

Water Supply Agreement General Terms

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Background

- A. The Farmer is the registered proprietor of, or otherwise has an interest in, the Land to be serviced by the Scheme owned and controlled by the Company.
- B. The Farmer wishes to be supplied water to the Land by the Company from the Scheme. The Company has agreed to supply the Farmer with water on the terms and conditions set out below, subject always to the Consents and availability of water.
- C. The Company will only be bound by these General Terms upon HDWL issuing Shares to the Farmer.

Agreement

1. Definitions and Interpretation

1.1 Definitions

In these General Terms, unless the context or subject matter otherwise requires:

"Agreement" means the Application Form together with these General Terms.

"Application Form" means the application form relating to Shares attached to the PDS which has been completed and signed by the Farmer.

"Backflow Prevention Device" means the infrastructure installed to prevent water flowing back into the delivery pipes through which the Company may supply water to the Farmer.

"Best Practice" means the exercise of that degree of skill, diligence, prudence, foresight and management which would reasonably and ordinarily be expected from a skilled operator of the relevant undertaking.

"Company" means HDWL, or such other company as has been nominated by HDWL to have the rights and perform the obligations of HDWL under this Agreement.

"Company's Easements" means the Easements and any other easements granted in favour of the Company over the Land and/or the Farmer's Land under any separate agreement or registered easement.

"Consent" or "Consents" means all resource consents held or relied upon by the Company to construct, maintain and operate the Scheme including to take and use water for the Scheme and to discharge nutrients.

"Consent Conditions" means any conditions attaching to the Consents.

"Easements" means any easements granted or to be granted in favour of the Company over the Farmer's Land under this Agreement.

"Easement Land" means all easement areas on the Land and/or the Farmer's Land as defined in the Company's Easements.

"Encumbrance" means any encumbrance registered, or to be registered under this Agreement, against the Farmer's Land in favour of the Company.

"Farm Turn-out" means the turn-out where the Farmer's Infrastructure connects to the Scheme Infrastructure and where the Farmer takes water from the Company.

"Farmer" means the person subscribing for Shares as described in section 1 of the Application Form.

"Farmer Infrastructure" means that Farmer's on farm infrastructure connecting with the Scheme Infrastructure at the Farm Turn-out to enable the Farmer to take water and irrigate on the Land.

"Farmer's Land" means all land owned by the Farmer in the Scheme Command Area.

"FEP" means the Farm Environmental Plan, the Farm Management Plan or Farm Environmental Management Plan required to be prepared under the Consents in the form required by the Company.

"FEP Audit" means an audit of the FEP to be undertaken as required by the Company, including to ensure compliance with the Consents and/or any RMA Plan.

"Financiers" means any bank, financial institution or other third party providing secured financing to the Company from time to time and includes any facility agent and/or security trustee acting on behalf of any such person or persons.

"General Terms" means the terms and conditions set out in this document as amended or varied from time to time.

"HDWL" means Hunter Downs Water Limited.

"HSWA" means the Health and Safety at Work Act 2016.

"Irrigable Area" means, in respect of an Irrigation Season, that part of the Land the Farmer is entitled to irrigate by virtue of:

- holding Shares; and
- having nominated that area as the irrigable area for that Irrigation Season on, or before, the first day of that Irrigation Season;

"Irrigation Scheme Management Plan" means any management plan prepared from time to time by the Company to comply with its Consents and/or RMA Plans, including any amendments or variations.

"Irrigation Season" shall be the period from the 1st day of September in one year to the 30th day of April in the following year or such other period as the Company may from time to time determine.

"Land" means the land detailed in the Application Form, but does not include any land sold or subdivided by the Farmer in accordance with clause 12.1.

"Licence" means any licence, contract, arrangement and/or joint ownership right under which the Company is granted the right to utilise the intake and main race operated by MGI for the purposes of the Scheme.

"Metering Equipment" means all water metering and telemetry equipment installed at the Farm Turn-out to meter and monitor the water taken and used by the Farmer.

"MGI" means Morven, Glenavy. Ikawai Irrigation Company Limited.

"Nutrient Allocation" means the amount of nutrients allowed to be discharged pursuant to the Consents.

"Nutrient Budget" means an annual nutrient budget in respect of the Land to be prepared in accordance with the Company's requirements and to ensure it can comply with Consent Conditions and/or any provisions of a relevant RMA Plan.

"PDS" means the product disclosure statement issued by HDWL dated 10 March 2017.

