholders will be entitled to

deal with either representative without the need to consult or defer to the other. The form of appointment:

- (a) must be in writing signed by, or in the case of an electronic form, sent by the Shareholder to the Company;
- (b) must identify the Shareholder's representative by name and position;
- (c) must confirm the representative's mandate to attend and participate in Shareholder meetings and deal with Shareholder matters on behalf of the Shareholder;
- (d) must describe any limitations to the representative's mandate;
- (e) cannot be for a period of more than 12 months, following which the mandate must be renewed or replaced;
- (f) must be produced to the Company immediately following the entry of the Shareholder's name in the Register.

13.20. Subject to any specific limitations recorded in the form of appointment, each representative appointed in accordance with this clause is deemed to be, and has the authority to act as:

- (a) the proxy of the appointing Shareholder as if that representative was appointed under clause 13.17; and
- (b) the attorney of the appointing Shareholder authorised to sign any documents on behalf of the Shareholder.

13.21. A person purporting to represent a Shareholder:

- (a) does not have the right to attend or participate at Shareholder meetings unless a proxy or a representative mandate has been produced in accordance with clauses 13.17 to 13.19 above; and
- (b) does not have the right to deal with other Shareholder matters unless a representative mandate has been produced in accordance with clause 13.19 above.

13.22. A person must not be appointed as a proxy or representative of more than 2 Shareholders at any one time.

Meetings of Interest Groups

13.23. Clauses 12 and 13 shall, with such consequential amendments as may be necessary, govern the proceedings of any meeting of an Interest Group (namely, a meeting of Shareholders holding Shares of a particular Share Category).

Other proceedings

13.24. Except as provided in this Constitution and the Shareholders Agreement, the Shareholders may regulate their own procedure at meetings of Shareholders.

PART IV: THE BOARD

14. APPOINTMENT AND REMOVAL

Number of Directors

14.1. Subject to clause 16.24 and the Shareholders Agreement:

- (a) the Initial Board is to comprise 3 Initial Directors; and
- (b) subsequent Boards are to comprise 5 Directors.

Initial Directors and Chairperson

14.2. Upon incorporation of the Company under the Act:

- (a) the Directors of the Initial Board are the persons named as the Directors in the application for incorporation of the Company (**Initial Directors**); and
- (b) the person referred to in clause 8.3 of the Shareholders Agreement is to be the Chairperson (**Initial Chairperson**).

Appointment of subsequent Directors and Chairperson

14.3. Subject to clause 14.2, Shareholders must elect, in accordance with the Shareholders Agreement, Directors and a Chairperson when a vacancy or vacancies arise in those offices.

14.4. The procedure for the election of Directors and Chairperson (not being the Initial Directors or Initial Chairperson) must be in accordance with Schedules 2 or 3 of the Shareholders Agreement.

Term of Office

14.5. A Director holds office until:

- (a) the expiry of the Directors' term of office; or
- (b) the Director's resignation, disqualification or removal in accordance with this Constitution.

14.6. Subject to clause 14.7, the terms of office of Directors and the Chairperson expire 3 years from the date of appointment unless the Shareholders decide by Ordinary Resolution that a term of less than 3 years will apply.

14.7. The terms of office of the Initial Directors and the Initial Chairperson expire on the dates set out in clauses 8.2 and clause 8.3 respectively of the Shareholders Agreement.

14.8. Directors may apply for re-election at the expiry of their terms of office provided, however, that no Director will hold office for more than 3 terms (excluding a term served as an Initial Director).

Resignation

14.9. A Director may resign office by signing a written notice of resignation and delivering it to the Company. The notice takes effect upon the later of:

- (a) the receipt of it at the registered office of the Company (including receipt of an electronic copy); and
- (b) any later time specified in the notice.

Disqualification

14.10. A person will be disqualified from holding the office of Director if the Director:

- (a) is removed by a Special Resolution of Shareholders under clause 14.11;
- (b) resigns in writing under clause 14.9 and is not reappointed in accordance with this Constitution;
- (c) becomes disqualified from being a director under section 151 of the Act (Qualifications of directors);
- (d) is disqualified from being an officer under section 36B of the Charities Act 2005 (Qualifications of officers of charitable entities);
- (e) is physically or mentally incapacitated to the extent that he or she lacks the capacity to perform the duties of a Director;
- (f) is a current officer or employee of a Shareholder;
- (g) is a current officer or employee of a contractor to the Company;
- (h) has been, at any time in the past 3 financial years, an officer or employee of a Shareholder or a contractor to the Company; or
- (i) has previously held office as a Director for 3 terms (excluding a term served as an Initial Director).

Removal from Office

14.11. A Director (including the Chairperson) may be removed from office by Special Resolution passed at a Shareholders meeting called for the purpose or for purposes that include the removal of the Director (or the Chairperson, as the case may be). The notice of the meeting must state that the purpose or a purpose of the meeting is the removal of the Director from the Board or, as the case may be, the removal of the Chairperson from office.

Shareholding qualification

14.12. A Director is not required to hold Shares.

Exclusion of Companies Act

14.13. Sections 155(1) and 156(1) of the Act (in relation to the appointment and removal of Directors of the Company) do not apply to the Company.

15. POWERS AND DUTIES OF THE BOARD

Powers of the Board

15.1. Subject to clause 15.2 and any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.

15.2. 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 or the Act expressly requires those powers to be exercised by the Shareholders or any other person.

Directors to act in good faith

- 15.3. Subject to section 131 of the Act, a Director, when exercising powers or performing duties, must act in good faith and in what the Director believes to be the best interests of the Company. To avoid doubt, in considering the best interests of the Company for the purposes of this clause, a Director must consider that those interests are best served by the fulfilment of the Company's charitable purposes and adherence to the Company's approved strategic plan (to the extent that the strategic plan is consistent with the Company's charitable purposes).
- 15.4. Nothing in clause 15.3 limits the power of a Director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.

Major Transactions

- 15.5. The Board must not procure or permit the Company to enter into a Major Transaction unless the transaction is:
- (a) approved by a Special Resolution; or
 - (b) made contingent on approval by a Special Resolution.

16. PROCEEDINGS OF THE BOARD

Third Schedule

- 16.1. The provisions of the Third Schedule to the Act are deleted and replaced by this clause 16.

Chairperson

- 16.2. If a new Chairperson is not elected on the expiry of a Chairperson's term, the existing Chairperson may continue in office or the Board may appoint an acting chairperson from among their number until a new Chairperson is elected.
- 16.3. If no Chairperson is elected, or if at a meeting of the Board the Chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

Notice of meeting

- 16.4. 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 clauses 16.5 to 16.8.
- 16.5. Subject to clause 16.8, not less than 5 Working Days' notice of a meeting of the Board must be given to every Director. The notice must include the date, time and place of the meeting and the matters to be discussed.
- 16.6. The giving of a notice of a meeting or an irregularity in the notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 16.7. Notice of a meeting may be given by any means, including by telephone. To avoid doubt, the notice may be sent via an electronic communication in accordance with clause 21.7 if the Director has provided the Company with an address for the receipt of electronic communications.

- 16.8. It is not necessary to give notice of a meeting of the Board to any Director that, to the knowledge of the Company, is unavailable for meetings due to being temporarily absent from New Zealand.

Method of holding meetings

- 16.9. A meeting of the Board may be held either:
- (a) by a number of Directors sufficient to form a quorum, being assembled together at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual communication, by which all the Directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.
- 16.10. Where a meeting of the Board is held under clause 16.9(b), at the commencement of the meeting each Director participating must acknowledge his or her presence to all the Directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the Chairperson.

Quorum

- 16.11. A quorum for a meeting of the Initial Board and any subsequent Boards is the number of Directors provided in clause 8.6(d) of the Shareholders Agreement.
- 16.12. No business may be transacted at a meeting of Directors if a quorum is not present.

Voting

- 16.13. Each Director has one vote.
- 16.14. The Chairperson (in his or her capacity as a Director) has one vote and does not have a casting vote.
- 16.15. 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 are in favour of it.
- 16.16. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of a resolution of the Board, unless he or she expressly dissents from (or votes against) the resolution at the meeting.

Interested Directors

- 16.17. A Director must not vote in respect of any transaction in which the Director is interested. The Director must, immediately upon becoming aware of the interest, disclose the nature of his or her interest in the transaction. The interested Director must, at the Chairperson's request, leave the meeting during deliberation and voting on the interested transaction and return to the meeting when invited to do so by the Chairperson. The Chairperson will inform the interested Director of the Board's decision on the transaction.

Minutes

- 16.18. The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board.
- 16.19. Minutes of proceedings of the Board which have been signed correct by the Chairperson are prima facie evidence of the proceedings.

Unanimous resolution

- 16.20. 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.
- 16.21. Any such resolution may consist of several documents (including electronic or other similar means of communication) in like form each signed or assented to by one or more Directors.
- 16.22. A copy of any such resolution must be entered in the minute book of Board proceedings.

Other proceedings

- 16.23. Except as provided in this clause 16 the Board may regulate its own procedure.

Continuing Directors

- 16.24. The continuing Directors will continue to comprise the Board notwithstanding any vacancy in the number of Directors. If their number is reduced below the number fixed by this Constitution as the number of Directors, the continuing Directors will comprise the Board only for the purpose of summoning an Election Meeting or Postal Election in accordance with Schedules 2 or 3 respectively of the Shareholders Agreement.

17. INTERESTED DIRECTORS

Authority to remunerate Directors

- 17.1. Directors are entitled to remuneration for their services as directors. Remuneration will be determined by Ordinary Resolution at an Annual Meeting.
- 17.2. The payment of remuneration to a Director in accordance with a contract authorised under clause 17.1 need not be separately authorised by the Board.
- 17.3. The Board must ensure that immediately after authorisation of any payment under clause 17.1, particulars are entered in the Interests Register.
- 17.4. Directors are entitled to reimbursement of reasonable expenses incurred in the performance of their duties subject to the provision of appropriate evidence (including tax invoices or receipts) in accordance with any relevant Company policies.

No other offices to be held with Company

- 17.5. A Director must not act by himself or herself, or by the Director's firm, in a professional capacity for the Company.
- 17.6. A Director must not hold any other office with the Company.
- 17.7. A Director is disqualified by virtue of his or her office from entering into any transaction with the Company.

Notice of interest to be given

- 17.8. A Director must, immediately after becoming aware of the fact that he or she is Interested in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, and, if the Company has more than one Director, disclose to the Board of the Company:

- (a) if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.