"RMA" means the Resource Management Act 1991.

"RMA Plan" means any proposed or operative regional or district plan prepared under the RMA and administered by the regional or territorial authority (or authorities) which has jurisdiction over the air, land and water resources used by the Company to construct, maintain and operate the Scheme.

"Run Off" means excess irrigation water containing animal effluent, waste products, fertiliser and other farm chemicals running off the Land and, directly or indirectly, back into the Scheme Supply Race or any other waterway.

"Scheme" means the Hunter Downs irrigation scheme to provide water for irrigation and other purposes to land located within the Scheme Command Area.

"Scheme Command Area" means, at any time, the command area for the Scheme identified in the Consents at that time.

"Scheme FEP Template" means a template as contained in the Irrigation Scheme Management Plan for use in the preparation of a FEP.

"Scheme Infrastructure" means all infrastructure owned or operated by the Company, or otherwise utilised by the Company for the purposes of the Scheme (including under the Licence), including the Scheme Supply Races, Water Pipes, Farm Turn-outs, headraces, bridges, siphons, dams, galleries, buffer/pressure break ponds, pumps, water meters, control valves, control gates, control cabinets, and fish screens, underground electricity cables, monitoring equipment, measuring devices, meters or other infrastructure necessary to take and convey water, supply water to farmers and manage the Scheme.

"Scheme Supply Race" means any water race owned by the Company conveying water to farmers now or in the future.

"Share(s)" means a Water Share in HDWL as defined in HDWL's constitution.

"Statutory Requirements" means all requirements to be met by the Company and/or the Farmer in relation to the Consents or under any other consents, statutes, regulations, by-laws, directions or plans introduced by any local authority, Government department or other statutory body.

"Water Charges" means the charges charged by the Company to the Farmer pursuant to clause 5.

"Water Pipes" means irrigation pipes owned by the Company conveying water to farmers now or in the future.

"Working Day" means 9.00am to 5.00pm Monday to Friday excluding New Zealand national holidays and regional holidays in Canterbury.

1.2 Interpretation

In this Agreement, unless the context or subject matter otherwise requires:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes a corporation, trust, association, partnership, government authority or other legal entity and, where necessary, includes a successor body;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (f) reference to law includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, directive, by-law and the rules of any stock exchange, treaty or other legislative measure;
- (g) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (h) where more than one person is named as Farmer, any provision in this Agreement to be performed by the Farmer will bind those persons jointly and severally;
- (i) referring to anything after the word "including" does not limit what else might be included (and expressions similar to "including" shall be construed accordingly);
- (j) where a word or expression is defined in this Agreement other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (k) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns; and
- (l) a reference to an agreement (including this Agreement) or document is to the agreement or document as amended, novated, supplemented or replaced from time to time.

2. Term

2.1 This Agreement shall continue until such time as it is terminated by the Company:

- (a) on providing at least ten Working Days' notice in writing to the Farmer; or
- (b) otherwise in accordance with the provisions of this Agreement.

2.2 The Farmer must not terminate, rescind or accept any repudiation of this Agreement.

3. Supply of Water

- 3.1 Subject to the terms of this Agreement, the Company will supply water to the Farmer in each Irrigation Season in consideration of the payment of the Water Charges.
- 3.2 Subject to the terms of this Agreement, the Farmer shall be entitled to take an allocation of water each Irrigation Season and to irrigate the Irrigable Area on the basis of one hectare per Share held at the rate of supply determined in accordance with clause 3.4.
- 3.3 The water shall be supplied to the Farmer at the Farm Turn-out in accordance with the Company's operational protocols (as determined by the Company and advised to the Farmer from time to time).
- 3.4 The Farmer's allocation of water and the rate of supply shall be determined by the Company, in its sole discretion, at the commencement of each Irrigation Season taking into account the quantity of Shares held by the Farmer at the time, and the quantity of water expected to be available.
- 3.5 The Farmer shall only take water for the purposes of efficient irrigation of the Irrigable Area and shall not be entitled to take water for any other purpose (including storage, stockwater or dairy shed washdown), or for the irrigation of any other land, without the prior written consent of the Company (which shall be evidenced by a separate form of water supply agreement for the relevant use of water).
- 3.6 The Farmer must not permit the total volume of irrigation water applied from all sources to the Land to exceed 6270 cubic metres per hectare in any 12 month period.
- 3.7 The Farmer acknowledges that the Company has a Nutrient Allocation under its Consent Conditions which covers nutrient discharge from properties (partly or wholly) within the Scheme Command Area. The Farmer acknowledges that they may need to obtain their own consent if any nutrient losses are not authorised by the Consents.
- 3.8 The Company shall supply, at its cost and in such a position as the Company determines, one Farm Turn-out. Any additional Farm Turn-out(s) requested by the Farmer will be at the Farmer's cost and in such a position as the Company determines.
- 3.9 The Company shall supply water through the Farm Turn-out to be maintained by the Company. The Farmer shall not alter or interfere with the Farm Turn-out (including any isolation or other control system) or allow any person to do so. The Farmer shall not take or attempt to take or allow any person under its control to take or attempt to take any water from Scheme Infrastructure otherwise than through a Farm Turn-out.
- 3.10 The Farmer agrees that failure by the Company to deliver water at the rate of supply determined in accordance with clause 3.4 (or any other rate or pressure) is not a breach of this Agreement and does not affect or limit any of the Farmer's obligations under this Agreement.