17.9. For the purposes of clause 17.8, a general notice entered in the Interests Register or disclosed to the Board to the effect that a Director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as Interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

17.10. Notwithstanding any other provision to the contrary in this Constitution:

- (a) any income, benefit or advantage must be used to advance the charitable purposes of the Company;
- (b) no shareholder or director of the Company or person associated with a shareholder or a director of the Company is allowed to take part in or influence any decision made by the Company in respect of payments to, or on behalf of, the shareholder or director or any associated person of any income, benefit or advantage;
- (c) any payments made to a shareholder or a director of the Company, or a person associated with a shareholder or a director of the Company, must be for goods or services that advance the charitable purposes of the Company and must be reasonable and relative to payments that would be made between unrelated parties, provided however that nothing in this clause shall prevent any income, benefit or advantage being paid to any person for any charitable purpose.

18. INDEMNITY AND INSURANCE

Indemnity of Directors and employees

18.1. The Board must cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by him or her in any proceeding:

- (a) that relates to liability for any act or omission in his or her capacity as a Director or employee; and
- (b) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.

18.2. The Board must cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:

- (a) liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee; or
- (b) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under clause 18.1 above;

not being:

- (c) criminal liability; or
- (d) liability for the breach of section 131 of the Act; or
- (e) in the case of an employee, liability for breach of any fiduciary duty owed to the Company or a related company.

Insurance of Directors and employees

- 18.3. The Board may, subject to section 162 of the Act (Indemnity and insurance), cause the Company to effect insurance for Directors and employees of the Company or a related company in respect of:
- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or
 - (b) costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or
 - (c) costs incurred by a Director or employee in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.
- 18.4. The Directors who vote in favour of authorising the effecting of insurance under clause 18.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.
- 18.5. The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related company are immediately entered in the Interests Register.

Definitions

- 18.6. For the purpose of this clause 18, “Director” includes a former Director and “employee” includes a former employee.

PART V: ADMINISTRATION AND MISCELLANEOUS

19. AUTHORITY TO BIND

Method of Contracting

- 19.1. A contract or other enforceable obligation may be entered into by the Company as follows:
- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
 - (i) two or more Directors of the Company;
 - (ii) a Director or any other person or class of persons authorised by the Board for that purpose whose signature or signatures must be witnessed;
 - (iii) one or more attorneys appointed by the Company in accordance with clause 19.3;
 - (b) 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; and
 - (c) 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.

- 19.2. A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the Company will be proof of such authority notwithstanding that the authority may have been subsequently revoked.

Attorneys

- 19.3. The Company may, by an instrument in writing executed in accordance with clause 19.1(a)(i), appoint a person as its attorney either generally or in relation to a specified matter or matters.
- 19.4. An act of the attorney in accordance with the instrument binds the Company.

20. LIQUIDATION

Appointment of liquidator

- 20.1. A liquidator of the Company may be appointed by a Special Resolution of those Shareholders entitled to vote and voting on the question.

Distribution of surplus assets

- 20.2. Subject to the terms of issue of any Shares and approval by Special Resolution of the Shareholders, upon the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation will be distributed to a charitable entity operating in New Zealand with the same or similar charitable purposes as the Company.

Removal from New Zealand register

- 20.3. Subject to sections 318 and 320 of the Act (Removal from register), a Director, who has been authorised by the Board to do so, may request the Registrar to remove the Company from the New Zealand register on the grounds that:
- (a) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
 - (b) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation.
- 20.4. For the purposes of clause 20.3(a), the Company shall be treated as having distributed its surplus assets in accordance with this Constitution if the Company does so in accordance with clause 20.2 except that no liquidator needs to be appointed and references to the liquidator in that clause will be construed as references to the Shareholders acting by Special Resolution.
- 20.5. In the event that the Shareholders Agreement is terminated for any reason, accumulated income must continue to be applied in a manner that preserves the Company's charitable status under New Zealand law and such that it is able to maintain its registration as a charitable entity under the Charities Act 2005.

21. DEFINITIONS AND INTERPRETATION

21.1. In this Constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

Act means the Companies Act 1993;

Amalgamation means the completed act of the Company and one or more other companies amalgamating under Part 13 of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company;

Annual Meeting means a meeting of Shareholders held under clause 12.1;

Balance Date means the date adopted by the Company as the end of its financial year for the purpose of its annual financial statements;

Board means the Directors numbering not less than the required quorum acting as the board of directors of the Company and includes the Initial Board;

Chairperson means the chairperson of the Board appointed under this Constitution;

Company means Tairāwhiti Community Commissioning Limited;

Constitution means this constitution of the Company and all amendments to it from time to time;

Director means a person appointed and continuing in office for the time being, in accordance with this Constitution and the Shareholders Agreement, as a director of the Company and includes an Initial Director;

Distribution, in relation to a distribution by a company to a shareholder, means:

- (a) the direct or indirect transfer of money or property, other than Shares, to or for the benefit of the shareholder; or
- (b) the incurring of a debt to or for the benefit of the shareholder,

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means;

Dividend means a Distribution by the Company other than a Distribution to which section 59 (Acquisition of company's own shares) or section 76 (Financial assistance) of the Act applies;

Initial Board means the board of Initial Directors;

Initial Director means a person named as a Director in the application for incorporation of the Company referred to in clause 14.2 of this Constitution and clause 8.2 of the Shareholders Agreement;

Interest Group, in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who hold Shares in one Share Category.

For the purposes of this definition:

- (a) one or more Interest Groups may exist in relation to any action or proposal; and

- (b) if:
- (i) action is taken in relation to some Shareholders in a Share Category and not others; or
 - (ii) a proposal expressly distinguishes between some Shareholders in a Share Category and other Shareholders in that Share Category,
- Shareholders in the same Share Category may fall into two or more Interest Groups;

Interested has the meaning given in clause 21.2;

Interests Register means a register kept by the Company at its registered office as required by section 189(1)(c) of the Act (Company records);

Iwi Sector has the meaning given in the Shareholders Agreement;

Major Transaction, in relation to the Company, means:

- (a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the Company's assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of (whether contingent or not), assets of the Company, the value of which is more than half the value of the Company's assets before the disposition; or
- (c) a transaction which has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities, the value of which is more than half the value of the Company's assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed under an instrument creating a charge over all or substantially all of the property of the Company.

Nothing in paragraphs (b) or (c) of this definition applies by reason only of the Company giving, or entering into an agreement to give, a charge secured over assets of the Company the value of which is more than half the value of the Company's assets for the purpose of securing the repayment of money or the performance of an obligation;

month means calendar month;

Ordinary Share means a Share which confers on the holder the right to vote at meetings of Shareholders;

Philanthropy Sector has the meaning given in the Shareholders Agreement;

Register means the register of Shares required by clause 7 of this Constitution and section 87 of the Act to be kept;

Registrar means the Registrar of Companies appointed under section 357(1) of the Act;

Share means a share in the Company;

Share Categories has the meaning set out in clause 4.1;

Shareholder means a person:

- (a) registered in the Register as the holder of one or more Shares; or

- (b) until the person's name is entered in the Register, a person named as a shareholder in the application for registration of the Company at the time of registration of the Company; or
- (c) until the person's name is entered in the Register, a person who is entitled to have that person's name entered in the Register under a registered Amalgamation proposal as a shareholder in an amalgamated company;

Shareholders Agreement means the agreement entered into by the Shareholders and the Company on or about the date of incorporation of the Company (as amended from time to time);

Social Services Provider Sector has the meaning given in the Shareholders Agreement;

Special Meeting means any meeting (other than an Annual Meeting) of Shareholders entitled to vote on an issue called at any time by the Board or by any other person who is authorised by the Board to call meetings of Shareholders;

Special Resolution means a resolution of Shareholders approved by a majority of 75 percent of the votes of those Shareholders entitled to vote and voting on the question;

Working Day means a day of the week other than:

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Ra Aro ki a Matariki/Matariki Observance Day, and Labour Day;
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday;
- (c) a day in the period commencing with 25 December in any year and ending with 2 January in the following year;
- (d) if 1 January in any year falls on a Friday, the following Monday; and
- (e) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

21.2. **Definition of Interested:** For the purposes of this Constitution:

- (a) subject to clause 21.2(b), a director of a company is **Interested** in a transaction to which the company is a party if, and only if, the director:
 - (i) is a party to, or will or may derive a material financial benefit from, the transaction; or
 - (ii) has a material financial interest in another party to the transaction; or
 - (iii) is a director, officer, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is:
 - A. the company's holding company being a holding company of which the company is a wholly owned subsidiary; or
 - B. a wholly owned subsidiary of the company; or
 - C. a wholly owned subsidiary of a holding company of which the company is also a wholly owned subsidiary; or
 - (iv) is the parent, child, spouse, civil union partner, or de facto partner of another party to, or person who will or may derive a material financial benefit from, the transaction; or

- (v) is otherwise directly or indirectly materially interested in the transaction;
and
 - (b) a director of a company is not interested in a transaction to which the company is a party if the transaction comprises only the giving by the company of security to a third party which has no connection with the director, at the request of the third party, in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security.
- 21.3. In this Constitution, unless the context otherwise requires:
 - (a) headings are inserted for convenience only and shall be ignored in construing this Constitution;
 - (b) the singular includes the plural and vice versa;
 - (c) one gender includes the other genders;
 - (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
 - (e) **written** and **in writing** includes any means of reproducing words, figures or symbols:
 - (i) in a tangible and visible form in any medium; or
 - (ii) in a visible form in any medium by electronic means that enables them to be stored in a permanent form and be retrieved and read; and
 - (f) **signature** includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory's approval of the information contained in the document;
 - (g) a reference to a clause is to that clause in this Constitution unless stated otherwise; and
 - (h) a reference to a clause of the Shareholders Agreement includes a reference to any clause amending or replacing that clause if the Shareholders Agreement is amended from time to time.
- 21.4. Subject to this clause 21, expressions contained in this Constitution bear the same meaning as specified in the Act as amended from time to time.
- 21.5. If the Act changes in a way that would, but for this clause, cause section 31 of the Act (Effect of constitution) to apply to any clause then that clause will be deemed to be amended in the same manner as the change in the Act so that this Constitution does not contravene or become inconsistent with the Act.
- 21.6. In this clause, the term **Legal Requirement** has the meaning given to it by the Contract and Commercial Law Act 2017. Where a Legal Requirement under the Act is reproduced in this Constitution, the provision of this Constitution which reproduces that Legal Requirement may be met by using electronic means in accordance with the Contract and Commercial Law Act 2017.
- 21.7. Service of documents by email will be determined in accordance with the Act. However, where the Act does not apply in relation to a document under this Constitution which is

sent in electronic form and via an electronic communication, for the purposes of the Contract and Commercial Law Act 2017, s214, such a document is taken to be received:

- (a) if sent by the Company, on the Working Day that it is sent or the next Working Day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication;
- (b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the Company may agree.

To avoid doubt, any document so sent may be in any widely used electronic form.

SHAREHOLDERS AGREEMENT
TAIRĀWHITI COMMUNITY COMMISSIONING LIMITED

**Draft for Community and Shareholder
consultation**

12 May 2026

[INSERT CONTENTS PAGE]

SHAREHOLDERS AGREEMENT – TAIRĀWHITI COMMUNITY COMMISSIONING LIMITED

DATED: [insert date]

BETWEEN

The Shareholders of Tairāwhiti Community Commissioning Limited, being those persons set out in clause 4.3 who have signed this Agreement (**Shareholders**);

AND

Tairāwhiti Community Commissioning Limited (**Company**) a duly incorporated company having its registered office at [insert registered office].

RECITALS

- A. The Company is to be incorporated on or about [insert date] as a charitable company. The Company's charitable purpose is described at clauses 2.2 and 2.3 of this Agreement and clauses 3.1 and 3.2 of the Constitution.
- B. The Shareholders agree that social wellbeing in Tairāwhiti is an important focus for all of them. Their common aspiration is for all people in Tairāwhiti to enjoy a high quality of life at every stage of their lives. The Shareholders have established the Company to achieve this aspiration.
- C. The Company's business is to deliver community commissioning and place-based initiatives in the Tairāwhiti Region. Community commissioning is a model in which decision-making authority for social service investment is devolved to local leaders. This empowers communities to tailor social service solutions appropriate to the specific needs of those communities.
- D. The four governance principles underlying the Company's formation are:
 - Community ownership: the entity is owned by the community through a shareholding structure that reflects the Tairāwhiti community and interests. This ensures that the breadth of local perspectives is taken into account.
 - Skills based, locally committed governance: the entity is governed by an independent, skills-based board elected by shareholders.
 - Fit for purpose legal structure: a legal structure which supports robust governance, accountability, simplicity, transparency and cost-efficiency will be established.
 - Strategic prioritisation driven by whanau voice, data, and insights: strategic decision-making is driven and improved by whanau voice, data and insights.
- E. This Agreement records the matters agreed between the Shareholders in relation to the operation of the Company and the relationship between the Shareholders as shareholders in the Company.

OPERATIVE PART:

1. TERM

- 1.1. The term of this Agreement (**Term**) commences on [insert date / date of incorporation of the Company] and continues until it is terminated in accordance with clause 16.1.

2. ACTIVITIES OF THE COMPANY AND RELATIONSHIP OF SHAREHOLDERS

Objective of the Shareholders

- 2.1. The objective of the Shareholders in relation to the Company is for the Company to be:
- (a) a community commissioning agency and place-based initiative for the Tairāwhiti Region; and
 - (b) a charitable entity registered under the Charities Act 2005 and established exclusively for the charitable purposes set out in clause 2.2.

Charitable Purposes

- 2.2. The purposes of the Company are exclusively charitable within the meaning of s5(1) of the Charities Act 2005.
- 2.3. Without limiting the generality of clause 2.2, the Company's charitable purposes include:
- (a) to relieve poverty and hardship by commissioning, funding, collaborating and supporting through evidence based decision-making initiatives that directly assist individuals or communities experiencing social, economic, or material disadvantage;
 - (b) to advance education by commissioning, funding, and supporting programmes that improve access to learning, skills development, capability building, and knowledge for the public benefit; and
 - (c) to advance community wellbeing and achieve whanau self-reliance by commissioning, funding, and supporting services and initiatives that are beneficial to the community and which are analogous to purposes recognised by New Zealand law as charitable,
- within the Tairāwhiti Region.

Shareholders' duty to act in best interests of Company

- 2.4. The Shareholders acknowledge that:
- (a) the Company is a charity and must fulfil its charitable purposes for public benefit;
 - (b) the Shareholders are not commercial investors, have no expectation of profit, and will not receive distributions from the Company;
 - (c) the Shareholders hold Shares due to the community ownership principle underlying the Company's formation; ie, that the Company is owned by the community through a shareholding structure that reflects Tairāwhiti community and interests, thereby ensuring that the breadth of local perspectives is taken into account; and
 - (d) the Board must be independent and its decisions free from the influence of any persons acting in their own interests rather than the best interests of the Company.

2.5. Further to the acknowledgments in clause 2.4, the Shareholders agree as follows:

- (a) each Shareholder must, when exercising any rights or powers conferred by the Constitution or the Companies Act, act in good faith and in the best interests of the Company; and
- (b) each Shareholder must, when exercising the right to approve a Major Transaction under clause 15.5 of the Constitution and s129 of the Companies Act, approve any Major Transaction which is in the Ordinary Course of Business.

For the purposes of this clause, **Ordinary Course of Business** means the running of the Company's day-to-day operations in accordance with the Company's:

- (i) charitable purpose;
- (ii) business as a commissioning agency;
- (iii) approved strategic plan; or
- (iv) activities to establish its business and operations for the first year following incorporation, and

includes any activities that are administrative, routine, or recurring in nature.

- (c) Where the Shareholders pass a Special Resolution to approve a Major Transaction under clause 2.5(b), each Shareholder (whether or not that Shareholder has voted in favour of that Special Resolution) will be deemed to have irrevocably appointed the Company to sign on that Shareholder's behalf, and as that Shareholder's attorney, every document or instrument required to give effect to the Major Transaction.

Relationship of the Shareholders

2.6. Each Shareholder must:

- (a) use its best endeavours to co-operate with the other Shareholders and not unreasonably delay any action, decision or notice required under this Agreement; and
- (b) (in its capacity as a Shareholder of the Company) be just and faithful and provide full information to each other Shareholder in relation to the affairs and activities of the Company,

in each case in accordance with this Agreement.

Compliance with this Agreement

2.7. The Shareholders must comply with and do all things necessary to carry out this Agreement.

2.8. The Company must comply with and do all things necessary to carry out this Agreement.

Limitation of Shareholder liability

2.9. Subject to clause 2.10 below, the Shareholders agree and acknowledge that:

- (a) the Constitution will not provide for unlimited liability and a Shareholder is therefore not liable for an obligation of the Company by reason only of being a Shareholder;
- (b) there will be no amounts unpaid on a Share held by a Shareholder;

- (c) further to clauses 10.1 and 10.2 of this Agreement, the Shareholders will not receive distributions from the Company and, therefore, will not be liable to repay any distributions recoverable under s56 of the Act;
 - (d) a Share will not render its holder liable to calls or otherwise impose any liability on its holder; and
 - (e) nothing in this Agreement obligates a Shareholder to provide any equity or debt funding to, or to guarantee or offer security for any obligations of the Company.
- 2.10. Notwithstanding clause 2.9 above, the Shareholders agree and acknowledge that:
- (a) a Shareholder may be liable under ss131 to 137 of the Act if the Shareholder is a deemed director under s126(2) of the Act; and
 - (b) nothing in this Agreement affects the liability of a Shareholder to the Company under a contract, or for any tort, or breach of fiduciary duty, or other actionable wrong committed by the Shareholder.
- 2.11. Each Shareholder is responsible for its own obligations under this Agreement and is not liable for the obligations of any other party.
- 2.12. This Agreement does not create any relationship between the Shareholders (or any of them) which renders a Shareholder liable for the acts or omissions of another Shareholder and, in particular, a Shareholder:
- (a) must not represent itself as a partner, principal, agent, or trustee of another Shareholder; and
 - (b) does not have authority to act for, or create or assume any responsibility or obligation on behalf of, another Shareholder.

3. CONSTITUTION

3.1. The Shareholders agree that:

- (a) promptly after this Agreement is signed by all the Parties, they must pass a Special Resolution adopting a Constitution in the form attached to this Agreement (if the Company is not formed with that Constitution); and
- (b) if for any reason the Constitution is, or becomes, inconsistent with this Agreement, they must pass a Special Resolution amending the Constitution, or adopting a new Constitution, to make it consistent with this Agreement; and
- (c) if this Agreement is terminated in a circumstance where the Company is not to be liquidated or wound up they must, prior to the termination of this Agreement, take such steps and do all such acts and things as may be necessary (including but not limited to amending the Constitution):
 - (i) to ensure that the Company's objects continue to be exclusively for charitable purposes in New Zealand and to ensure that the Company maintains its charitable status under New Zealand law and its registration as a charitable entity under the Charities Act 2005; and
 - (ii) to ensure accumulated income is continued to be applied for charitable purposes in New Zealand.

4. INITIAL SHARE CAPITAL

Initial Share Capital

4.1. The Shareholders confirm that:

- (a) the total issued share capital of the Company is **100** Shares issued for no consideration (**Initial Share Capital**);
- (b) the Initial Share Capital is issued to the Shareholders as set out in clause 4.3; and
- (c) each of the Shareholders fulfils the Shareholder Eligibility Criteria.

4.2. The Shareholders agree that:

- (a) each Shareholder is issued the number of Shares beside that Shareholder's name in clause 4.3;
- (b) the Initial Share Capital is to be divided into Shares of the following categories (**Share Categories**):
 - (i) Iwi Sector Shares (45 Shares);
 - (ii) Social Services Provider Sector Shares (45 Shares); and
 - (iii) Philanthropy Sector Shares (10 Shares); and
- (c) each Shareholder is to hold Shares of the Share Category beside that Shareholder's name in clause 4.3.

Proposed Allocation of Initial Share Capital

4.3. The Share Capital is to be held as follows as at the date of incorporation:

Sector	Name of Shareholder	Contact details	Number of Shares
Iwi			
Social Services Provider			
Philanthropy			
Total shares			100

Second issue of Shares

4.4. The parties acknowledge that:

- (a) one of the governance principles upon which the Company is formed is community ownership; that the company is owned by the community through a shareholding structure that reflects the Tairāwhiti community and interests;
- (b) there are organisations who fulfil the Shareholder Eligibility Criteria who have not taken a shareholding in the Initial Share Capital;
- (c) based on the principle of community ownership, eligible organisations should be given a further opportunity to apply for and receive an issue of Shares for a defined period following the Company's incorporation,

provided, however, that the total number of Shareholders in the Social Services Provider Sector must not exceed 30 Shareholders.