4. Management of the supply of water

- 4.1 The Farmer acknowledges and accepts in respect of the supply of water by the Company that:
 - (a) it is the obligation of the Farmer to determine from the Company the volume of water available, whether any restrictions apply and if any excess water is available; and
 - (b) requests for the delivery of water by the Company shall be undertaken in accordance with such procedures as the Company may establish and maintain from time to time.

5. Water Charges

- 5.1 The Farmer shall pay to the Company Water Charges on a per Share basis at an amount to be determined by the Company in its sole discretion to recover all capital, operating and specific farmer expenses.
- 5.2 The Water Charges shall be payable at such time and in such manner as the Company may from time to time determine.
- 5.3 Capital expenses incurred by the Company include:
- (a) construction and consent costs in respect of the Scheme Infrastructure; and
 - (b) interest, distributions, repayments, redemptions and capital payments on any bank loan, other loan or debt or equity financing taken out by the Company to fund capital projects or Scheme operations.
- 5.4 Operating expenses incurred by the Company include all costs in relation to:
- (a) maintenance and repairs of the Scheme Infrastructure;
 - (b) electricity and other utility costs;
 - (c) any royalty or tax introduced and levied on water to be taken as part of the Scheme;
 - (d) costs of running and administering the Company;
 - (e) consent costs;
 - (f) monitoring and compliance costs;
 - (g) costs incurred by directors and directors' fees;
 - (h) costs payable to professionals and service providers to the Company; and
 - (i) any rental, premises costs (including utilities), if applicable.
- 5.5 Specific expenses incurred by the Company which are particular to a specific farmer in respect of the supply of water (which are not appropriate for the Company to pay) include all costs in relation to:
- (a) specific construction and consent costs in respect of the Scheme Infrastructure required to ensure and maintain access to water by the relevant farmer;
 - (b) maintenance and repairs of Scheme Infrastructure;
 - (c) delivery or operating costs (e.g. electricity); and
 - (d) costs incurred as a result of the Farmer breaching this Agreement and/or the Consent Conditions in relation to its water take and use including enforcement costs.
- 5.6 The Water Charges as determined by this clause 5 shall be payable by the Farmer to the Company whether or not the Farmer takes the water and notwithstanding that the supply of water to the Land may be cut off, suspended or not be available for any reason whatsoever (including in the circumstances referred to in clause 20.1).
- 5.7 In the event of non-payment of any Water Charges or any other amount due under this Agreement, then without prejudice to the Company's other rights and remedies, penalty interest at a rate of 2% per month shall accrue from the date of non-payment to the date the payment is

actually made. The Farmer shall also be responsible for the Company's recovery costs, including legal costs on a client/solicitor basis. All amounts due under this Agreement shall be paid in full without set-off or deduction of any kind.