4.5. Given the acknowledgments in clause 4.4, the parties agree that, in the 12-month period following the Company's incorporation date (**Year 1**):

- (a) in the first 9 months of Year 1:
 - (i) the Company will invite organisations that, in the Board's discretion, are likely to satisfy the Shareholder Eligibility Criteria, to apply for new shares in the Company (**Applicants**);
 - (ii) the Board will assess the information submitted by Applicants to confirm:
 - whether the Applicants fulfil the Shareholder Eligibility Criteria; and
 - whether the Applicants fall within the definition of one of the 3 Sectors, being the Iwi Sector, Social Services Provider Sector, or Philanthropy Sector; and
 - if the number of Applicants for, and existing Shareholders in, the Social Services Provider Sector exceeds 30, which of the Applicants the Board will select to be Shareholders in that Sector without exceeding the cap of 30 Shareholders set out in clause 4.4; and
 - (iii) the Company will notify the Applicants and the Shareholders of the outcome of the Board's assessment; and
- (b) in the last 3 months of Year 1:
 - (i) the Board will approve the issue of 900 Shares (**Second Shares**) bringing the total number of Shares on issue to 1000 Shares;
 - (ii) the Second Shares will be divided among the Share Categories in the same proportions as set out in clause 4.2, that is:
 - Iwi Sector Shares (45 initial Shares plus 405 Second Shares for a total of 450 Shares);
 - Social Services Sector Shares (45 initial Shares plus 405 Second Shares for a total of 450 Shares);
 - Philanthropy Sector Shares (10 initial Shares plus 90 Second Shares for a total of 100 Shares);
 - (iii) the Company will issue the Second Shares to the Applicants and the Shareholders to ensure that, within each Share Category, each holds an equal number of Shares (or as close as possible to an equal number of Shares);
 - (iv) the Board will pass resolutions and ensure that the Company prepares all necessary documents and filings, and the Applicants and Shareholders undertake to do all things necessary to assist, to ensure that the Second Shares are issued before the end of Year 1; and
 - (v) the Board has the discretion to develop and implement a policy setting out how the Company will give effect to this clause 4.5 including, without limitation, timeframes for the invitations referred to in clause 4.5(a)(i) and the scope of the information to be submitted by Applicants (clause 4.5(a)(ii)).

- 4.6. The Company must not issue Shares except in accordance with clause 4.5 or clause 5. Nothing in clause 5 of this Agreement applies to the issue of Second Shares under clause 4.5. For the avoidance of doubt, the issue of Shares under clause 4.5 does not require the approval of Shareholders by Special Resolution.

Nature of Shareholders

- 4.7. The Shareholders acknowledge that each of them represents the interests of the Sector to which the Share Category held by that Shareholder relates.

5. NEW SHARE CAPITAL

Issue of additional Shares

- 5.1. Notwithstanding clause 4.5, and not earlier than 12 months following the Company's incorporation date, the Company may issue Shares in addition to the Initial Share Capital and Second Shares if:

- (a) the Shareholders resolve by Special Resolution that a share issue is required to preserve proportionality between shareholdings or Sectors and to ensure that interests in Shares are not fractionalised as a consequence of subsequent transfers; or
- (b) the Shareholders resolve the following matters by Special Resolution:
 - (i) that the Company is to be responsible for a sector (**Additional Sector**) in addition to the Sectors described at clause 4.2(b) (**Initial Sectors**);
 - (ii) that Shares of a number agreed to by the Shareholders be issued to that Additional Sector (**Additional Sector Shares**);
 - (iii) the name of the legal entity (or entities) to whom the Additional Sector Shares are to be issued (**Additional Shareholders**), being a person (or persons) who represent the interests of the Additional Sector;
 - (iv) that the Additional Shareholders, if more than one, are each to hold an equal number of the Additional Sector Shares (or as close as possible to an equal number of shares);
 - (v) that the Additional Sector Shares be of a Share Category specified by the Special Resolution (**Additional Share Category**);
 - (vi) the application of the Shareholder Eligibility Criteria to that Additional Share Category;
 - (vii) the terms of issue of the Additional Sector Shares; and
 - (viii) any consequential changes to be made to this Agreement due to the Company resolving:
 - A. to be responsible for an Additional Sector; and
 - B. the other matters referred to in this clause 5.1(b);

and, furthermore:

- (ix) each Additional Shareholder signs an undertaking with the Company and the Shareholders in the form set out in Schedule 1 (with appropriate amendments) to the effect that the Additional Shareholder will, on registration as a Shareholder, become a party to and bound by the terms and conditions of this Agreement (including any amendments under

clause 5.1(b)(viii)) as if that Additional Shareholder had been one of the Shareholders as at the date of incorporation of the Company; and

all requirements of the Companies Act in relation to the issue of Shares under clauses 5.1(a) or 5.1(b) are met.

Authority for the Company to sign the undertaking on behalf of Shareholders

- 5.2. If the Shareholders pass a Special Resolution under clause 5.1 approving the issue of Shares, each Shareholder (whether or not that Shareholder has voted in favour of that Special Resolution) will be deemed to have irrevocably appointed the Company to sign on that Shareholder's behalf, and as that Shareholder's attorney, every instrument required to give effect to the issue, including any undertaking with each Additional Shareholder under clause 5.1(b)(ix).

No consideration for issue of Shares

- 5.3. There must be no payment or consideration for the issue of any Share.

No pre-emptive rights

- 5.4. Section 45 of the Companies Act (Pre-emptive rights) does not apply.

6. TRANSFER OF SHARES

Restrictions on Transfers

- 6.1. Shareholders must not Transfer Shares except in accordance with this clause 6.

Voluntary Transfer of Share

- 6.2. If a Shareholder wishes to Transfer its Shares, and the Shareholders by Special Resolution approve the proposed Transfer, the Shareholder may Transfer those Shares:
- (a) pro rata to all other Shareholders who hold Shares of the same Share Category;
 - (b) to a person who meets the Shareholder Eligibility Criteria and consents to becoming a Shareholder; or
 - (c) to the Company in accordance with clause 5 of the Constitution,
- upon the terms and conditions set out in the Special Resolution approving the transfer.

Compulsory Transfer of Shares

- 6.3. If a Shareholder is in Default (as defined in clause 15.1), and the Shareholders, by Special Resolution, require that Shareholder to Transfer its Shares, the Shareholder must immediately Transfer those Shares (**Identified Shares**) to the person or persons required by the Special Resolution.
- 6.4. A Special Resolution under clause 6.3 must require the relevant Shareholder to Transfer the Identified Shares:
- (a) pro rata to all other Shareholders that hold Shares of the same Share Category;
 - (b) to a person who meets the Shareholder Eligibility Criteria and who consents to becoming a Shareholder; or
 - (c) to the Company in accordance with clause 5 of the Constitution,
- upon the terms and conditions set out in the Special Resolution requiring the transfer.

- 6.5. If a Shareholder is required to Transfer Shares to another person (**Required Transferee**) under clauses 6.3 and 6.4 and does not provide a signed transfer to every Required Transferee immediately after the passing of the Special Resolution under those clauses:
- (a) that Shareholder will be deemed to have irrevocably appointed the Chairperson to act as its attorney to sign a transfer of the Shares to each Required Transferee; and
 - (b) after the name of a Required Transferee has been entered in the Company's share register, that Transfer will be deemed to have been validly effected.

Share Category of transferred Shares

- 6.6. The Shareholders must not approve the Transfer of Shares under clause 6.2 if the Transfer would materially change the nature of the shareholdings in the relevant Share Category. All Shares transferred under this part 6 will be treated, upon transfer, as remaining in the same Share Category in which they were first issued.

No payment for Transfer of Shares

- 6.7. There must be no payment or consideration for the Transfer of any Share.

Void Transfer

- 6.8. Any Transfer of a Share that does not comply with this clause 6 (**Void Transfer**), and any entry in the Company's share register of that Transfer, is void and of no effect.
- 6.9. The Board must make whatever entries are necessary in the Company's share register to correct the entry of a Void Transfer in the share register.

7. GENERAL PROVISIONS RELATING TO SHARES

Shares of only one Share Category to be held

- 7.1. A Shareholder must hold Shares in only one Share Category.

No fractional Shares

- 7.2. If this Agreement requires Shares to be issued or transferred so that certain persons hold an equal number of Shares, that issue or transfer must be done in such a way that it is achieved as nearly as possible without creating fractional interests in Shares.

Shares of same category to be held equally

- 7.3. The Shareholders holding Shares of the same Share Category are each to hold an equal number of Shares (or as close as possible to an equal number of Shares).

Shareholder Eligibility Criteria

- 7.4. Shareholders, and any person intending to become a Shareholder, must comply with the Shareholder Eligibility Criteria. This is a continuing obligation. If there is any issue or dispute over whether a person satisfies the Shareholder Eligibility Criteria, the issue or dispute will be conclusively determined by an independent person appointed by the Board.
- 7.5. The dispute resolution provisions in clause 14 do not apply to a determination by an independent person in accordance with clause 7.4 (as to whether a person satisfies the Shareholder Eligibility Criteria).

8. BOARD OF DIRECTORS

Number and residency of Directors

8.1. The:

- (a) Initial Board is to comprise 3 Initial Directors (including the initial Chairperson) with not less than 2 Initial Directors having their Main Residence in the Tairāwhiti Region; and
- (b) subsequent Boards are to comprise 5 Directors (including the Chairperson) with not less than 4 Directors having their Main Residence in the Tairāwhiti Region.

Initial Directors

8.2. The Initial Directors of the Company are set out below. They are to hold office from the date of incorporation of Company until the date set opposite that Director's name below:

Director's name	Term expiry date
[insert name]	[31 May 2027]
[insert name]	[31 May 2027]
[insert name]	[31 May 2027]

Initial Chairperson

8.3. The initial Chairperson of the Board is [insert name] and [he/she] will hold office as Chairperson until [31 May 2027].

Appointment of subsequent Directors and Chairperson

8.4. The Shareholders must elect, in accordance with the provisions of Schedule 2 or Schedule 3, a Director or Directors, and a Chairperson, when a vacancy or vacancies arise in those offices. Clauses 12.5 to 12.7 of the Constitution do not apply to the election of Directors or a Chairperson.

Termination of office of Directors and Chairperson

8.5. The Directors and the Chairperson cease to hold office in accordance with part 14 of the Constitution.

Board meetings

8.6. The following provisions relate to meetings of the Board:

- (a) at least 6 meetings of the Board must take place each Financial Year;
- (b) a Director must attend at least 75% of the meetings of the Board in each Financial Year or may be removed from office by Special Resolution in accordance with part 14 of the Constitution;
- (c) additional meetings of the Board must be convened at the written request of any 2 Directors; and

- (d) the quorum for a meeting of the Initial Board is 2 Directors and, for a meeting of subsequent Boards, 4 Directors.