6. Farmer Obligations

6.1 The Farmer shall:

- (a) ensure that all irrigation on the Land is carried out in accordance with Best Practice, any Irrigation Scheme Management Plan, FEP, environmental requirements, Consents, industry quality assurance programmes, codes of practices, Statutory Requirements, the Licence, and Company policies;
- (b) at all times hold the number of Shares as set out in the Application Form (being one Share per hectare), unless otherwise agreed in writing by the Company;
- (c) not operate any plant or equipment on the Land or the Farmer's Land in a manner that could affect the supply of water by the Company, or damage or be detrimental to any part of the Scheme Infrastructure;
- (d) be responsible for any costs incurred by the Company for the repair of any damage to the Scheme Infrastructure to the extent that such damage was caused by the Farmer (or its directors, employees, contractors, servants, agents or invitees) through any act or omission, including damage caused by stock, machinery, vehicles, posts or otherwise;
- (e) be responsible for the cost of installing and maintaining all of the Farmer Infrastructure as may be required by the Farmer to take and distribute water beyond the Farm Turn-out. The Farmer will not commence construction or installation of the Farmer Infrastructure without the prior written consent of the Company;
- (f) be responsible at the Farmer's cost for ensuring that the Farmer Infrastructure is protected from over pressure through the installation and maintenance of appropriate equipment that complies with the requirements notified by the Company from time to time;
- (g) where water is made available to the Farmer at the Farm Turn-out away from the Land boundary, be responsible at the Farmer's cost for arranging, maintaining and operating (in each case in accordance with Best Practice), all pipes, connections, equipment, easements or other rights necessary for securing the delivery of water;
- (h) in distributing water on the Land utilise a system and equipment, and apply water use methodologies prescribed by the Company from time to time (including installation, maintenance and use of an approved Backflow Prevention Device if required by the Company);
- (i) not plant or allow trees on the Easement Land (or such additional set back where required for pumps, valves and other Scheme Infrastructure) without the prior written approval of the Company and then only upon and subject to the terms and conditions stipulated by the Company;
- (j) promptly remove (at the Company's expense) all trees presently growing beside or on top of the Scheme Infrastructure or on the Easement Land which may be identified by the Company as limiting or having the potential to limit the efficient maintenance, flow and operation of the Scheme Infrastructure;

- (k) trim and promptly remove all trimmings from all other trees presently growing on any Easement Land and overhanging or within the prescribed set back from a Scheme Supply Race;
- (l) not obstruct, interfere with the Company's operations or the Scheme Infrastructure or attempt to alter any Scheme Infrastructure without the prior written consent of the Company and then only upon and subject to the terms and conditions stipulated by the Company;
- (m) not permit any improvement or structure to be erected or altered on the Easement Land without the prior written approval of the Company and then only upon and subject to the terms and conditions stipulated by the Company;
- (n) not light any fires or burn off vegetation within ten metres of any Easement Land;
- (o) not graze any stock other than sheep within any fenced area of any Easement Land containing a Scheme Supply Race;
- (p) maintain any drainage works on the Land carrying surplus irrigation or flood water to such a standard as will permit the proper functioning of the Scheme Infrastructure;
- (q) not permit the discharge of Run Off, chemicals, effluent, debris, dead stock or other toxic matter into or around any Scheme Infrastructure (including any Scheme Supply Race), or any river, contributory, waterway or flood channel;
- (r) where the Easement Land contains a Scheme Supply Race not cultivate the Easement Land;
- (s) not excavate the Easement Land without the written consent of the Company;
- (t) remove all debris from any Easement Land;
- (u) not undertake any act or omission which may in the reasonable opinion of the Company have a negative effect on the Scheme, or the Scheme Infrastructure or its use;
- (v) ensure that electric fences erected across the Easement Land have insulated break couplings suitably located to facilitate vehicle access;
- (w) allow the Company ready access at all times to the Easement Land and Scheme Infrastructure for construction, operation, inspection, repair and maintenance;
- (x) provide the Company its copies of keys to any locks fitted to any gates on the Land and/or the Farmer's Land required by the Company to exercise its rights in accordance with this Agreement;
- (y) allow the Company to remove silt and other material from the Scheme Supply Races or Water Pipes and spread such silt and other material out on the Easement Land (or such other areas of the Land and/or the Farmer's Land as agreed between the parties) to dry, grade and ultimately re-grass at the Farmer's cost;
- (z) ensure that its Farmer Infrastructure only irrigates on the Irrigable Area and (for the avoidance of doubt) does not at any time spray water onto a public road or other public way;
- (aa) ensure that any lessee, other occupier, contractor, agent or invitee on the Land and the Farmer's Land complies in all respects with the terms of this Agreement;

- (bb) observe and comply with HDWL's constitution, the Consents and all Statutory Requirements, and farming and irrigation practices, procedures and operational protocols as determined from time to time by the Company;
- (cc) comply with the Irrigation Scheme Management Plan (which includes the requirement for the Farmer to prepare, maintain and comply with an FEP in accordance with the Scheme FEP Template and policies approved by the Company);
- (dd) prepare, submit, implement, alter or add to a FEP as required by the Company in accordance with the Consent and the Scheme FEP Template;
- (ee) prepare, submit, implement, alter or add to a FEP Audit as required by the Company in accordance with the Consent and the Scheme FEP Template;
- (ff) engage a Nutrient Management Advisor on an annual basis to prepare a Nutrient Budget as required by the Company in accordance with the Consent which shall include an actual budget for the current year and a forecast for the forthcoming year;
- (gg) at the Company's request allow the Company or the Company's contractors or employees to attend to any of the repairs and/or work set out in this clause 6.1 with the cost of such work being recovered from the Farmer through the Water Charges set out in clause 5; and
- (hh) allow the Company and relevant local authorities, or any of their contractors or employees, access to the Land and the Farmer's Land at all reasonable times for the purpose of inspecting, undertaking or assisting with:
 - (i) a FEP;
 - (ii) a FEP Audit;
 - (iii) spot checks to ensure compliance with the implementation requirements of the FEP and that the Farmer is otherwise enabling the Company to comply with the Consents; and
 - (iv) environmental monitoring in accordance with the Consent.

7. Health and Safety

7.1 The Farmer agrees:

- (a) to consult, cooperate and coordinate activities with the Company so far as is reasonably practicable;
- (b) to comply with and ensure its directors, contractors, servants, employees, agents and invitees comply with all reasonable health and safety directions given by the Company;
- (c) to comply with all obligations imposed on the Farmer and its workers (as defined in the HSWA) under the HSWA and all regulations made under that Act and at law as owner of the Farmer's Land in relation to the health and safety of persons on or in the vicinity of the Farmer's Land;
- (d) to produce a health and safety management plan for the Land and/or the Farmer's Land when required by the Company;
- (e) to provide a register of all known hazards in respect of the Land and/or the Farmer's Land when required by the Company and immediately advise the Company should they become aware of any new hazards; and

- (f) allow the Company from time to time, if it considers there is an emergency involving health and safety, to temporarily exclude entry by all persons to the Easement Land.

8. Company's Obligations

8.1 The Company shall:

- (a) take all reasonable steps to maintain the Consents;
- (b) comply with the provisions of the Companies Act 1993, the Financial Reporting Act 2013, the RMA, and any RMA Plans and, without limiting the generality of the foregoing, provide the Farmer with annual reports and annual accounts detailing income received in the form of Water Charges and expenses incurred;
- (c) operate the Scheme in a professional manner and to the appropriate industry standards which will be updated from time to time;
- (d) comply with its obligations and ensure that the Company's workers (as defined in the HSWA) comply with their obligations under the HSWA and all regulations made under that Act and take reasonable steps to mitigate damage and cause as little interruption as possible to the Land and the Farmer's Land, and the carrying on by the Farmer of its farming operations;
- (e) attend to such reasonable maintenance and repairs as required to maintain the Scheme Infrastructure owned by the Company, and the Company reserves the right to suspend or reduce the supply of water to carry out such activities;
- (f) when necessary, and at its own expense, remove silt and other deleterious material from any Scheme Supply Race;
- (g) promptly pay and discharge all amounts due by it or obligations imposed on it by relevant local authorities in respect of the Consents held in relation to the taking and using of the water or the operation of the Scheme;
- (h) at all times seek to act in an equitable manner in relation to water allocation as between all farmers so farmers receive a fair proportion of water, based on the number of Shares they hold in HDWL;
- (i) from time to time provide the Farmer with a policy relating to the delivery of water taking into account the following factors:
 - (i) the restrictions that may be placed on the supply of water due to insufficient water being available for take from the Waitaki River under the Consents and Licence;
 - (ii) the requirements under the FEP and Irrigation Scheme Management Plan for restricting the supply of water;
 - (iii) any Statutory Requirements restricting the supply of water; and
 - (iv) the right to manage the supply of water so it is supplied at varying intervals and for varying periods during the year to meet the requirements of farmers.

9. Environmental Provisions

- ### **9.1 The Farmer acknowledges that the Company must comply with the RMA, the relevant RMA Plans, the Irrigation Scheme Management Plan and its Consent/s and, to ensure compliance with the same, the Company shall from time to time prescribe certain farming and irrigation practices, policies, protocols and rules in writing to the farmers and the Farmer agrees to**

comply with and be bound by such farming and irrigation practices, which will if necessary be incorporated into an FEP that will be maintained at all times by the Farmer.