Directors' fees

- 8.7. Directors are entitled to remuneration for their services as directors. Remuneration will be determined by Ordinary Resolution at an Annual Meeting. Directors are also entitled to reimbursement of reasonable expenses incurred in the performance of their duties subject to the provision of appropriate evidence (including tax invoices or receipts) in accordance with any relevant Company policies.

Certain requirements of Companies Act inapplicable

- 8.8. The Shareholders agree that sections 155(1) and 156(1) of the Companies Act (in relation to the appointment and removal of Directors) do not apply to the Company.

9. DECISION MAKING

Powers of the Board

- 9.1. The Board will have full power to direct the activities of the Company (except as otherwise provided in the Companies Act, this Agreement or the Constitution).

Voting generally

- 9.2. All decisions of the Shareholders, and all decisions of the Board, are to be made by a simple majority of votes except as otherwise provided in the Companies Act, this Agreement or the Constitution.
- 9.3. This clause and clause 11.3 of the Constitution requires a Special Resolution of Shareholders to:
- (a) approve the issue of new Shares and Additional Shares (excluding the issue of Second Shares under clause 4.5) (clause 5.1);
 - (b) approve the creation of an Additional Share Category (clause 5.1(b));
 - (c) approve the voluntary Transfer of Shares (clause 6.2);
 - (d) require the compulsory Transfer of Shares (clause 6.3);
 - (e) where a Shareholder is in Default, approve the taking of action other than the suspension of all rights attaching to the Shareholder's Shares (clause 15.2(a));
 - (f) remove a Director (including the Chairperson) from office (clause 8.5; Constitution, clause 14);
 - (g) alter or revoke the Constitution or adopt a new Constitution (Constitution, clause 3.8);
 - (h) approve a Major Transaction (Constitution, clause 15.5);
 - (i) amalgamate with another company;
 - (j) liquidate the Company and distribute any surplus assets; or
 - (k) amend or terminate this Agreement.
- 9.4. If the Board so decide, any matter to be decided by the Shareholders, may be determined by way of postal vote in accordance with Schedule 4 rather than by way of a meeting of

Shareholders and, for the purposes of this clause, the information in Schedule 4 and any relevant Company policies, must be attached to the notice of the postal vote.

Quorum for Meetings of Shareholders

- 9.5. A quorum for a meeting of Shareholders is present if Shareholders holding a majority of Shares are present by mandated representative or proxy.
- 9.6. Proxies are to be counted for the purposes of determining a quorum under clause 9.5.

10. DISTRIBUTIONS

- 10.1. The Company must not declare dividends, or make distributions, to Shareholders.
- 10.2. All profits of the Company are to be applied in furthering the charitable purposes of the Company as provided in clauses 2.2 and 2.3.

11. STRATEGIC PLAN, FINANCIAL YEAR, REPORTS AND AUDITORS

Financial Year

- 11.1. The financial year for the Company (**Financial Year**) ends on [30 June] in each year or such other date as the Board may determine.

Financial reports and records

- 11.2. The Company must ensure:
 - (a) that its financial statements:
 - (i) are prepared and audited in accordance with the Companies Act and Financial Reporting Act 2013; and
 - (ii) comply with generally accepted accounting practice (as that term is defined by the Financial Reporting Act 2013); and
 - (b) that, within 6 months after the end of each Financial Year, it provides to the Shareholders, for approval by Ordinary Resolution at an annual meeting held in accordance with clause 12.1 of the Constitution, an annual report and financial statements as at the end of the relevant Financial Year.

Auditors

- 11.3. The Company's financial statements must be audited. The Company's auditors will be determined by Ordinary Resolution at each Annual Meeting.
- 11.4. The auditors for the first Financial Year of the Company are [insert].

Strategic Plan

- 11.5. The Board will:
 - (a) at the first Board meeting following incorporation, approve and adopt the strategic plan annexed to this Agreement (Schedule 6);
 - (b) review the strategic plan annually, on a rolling basis;
 - (c) present the findings of its review and any recommendations for amendment to the next Annual Meeting (following completion of the review) for Shareholder approval by Ordinary Resolution;

- (d) ensure that Shareholders receive reasonable notice of the Board's review of, and any recommendations for amendment to, the strategic plan such that Shareholders have sufficient time to consider and engage on the matter at the relevant Annual Meeting.

12. CONFIDENTIALITY

Confidentiality

- 12.1. All information marked "confidential" communicated by one Party to another Party in connection with this Agreement (**Confidential Information**), whether before or after the date of this Agreement, must be used by the Party receiving that Confidential Information only for the purposes for which it is provided.
- 12.2. A Party that has received Confidential Information must not disclose the Confidential Information to any third party without the prior written consent of the Party that provided the Confidential Information.

Employees and agents

- 12.3. Each Party must:
 - (a) advise its employees and agents who receive any other Party's Confidential Information of its confidential nature; and
 - (b) require them to comply with clauses 12.1 and 12.2.

Exclusions

- 12.4. The confidentiality provisions of this clause 12 do not apply to any Confidential Information that:
 - (a) is, or becomes, generally available to the public (other than as a result of disclosure in breach of this Agreement);
 - (b) was rightfully in the recipient Party's possession prior to its receipt from the other Party;
 - (c) is independently developed by the recipient Party without the use of another Party's Confidential Information; or
 - (d) is disclosed in a manner required by law (so long as the recipient Party promptly provides the Party that provided the information with written notice of the required disclosure and of the relevant details).

13. FORCE MAJEURE

- 13.1. Non-performance by a Party of any of its obligations under this Agreement is to be excused, without liability for non-performance, during the time and to the extent that performance is prevented, wholly or substantially, by a Force Majeure Event.
- 13.2. Any Party claiming the benefit of this clause 13 must:
 - (a) promptly give written notice to the other Parties specifying:
 - (i) the cause and extent of its inability to perform any of its obligations under this Agreement; and
 - (ii) the likely duration of that non-performance; and

- (b) take all reasonable steps to remedy, and limit the effect of, the Force Majeure Event.

13.3. No Party may, by virtue of this clause, be required against its will to settle any strike, lockout or other industrial disturbance.

14. DISPUTES

Good faith

14.1. The Parties undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them, or any of them, in connection with this Agreement (a Dispute).

Notice of dispute

14.2. A Party must, as soon as reasonably practicable, give the other Parties notice of any Dispute.

Dispute resolution

14.3. The Parties will endeavour to resolve the Dispute themselves within 10 Working Days of the receipt of the notice of a Dispute.

Mediation

14.4. If the Parties fail to resolve the Dispute themselves within 10 Working Days of the receipt of the notice of the Dispute, the Parties will try to settle the Dispute by mediation.

14.5. Any Party may initiate mediation by giving written notice to the other Parties. If the Parties do not agree on a mediator, and the rules of mediation, within 5 Working Days after mediation has been initiated, then:

- (a) the mediator is to be selected by the chair of the Arbitrators and Mediators Institute of New Zealand (AMINZ) (or his or her nominee); and
- (b) the Parties must mediate the Dispute within the rules of AMINZ.

No litigation

14.6. No litigation in relation to a Dispute (except for an application for interim relief) may be commenced until the mediation process under clause 14.4 has been completed.

Not arbitration

14.7. Clauses 14.4 to 14.6 provide for a form of alternative dispute resolution and are not references to arbitration.

Venue

14.8. Any dispute resolution, mediation or litigation must be held in Gisborne, New Zealand.

15. DEFAULT BY SHAREHOLDERS

Default

15.1. A Shareholder is in default (**Default**) if that Shareholder (**Defaulting Shareholder**):

- (a) breaches, or is in breach of, any provision of this Agreement which:

- (i) if capable of remedy, is not remedied by the Defaulting Shareholder within 30 Working Days of being requested to do so by notice from any other Party; or
 - (ii) is a material provision of this Agreement and is not capable of remedy, (and, to avoid doubt, a failure to comply with the Shareholder Eligibility Criteria is a breach of this Agreement that may be capable of remedy);
- (b) grants any Security over any of its Shares;
- (c) purports to Transfer any of its Shares (other than in accordance with clause 6);
- (d) is, becomes, or is deemed to be, insolvent or bankrupt;
- (e) makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors;
- (f) goes into receivership or has a receiver, manager, trustee or similar official appointed in respect of all or any of its property;
- (g) has any resolution passed, or any proceeding commenced, for the winding up, dissolution or liquidation of that Shareholder;
- (h) materially changes the nature of its business or its ownership structure such that it no longer represents the interests of the Sector in which it holds Shares; or
- (i) fails to attend and vote at 2 consecutive Annual Meetings, either in person, or by proxy or representative.

Consequences of Default

15.2. If a Shareholder is in Default, then:

- (a) (unless otherwise agreed by Special Resolution) all rights attaching to the Shares held by the Defaulting Shareholder (including voting rights) will be suspended; and
- (b) if required in accordance with clauses 6.3, the Defaulting Shareholder must Transfer its Shares in accordance with the relevant Special Resolution.

Notice of Default

15.3. If a Party gives notice to a Defaulting Shareholder under clause 15.1(a)(i), that Party must as soon as practicable give all other Parties a copy of that notice.

Other remedies

15.4. The remedies provided by this clause 15 are in addition to any other rights or remedies that a Party may have against a Defaulting Party.

16. TERMINATION

Termination

16.1. This Agreement will continue in full force and effect until the earliest to occur of:

- (a) the date on which the Shareholders agree by Special Resolution to terminate this Agreement; or
- (b) the date on which an order is made, or a Special Resolution is passed, to liquidate the Company.

Preservation of rights

16.2. Termination of this Agreement does not affect:

- (a) any right of a Party against any other Party if that right accrued before termination;
or
- (b) the provisions of clause 12 (which survive termination of this Agreement).

17. REPRESENTATIONS AND WARRANTIES BY EACH PARTY

17.1. Each Party represents and warrants that the following are true on the date of this Agreement:

- (a) it has authority to enter, and perform its obligations under, this Agreement;
- (b) the signing of, and performance of its obligations under, this Agreement has been authorised by all necessary action;
- (c) the signing of this Agreement by it, and the performance by it of its obligations under this Agreement, will not result in a breach of:
 - (i) the terms and conditions of any other agreement or arrangement to which it is a party or bound;
 - (ii) any order of any court, administrative agency or governmental body; or
 - (iii) any legislation applicable to it; and
- (d) this Agreement is enforceable against it in accordance with its terms.

18. NOTICES

Giving notice

18.1. A notice, approval, consent or other communication (**Notice**) in connection with this Agreement must be:

- (a) in writing; and
- (b) left at the address of the addressee; or
- (c) sent by prepaid ordinary post or courier to the address of the addressee; or
- (d) sent by electronic communication in accordance with clause 21.5 of this Agreement.

Address

18.2. The addresses of the Parties for the purposes of clause 18.1 are:

Shareholders

Addresses: (as provided in clause 4.3)

Company

Addresses: [insert address]

or any replacement address notified by a Party to the other Parties by Notice from time to time.

Receipt

18.3. A Notice will be treated as having been received:

- (a) if left at the address of the addressee, on receipt;
- (b) if sent by prepaid ordinary post or courier, on the third day after posting; and
- (c) if sent by electronic communication, in accordance with clause 21.5 of this Agreement.

Delivery on non-Working Day

18.4. If a Notice is received by a Party on a day that is not a Working Day, then the Notice will be treated as having been received on the next Working Day.

19. PROVISIONS RELATING TO AGREEMENT

Governing document

19.1. In the case of any conflict, or inconsistency, between the terms of this Agreement and:

- (a) the Constitution; or
- (b) the terms of any other agreement or document between the Parties relating to, or affecting, the business or affairs of the Company,

this Agreement will prevail (to the maximum extent permitted by law).

Entire agreement

19.2. This Agreement:

- (a) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement; and
- (b) supersedes all previous agreements, undertakings and negotiations on that subject matter.

Amendment

19.3. Subject to clauses 19.4 to 19.7 inclusive, this Agreement must be amended by Special Resolution of the Shareholders and that amendment will bind the Company and every Shareholder (whether or not that Shareholder has voted for that Special Resolution).

19.4. The parties must co-operate with each other in good faith to amend this Agreement or the Constitution where it is (and to the extent) necessary to secure or maintain any approval from any relevant agency or regulator as to the Company's charitable status, or to secure or maintain registration as a charitable entity under the Charities Act 2005.

19.5. The Shareholders must not, unless required by law or due to a law change:

- (a) amend or delete clause 10;
- (b) amend or delete this clause;
- (c) amend or delete clauses 3.3 to 3.7, 3.12, 17.10, 20.2 or 20.5 of the Constitution; or
- (d) revoke the Constitution and adopt a new Constitution (unless clauses having the same effect as clauses 3.3 to 3.7, 3.12, 17.10, 20.2 and 20.5 of the Constitution are included in the new constitution).

Further restrictions on amendment

- 19.6. The Shareholders must not amend this Agreement or the Constitution if the effect of the amendment would be such that the Company would cease to exist exclusively for charitable purposes in New Zealand so as to no longer be eligible for tax relief under relevant New Zealand laws or if the amendment would preclude the Company being registered as (or maintaining its registration as) a charitable entity under the Charities Act 2005.
- 19.7. Clauses 19.3 to 19.7 inclusive must not be subject to amendment if this would prevent the Company maintaining any approval from a relevant agency or regulator as to the Company's charitable status or would prevent the Company securing or maintaining registration as a charitable entity under the Charities Act 2005 and must be included in any deed, agreement or arrangement between the parties replacing this Agreement.

Severability

- 19.8. If any term or provision of this Agreement is, to any extent, held to be invalid or unenforceable:
- (a) the remainder of this Agreement will not be affected; and
 - (b) each term and provision of this Agreement will be valid and enforceable to the maximum extent permitted by law.

Counterparts

- 19.9. This Agreement may be signed in several counterparts. All of the signed counterparts taken together constitute one single agreement between the Parties.

20. MISCELLANEOUS

Governing law

- 20.1. This Agreement is to be governed by New Zealand law.

Relationship between the Parties

- 20.2. Nothing in this Agreement creates any partnership, agency, trust or employment relationship between the Parties.
- 20.3. A Party does not have the authority to act for, or to incur any obligation on behalf of, any other Party (except as expressly provided for in this Agreement).

Assignment

- 20.4. No Party may assign any right or obligation under this Agreement.

Binds successor and assignees

- 20.5. This Agreement is binding on the Parties and their respective successors.

Waiver

- 20.6. No delay or omission by a Party to exercise any right or power under this Agreement will:
- (a) impair that right or power; or
 - (b) be construed as a waiver of it.

20.7. A waiver by a Party of:

- (a) any obligation to be performed by another Party under this Agreement; or
- (b) any breach of that obligation,

will not be construed to be a waiver by that Party of any succeeding breach of that obligation or of any other obligation.

21. DEFINITIONS AND INTERPRETATION

Definitions

21.1. Terms defined in the Constitution have the same meanings when used in this Agreement. In addition, unless the context requires otherwise:

Additional Sector, Additional Sector Shares, Additional Share Category, and Additional Shareholders have the meanings given by clause 5.1;

Agreement means this shareholders agreement including any schedule (as it may be amended from time to time);

Board means the board of Directors of the Company and includes the Initial Board;

Chairperson means any individual appointed as the chairperson of the Board and includes the initial chairperson;

Companies Act means the Companies Act 1993;

Company means Tairāwhiti Community Commissioning Limited;

Confidential Information has the meaning given by clause 12.1;

Constitution means the constitution of the Company from time to time;

Default has the meaning given by clause 15.1;

Defaulting Shareholder has the meaning given by clause 15.1;

Dispute has the meaning given by clause 14.1;

Director means any individual appointed as a director of the Company and includes the Initial Directors;

Financial Year has the meaning given by clause 11.1;

Force Majeure Event means an event beyond the reasonable control of a Party, including:

- (a) act of God;
- (b) earthquake, flood, fire, storm and adverse weather conditions for which provisions could not reasonably have been made;
- (c) unpredictable and reasonably unpreventable delays in the delivery of materials, equipment or services necessary for the compliance by the Party of an obligation under this Agreement;
- (d) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
- (e) governmental restraint, expropriation, prohibition, intervention, direction or embargo; and
- (f) strike, lock-out, work stoppage or other labour hindrance;

Identified Shares has the meaning given by clause 6.3;

Initial Board means the board of Initial Directors;

Initial Director means a person named as a Director in the application for incorporation of the Company referred to in clause 14.2 of the Constitution and clause 8.2 of this Shareholders Agreement;

Initial Share Capital has the meaning given by clause 4.1;

Iwi Sector means the representative entities of iwi with rohe in the Tairāwhiti Region who fulfil the Shareholder Eligibility Criteria;

Iwi Sector Share means a Share referred to in clause 4.3 as an Iwi Sector Share;

Main Residence means the one residential home with which a Director (or a person nominated for election as a Director) has the greatest connection. Factors relevant for determining the Main Residence include, but are not limited to, the time the person has occupied the residence, where the person's immediate family lives, where the person's social ties are strongest, and where the person's main employment, business interests, economic ties and personal property are located;

Notice has the meaning given by clause 18.1;

Party means each of the Shareholders and the Company;

Philanthropy Sector means any entities with philanthropic, community wellbeing, or community economic development purposes who fulfil the Shareholder Eligibility Criteria;

Philanthropy Sector Share means a Share referred to in clause 4.3 as a Philanthropy Sector Share;

Required Transferee has the meaning given by clause 6.5;

Security includes a debenture, mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, equity, deferred purchase option, right to pre-emption, and any other security interest or third party right (whether legal or equitable);

Share means any share issued by the Company;

Share Category means any category of Shares referred to in clause 4.2(b) and includes any Additional Share Category created by Special Resolution under clause 5.1(b);

Shareholder Eligibility Criteria means that the relevant person must:

- (a) be incorporated and have legal personality;
- (b) represent interests in the Sector in which the person holds Shares or intends to hold Shares;
- (c) have its registered office and place of business in the Tairāwhiti Region with its business or services delivered in the Tairāwhiti Region;
- (d) have a majority of officers on its governance board or committee resident in, or if not resident then able to demonstrate a connection and commitment to, the Tairāwhiti Region;
- (e) demonstrate commitment to advancing the wellbeing of the people and communities of the Tairāwhiti Region;
- (f) be reputable and trustworthy;
- (g) be solvent and transparent.

Shareholder means a person who holds a Share or Shares;

Special Resolution means a resolution approved by a majority of 75 percent of the votes of those Shareholders entitled to vote and voting on the resolution;

Social Services Provider Sector means any non-government entities who::

- (a) fulfil the Shareholder Eligibility Criteria; and
- (b) provide education, support, intervention, advocacy, and social services in the Tairāwhiti Region in any or all of the following areas: social housing, child wellbeing, health, education and training (post compulsory education), family and social violence, addiction, budgeting and legal advice, justice, aged care and elder support services (not including residential facilities), disability, employment support, mental health and wellbeing, youth services, community development and navigation, and whanau ora;

Social Services Provider Sector Share means a Share referred to in clause 4.3 as a Social Services Provider Sector Share;

Tairāwhiti Region means the geographical area comprising the Gisborne District administered by the Gisborne District Council at the date of this Agreement and as shown in the plan attached at Schedule 5;

Term has the meaning given by clause 1.1;

Transfer, in relation to a Share, includes assigning, donating, conveying, mortgaging, pledging or otherwise encumbering, or granting an option in relation to, that Share; and

Void Transfer has the meaning given by clause 6.8; and

Working Day means a day of the week other than:

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Ra Aro ki a Matariki/Matariki Observance Day, and Labour Day;
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday;
- (c) a day in the period commencing with 25 December in any year and ending with 2 January in the following year;
- (d) if 1 January in any year falls on a Friday, the following Monday; and
- (e) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

Interpretation

21.2. In this Agreement, unless the context otherwise requires:

- (a) headings are inserted for convenience only and must be ignored in construing this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether incorporated and whether having separate legal personality;

- (e) **written** and **in writing** includes any means of reproducing words, figures or symbols:
 - (i) in a tangible and visible form in any medium; or
 - (ii) in a visible form in any medium by electronic means that enables them to be stored in a permanent form and be retrieved and read; and
 - (f) **signature** includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory's approval of the information contained in the document;
 - (g) a reference to a clause is to that clause in this Agreement unless stated otherwise; and
 - (h) a reference to a clause of the Constitution includes a reference to any clause amending or replacing that clause if the Constitution is amended from time to time.
- 21.3. Subject to this clause 21, expressions contained in this Agreement bear the same meaning as specified in the Companies Act as amended from time to time.
- 21.4. In this clause, the term **Legal Requirement** has the meaning given to it by the Contract and Commercial Law Act 2017. Where a Legal Requirement under the Companies Act is reproduced in this Agreement, the provision of this Agreement which reproduces that Legal Requirement may be met by using electronic means in accordance with the Contract and Commercial Law Act 2017.
- 21.5. Service of documents by email will be determined in accordance with the Companies Act. However, where the Companies Act does not apply in relation to a document under this Agreement which is sent in electronic form and via an electronic communication, for the purposes of the Contract and Commercial Law Act 2017, s214, such a document is taken to be received:
- (a) if sent by the Company, on the Working Day that it is sent or the next Working Day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication;
 - (b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the Company may agree.

To avoid doubt, any document so sent may be in any widely used electronic form.

SCHEDULE 1

DEED OF UNDERTAKING TEMPLATE

THIS DEED is made between:

The shareholders listed in the appendix to this deed (**Continuing Shareholders**); and

Tairāwhiti Community Commissioning Limited (**Company**); and

[] (**New Party**).

BACKGROUND

- A. The Continuing Shareholders are Shareholders in the Company and are parties to a shareholders agreement dated [] (**Agreement**) relating to the Company.
- B. The Company is a party to the Agreement.
- C. The Company has resolved to [issue Shares OR approve the transfer of Shares] (**Shares**) in the Company subject (amongst other things) to the New Party signing this Deed of Undertaking.

NOW BY THIS DEED the parties agree as follows:

New Party bound by Agreement

- 1. The New Party agrees that, from the date (**Effective Date**) the Shares are [issued / transferred] to the New Party, the New Party:
 - (a) becomes a party to the Agreement as if the New Party had been one of the Continuing Shareholders to the Agreement and had signed it;
 - (b) must observe and perform all of the obligations of a Shareholder under the Agreement; and
 - (c) is bound by the terms and conditions of the Agreement.

Continuing Shareholders continue to be bound by Agreement

- 2. The Continuing Shareholders and the Company agree with the New Party that from the Effective Date they:
 - (a) must observe and perform their respective obligations under the Agreement; and
 - (b) are bound by the terms of the Agreement.

Representations and warranties

- 3. The New Party gives the representations and warranties set out in clause 18 of the Agreement as if the New Party was a Continuing Shareholder.

Address

- 4. The New Party's address is, for the purposes of clause 18.2 of the Agreement:
[insert address]

Definitions and interpretation

- 5. Clause 21 of the Agreement (relating to definitions and interpretation) applies with all necessary changes to this Agreement.

APPENDIX - Continuing Shareholders

[Signing provisions]

SCHEDULE 2

PROVISIONS FOR ELECTION OF DIRECTORS OR CHAIRPERSON

Directors and Chairperson must be elected under this Schedule

- S2.1 Subject to S2.1(a), the election of Directors, or a Chairperson, must be carried out at a meeting of Shareholders in accordance with this Schedule.
- (a) If the Board so decide, the election of Directors, or a Chairperson, can be carried out by way of a Postal Election Vote in accordance with Schedule 3 rather than in accordance with this Schedule 2 and, if so, the information in Schedule 3 and any relevant Company policies must be summarised and attached to the notice of the Postal Election Vote.

Interpretation

- S2.2 In this Schedule, except where the context requires otherwise:

Appointments Panel and **Panel** means the panel convened in accordance with clause S2.4;

Candidate, in relation to an Election, means a person who has applied for election as a Director or the Chairperson (as the case may be);

Chairperson Voting Form means a Voting Form referred to in clause S2.17(b);

Directors Voting Form means a Voting Form referred to in clause S2.17(a);

Election means an election of Directors, or a Chairperson, at an Election Meeting in accordance with this Schedule;

Election Meeting means a meeting of Shareholders that is for the purpose of, or includes the purpose of, the election of Directors or a Chairperson and, to avoid doubt, an Election Meeting may be held at the same time as an Annual or Special Meeting;

Scrutineer, in relation to an Election, means a scrutineer for that Election appointed under clause S2.16; and

Voting Form means a Directors Voting Form or a Chairperson Voting Form.

Overview of election process

- S2.3 The process for the election of Directors or a Chairperson consists of four steps:
- (a) The Board will convene an independent Appointments Panel.
- (b) The Appointments Panel will run the process for the election of Directors or a Chairperson and will provide appointment recommendations to the Shareholders.
- (c) The Shareholders will vote to elect the Directors or a Chairperson at an Election Meeting under this Schedule 2 or a Postal Election under Schedule 3 and an independent Scrutineer will confirm the outcome of the election.
- (d) The Company will attend to formal appointment notices and register filings.

Appointments Panel

- S2.4 The Board will convene an Appointments Panel:
- (a) not less than 4 months before the expiry of the terms of office of Directors; and

- (b) immediately upon becoming aware of a casual vacancy on the Board.

Membership of Appointments Panel

S2.5 The Appointments Panel will comprise 3 members as follows:

- (a) the Chairperson or, if the Chairperson is seeking reappointment as a Director or the Chairperson or is Director for whom a casual vacancy has arisen, then another Director (to be agreed among Directors) who is not seeking re-appointment to the Board or as the Chairperson;
- (b) a person experienced in governance procedures who is appointed by Shareholders via an Ordinary Resolution; and
- (c) an independent professional advisor experienced in governance appointment procedures who is appointed by the Board,

and, in the case of the members referred to in subclauses (b) and (c), the Panel member must not be an incumbent Director, employee or contractor to the Company, nor a person seeking election as a Director or as the Chairperson.

The members of the Appointments Panel will choose one of their number to be the chair of the Panel (with all the usual duties and responsibilities of a chair).

Board unable to appoint

S2.6 If the Board is unable to appoint, or procure the appointment of, a Panel member in accordance with clause S2.5, the Board in its discretion may:

- (a) ask the Company's auditor;
- (b) ask a delegate of the Institute of Directors; or
- (c) convene a Special Meeting of Shareholders or circulate a written resolution in lieu of a meeting,

to appoint a member to the vacant Panel position.

Term of office

S2.7 Members of the Appointments Panel will hold office until the earlier of:

- (a) the expiry of 3 years from the date of appointment;
- (b) in the case of a Panel member appointed under clauses S2.5(a), S2.5(b), or S2.6(a) to (c), the receipt of an Ordinary Resolution removing or replacing the Panel member (and no reason need be stated in the notice);
- (c) in the case of a Panel member appointed by the Board under clause S2.5(c), the receipt of written notice from the Board removing or replacing the Panel member (and no reason need be stated in the notice); or
- (d) the service on the Company of a Panel member's written notice of resignation.

Panel members may put themselves forward for reappointment following the expiry of their terms.

Responsibilities of Appointments Panel

S2.8 The Appointments Panel is independent of the Board and is responsible for:

- (a) where there is a vacancy on the Board, advertising and inviting members of the public to apply for appointment as a Director;
- (b) where there is a vacancy in the position of Chairperson, inviting sitting Directors to apply for appointment as the Chairperson;
- (c) conducting the process for appointment in accordance with this Schedule and any relevant Company policies including, without limitation:
 - (i) confirming the steps to be taken and the timeline for the application and election process;
 - (ii) preparing a budget and workplan for the Board's approval;
 - (iii) scoping the vacant role(s) and the necessary skills, experience, and attributes required;
 - (iv) organising and procuring advertising, notices, application and voting documents, Candidate information, and arranging the Election Meeting under this Schedule or the Postal Election under Schedule 3;
 - (v) assessing the Candidates, conducting reference checks and interviews, and providing recommendations to the Shareholders;
 - (vi) engaging an independent Scrutineer to oversee the vote, determine the election outcome, and certify the result;
 - (vii) where the number of Candidates is equivalent to the number of vacancies, putting a recommendation to the Shareholders on how to proceed, which may include (without limitation) re-advertising the vacancies until sufficient applications have been received to conduct an Election;
 - (viii) working with the Company to ensure that the election result is formalised and formal notices of appointment are issued and registered; and
 - (ix) working with the Company to ensure that the application and election process is delivered to time and within budget.

Relevant factors for assessment

S2.9 Before making any recommendations under clause S2.8(c)(v), the Appointments Panel must take into account the following factors about the Candidates and the Board as a whole:

- (a) their prior experience as a director or experience in any other governance role;
- (b) their commitment to the Tairāwhiti Region;
- (c) their place of residence (with 2 of 3 Initial Directors and 4 of 5 subsequent Directors required to have their Main Residence in the Tairāwhiti Region);
- (d) their knowledge of, and experience in, the social services sector and charitable and not-for-profit organisations, particularly in the Tairāwhiti Region;
- (e) their knowledge of, and experience with, central and local government agencies;
- (f) the need for conflicts of interest to be minimised; and
- (g) the need for a wide range of skills, experience, and diversity on the Board.

Meetings and decisions

- S2.10 The Appointments Panel may meet as and when required and in such manner as it thinks fit.
- S2.11 The quorum for a meeting of the Appointments Panel is 3 members.
- S2.12 Any decision of the Appointments Panel must be agreed by at least 2 of the 3 members.
- S2.13 All confidential information received by the Appointments Panel, and its deliberations, must be kept confidential except to the extent the Panel is required to disclose information to fulfil its responsibilities under this Agreement and except as otherwise required by law.

Conflicts

- S2.14 Any member of the Appointments Panel who considers they have a conflict, or may have a potential conflict of interest, must declare that interest to the other members of the Panel and, if the other members consider it appropriate to do so, they may require the interested member to vacate their position, temporarily or permanently, on the Panel. Any vacancy on the Panel must be filled in accordance with clauses S2.5 and S2.6.

Remuneration

- S2.15 Members of the Appointments Panel will be entitled to remuneration to be determined by Ordinary Resolution at an Annual Meeting. Members are also entitled to reimbursement of reasonable expenses incurred in the course of performing their duties subject to the provision of appropriate evidence (including tax invoices or receipts) in accordance with any relevant Company policies.

Scrutineer

- S2.16 The Appointments Panel must work with the Chairperson of an Election Meeting to ensure that an independent Scrutineer has been appointed, and is present at an Election Meeting, to count the votes in relation to the Election of Directors or a Chairperson and the Scrutineer has a duty to:
- (a) collect all completed Voting Forms and check that they are valid;
 - (b) count:
 - (i) the votes cast for each Candidate in accordance with S2.21; and
 - (ii) the number of Shareholders who have submitted a Voting Form; and
 - (iii) the number of Shareholders who have not submitted a Voting Form;
 - (c) sign a certificate which sets out the Election results and confirms that he or she has carried out the duties set out in this S2.16; and
 - (d) ensure that the certificate required by S2.16(c) of this Schedule is presented to the Shareholders and the Board.

Voting Forms

- S2.17 The Appointments Panel must work with the Chairperson of an Election Meeting to ensure there is provided to each Shareholder attending that Election Meeting:
- (a) where there is to be an Election of Directors, a Voting Form including in alphabetical order all the Director Candidates; or

- (b) where there is to be an Election of a Chairperson, a Voting Form including in alphabetical order all the Chairperson Candidates.

Method of voting (FPP)

S2.18 Each Shareholder wishing to vote at an Election Meeting for the election of Directors, or a Chairperson, must select, on the correct Voting Form, up to the maximum number of Candidates as there are positions to be filled. The Shareholder may enter less than the maximum number of Candidates allowed but must not cast more than that number or the Voting Form will be ruled invalid under clause S2.20.

Voting Forms to be provided to Scrutineer

S2.19 The Chairperson of an Election Meeting must, at that Election Meeting, ensure that Shareholders provide the Scrutineer with the originals of:

- (a) all completed Directors Voting Forms; or, as the case may be,
- (b) all completed Chairperson Voting Forms.

Invalid Voting Forms

S2.20 If a Shareholder does not complete a Voting Form in accordance with clause S2.18, the Scrutineer must declare that the Voting Form:

- (a) is invalid; and
- (b) must not be taken into account in the Election.

Determination of votes

S2.21 The Scrutineer will determine the outcome of the voting as follows:

- (a) the Scrutineer will scrutinise all Voting Forms against the registered shareholdings of each Shareholder participating in the election;
- (b) each Candidate selection made by a Shareholder will receive votes equivalent to the total number of Shares held by that Shareholder;
- (c) the Scrutineer will tally and confirm the votes for each Candidate from all Voting Forms;
- (d) where a single position is to be filled, the Candidate who receives the highest number of votes is elected;
- (e) where more than one position is to be filled, the Candidates equal to that number of positions who receive the highest number of votes are elected;
- (f) in the event of an equality of votes, the Scrutineer will have sole discretion to decide and implement an urgent process to break the voting tie and thereby determine the voting outcome for the affected Candidates (time being of the essence); and
- (g) the Scrutineer will certify and notify the outcome of the Election to the Shareholders and the Board.

SCHEDULE 3

POSTAL VOTING FOR ELECTION OF DIRECTORS OR CHAIRPERSON

- S3.1 Directors and the Chairperson must be elected under this Schedule if the Board so decide pursuant to section S2.1(a) of the Second Schedule of this Agreement.
- S3.2 The provisions of Schedule 2 apply, with necessary amendments, to a Postal Election under this Schedule 3.

Postal Voting for Election of Directors or Chairperson

- S3.3 Interpretation

Candidate, in relation to a Postal Election means a person who has applied for appointment as a Director or the Chairperson (as the case may be);

Postal Election means an election of Directors or a Chairperson by Postal Election Vote in accordance with this Schedule;

Postal Election Vote, in relation to a Postal Election, is a vote which is made in accordance with S3.6 and S3.7. To avoid doubt, a Postal Election Vote may be cast using any electronic means permitted by the Board;

Scrutineer, in relation to a Postal Election, means a Scrutineer for that Postal Election appointed under S3.5; and

Postal Voting Form means that form used to vote in order to carry out the Postal Election Vote.

Notice of Postal Election

- S3.4 The Board will work with the Appointments Panel to notify all Shareholders of a Postal Election within 2 months of the date the Postal Election is to take place.
- S3.5 The notice must state the Scrutineer appointed by the Appointments Panel who is authorised to receive and count the Postal Election Votes.
- S3.6 The notice must state how the Shareholder will cast their Postal Election Vote and the date by which their Postal Election Vote must reach the Scrutineer.
- S3.7 The notice must be accompanied by a Postal Voting Form and the notice must be sent to every Shareholder.

Responsibilities of Appointments Panel

- S3.8 The Appointments Panel will be responsible for organising and conducting the Postal Election. Clauses S2.8 to S2.21 of Schedule 2 apply, with necessary amendments, to a Postal Election under this Schedule 3.

Scrutineer

- S3.11 The Appointments Panel must appoint a Scrutineer to count any votes in relation to the Postal Election of Directors or a Chairperson and the Scrutineer has a duty to:
- (a) collect all Postal Election Votes and check that they are valid;
 - (b) count:
 - (i) the votes cast for each Candidate in accordance with S3.16;

- (ii) the number of Shareholders who have submitted a Postal Voting Form; and
 - (iii) the number of Shareholders who have not submitted a Postal Voting Form;
- (c) sign a certificate which sets out the Postal Election results and confirms that he or she has carried out the duties set out in this S3.11; and
- (d) ensure that the certificate required by S3.11(c) of this Schedule is presented to the Shareholders and the Board.

Postal Voting Forms

S3.12 The Appointments Panel and Scrutineer must ensure there is provided to each Shareholder entitled to cast a Postal Election Vote, a Postal Voting Form which sets out, in clear terms, the election to be decided and the date by which Postal Election Votes must be received by the Scrutineer.

Method of postal voting (FPP)

S3.13 Each Shareholder wishing to vote at a Postal Election for the election of Directors or a Chairperson must select, on the correct Postal Voting Form, up to the maximum number of Candidates as there are positions to be filled. The Shareholder may select less than the maximum number of Candidates allowed but must not cast more than that number or the Postal Voting Form will be ruled invalid under clause S3.15.

Postal Voting Forms to be provided to Scrutineer

S3.14 Shareholders must provide their completed Postal Voting Forms to the Scrutineer at the address or by the electronic means and by the deadline indicated in the Postal Voting Form instructions.

Invalid Voting Forms

S3.15 If a Shareholder does not complete a Postal Voting Form in accordance with S3.13, or does not return it to the Scrutineer in accordance with S3.14, the Scrutineer must declare that the Postal Voting Form:

- (a) is invalid; and
- (b) must not be taken into account in the Postal Election.

Determination of Votes

S3.16 The Scrutineer will determine the outcome of the Postal Election Vote as follows:

- (a) the Scrutineer will scrutinise all Postal Voting Forms against the registered shareholdings of each Shareholder participating in the Postal Election;
- (b) each Candidate selection made by a Shareholder will receive votes equivalent to the total number of Shares held by that Shareholder;
- (c) the Scrutineer will tally and confirm the votes for each Candidate from all Postal Voting Forms;
- (d) where a single position is to be filled, the Candidate who receives the highest number of votes is elected;
- (e) where more than one position is to be filled, the Candidates equal to that number of positions who receive the highest number of votes are elected;

- (f) in the event of an equality of votes, the Scrutineer will have sole discretion to decide and implement an urgent process to break the voting tie and thereby determine the voting outcome for the affected Candidates (time being of the essence); and
- (g) the Scrutineer will certify and notify the outcome of the Postal Election to the Shareholders and the Board in accordance with S3.11.

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SCHEDULE 4

POSTAL VOTING FOR GENERAL PURPOSES

- S4.1 Any matter to be decided by the Shareholders pursuant to either the Constitution or the Shareholders Agreement may be determined by Postal Vote if the Board so determines. Where the Board is of the opinion that a matter be determined by Postal Vote, the provisions of this Schedule 4 apply.
- S4.2 The Board must advise the Shareholders in advance that it is proposing to have a matter determined by Postal Vote. A brief outline of the matter must be included in the notice to Shareholders advising them of the Board's intention use a postal vote. Shareholders may provide input to the Board before notice of the postal vote is issued under S4.3. Any such input is recommendatory and not binding on the Board.

Interpretation

Scrutineer, in relation to a Postal Vote, means a Scrutineer for that Postal Vote appointed under S4.6; and

Voting Form means the form sent to Shareholders to vote on a matter in order to carry out a Postal Vote under this Schedule 4.

To avoid doubt, a Postal Vote under this Schedule 4 may be cast using any electronic means permitted by the Board.

Notice

- S4.3 Following compliance with S4.2 the Board must notify all Shareholders of a Postal Vote matter within 1 month of the date the Postal Vote is to take place. The notice must state the name of the Scrutineer appointed the Board who is authorised to receive, count, and confirm the outcome of the Postal Votes.
- S4.4 The notice must state how the Shareholder must cast their Postal Vote and the date by which their Postal Vote must reach the Scrutineer.
- S4.5 The notice under S4.3 must be accompanied by a Voting Form and must be sent to every Shareholder.

Scrutineer

- S4.6 The Board must appoint a Scrutineer to receive, count, and confirm the outcome of all votes cast in a Postal Vote and the Scrutineer has a duty to:
- (a) collect all Postal Votes and check that they are valid;
 - (b) count:
 - (i) each Postal Vote; and
 - (ii) the number of Shareholders who have submitted a Postal Vote; and
 - (iii) the number of Shareholders who have not submitted a Postal Vote;
 - (c) sign a certificate which sets out results of the count and confirms that he or she has carried out the duties set out in this S4.6; and
 - (d) ensure that the certificate required by S4.6(c) of this Schedule is presented to the Board within 5 days of the final date for Postal Votes to be received.

Voting Forms

S4.7 The Board must ensure there is provided to each Shareholder entitled to cast a Postal Vote, a Voting Form which sets out the matter to be decided in clear terms and sets out the date by which Postal Votes must be received by the Scrutineer.

Voting Forms to be provided to Scrutineer

S4.8 Shareholders must provide their completed Voting Forms to the Scrutineer at the address or by the electronic means and by the deadline indicated in the Voting Form instructions.

Invalid Voting Forms

S4.9 If a Shareholder does not complete a Voting Form in accordance with S4.7 and S4.8, the Scrutineer must declare that the Voting Form:

- (a) is invalid; and
- (b) must not be taken into account in determining the matter.

Determination of Votes

S4.10 In a Postal Vote, a Shareholder is allocated one vote for each Share held by the Shareholder.

S4.11 A matter voted on by way of Postal Vote is to be determined by a simple majority of those votes of Shareholders who have submitted a Postal Vote, unless the Constitution or Shareholders Agreement provides that the matter must be determined by a Special Resolution of Shareholders in which case the matter must be determined by such number as is required for a Special Resolution.

**SCHEDULE 5
TAIRĀWHITI REGION**

[Attach plan of Gisborne District]

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SCHEDULE 6
STRATEGIC PLAN

[Attach first 3-yearly Strategic Plan to be adopted at the first Board meeting]

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