- 9.2 Notwithstanding anything to the contrary contained or implied in this Agreement, the Farmer acknowledges that the supply of water under this Agreement is expressly subject to and conditional upon the availability of water, restrictions and limitations placed on the Company by its Consents, the Licence, the requirements of the relevant consent authorities, the relevant RMA Plans and any Statutory Requirements.
- 9.3 The Farmer shall comply with the terms, conditions, restrictions and limitations placed on the Company by the Consent Conditions or any permitted activity standards in the relevant RMA Plans. The Farmer acknowledges that it will further support any applications for new resource consents, and comply with any amendment, variation or replacement of, the Consent or Consent Conditions that may occur from time to time.
- 9.4 The Farmer acknowledges that the Company may from time to time impose restrictions on the Farmer to comply with its Consents and/or the restrictions, policies, rules or directions imposed on the Company by the relevant local authorities or such other statutory body and agrees and undertakes to comply with such restrictions, rules or directions and to reduce its water take and use immediately following notification.

10. Resource Consents and Approvals

- 10.1 The Farmer will not, either directly or indirectly:
- (a) object to the application for or the granting of any plan change, resource consent or building consent sought by the Company for any of the Company's operations as set out in clause 13;
 - (b) object to, advocate against, oppose or impede any action taken by the Company under the RMA to give effect to any of the matters referred to in this Agreement or for the purposes of undertaking any of the Company's operations as set out in clause 13;
 - (c) fund, facilitate, assist or promote any other person to take any action that would be in breach of this Agreement if done by the Farmer.
- 10.2 If requested by the Company the Farmer will promptly give, sign and deliver all written approvals or consents (including in relation to any building consent, plan change or any resource consent application under section 94 of the RMA or otherwise) for any activity to be undertaken by the Company pursuant to this Agreement (or the Company's Easements) to the Company or directly to the relevant local authority. For the avoidance of doubt the Farmer acknowledges that the Farmer has, for valuable consideration, granted the Company an irrevocable power of attorney to execute such approval or consent on the Farmer's behalf if necessary in accordance with clause 21.
- 10.3 If the Company is required by any resource consent or relevant RMA Plan to undertake particular mitigation measures on the Land and/or the Farmer's Land, including any planting or earthworks, the Farmer will allow the Company to undertake such mitigation measures.

11. Metering

- 11.1 The Farmer must install, at their cost, Metering Equipment at all Farm Turn-outs to meter and monitor the water taken and used by the Farmer to ensure compliance by the Company with the Consent Conditions and compliance by the Farmer with the terms of this Agreement. Repair and replacement of any Metering Equipment as required from time to time by the Company shall be the Farmer's sole cost and responsibly.
- 11.2 The Farmer shall only install (or replace) and use Metering Equipment that has first been approved by the Company in writing.

- 11.3 The Farmer shall under no circumstance tamper or interfere with any Metering Equipment and shall take reasonable steps at the direction of the Company to prevent interference and tampering by outsiders, trespassers or any other third party.
- 11.4 The Company shall have the right at any time and from time to time, without being deemed to commit a trespass, to enter onto the Land and/or the Farmer's Land to install, operate, inspect, maintain, read or repair any Metering Equipment (including all telemetry equipment) on the Land.
- 11.5 On request by the Company, the Farmer will (at the Farmer's cost) promptly arrange for independent testing and/or auditing of the Metering Equipment in accordance with the Company's requirements.
- 11.6 The costs associated with the monitoring, receipt and storage of information provided by any Metering Equipment (including all telemetry equipment) will be the responsibility of the Company.
- 11.7 The information collected from the metering equipment by the Company shall be taken to be correct unless there is a manifest error in that information.

12. Sale, Subdivision or Lease

- 12.1 If the Farmer wishes to sell or subdivide all or any part of the Land then:
- (a) the Company shall be under no obligation to pay for any costs relating to on-farm or other works required to be made to ensure the continuity of water supply via construction of Scheme Infrastructure following a change in the ownership of the Land or any part thereof;
 - (b) appropriate provisions shall be made by the Farmer for the granting of all requisite easements (if any) and other rights;
 - (c) the Farmer shall ensure that if its Shares (or the appropriate parcel(s) of Shares in the event of a subdivision) are to be transferred to the intending purchaser or purchasers of the Land ("Purchaser(s)") (or the relevant part of the Land in the event of a subdivision), all requirements in HDWL's constitution relating to the transfer of Shares are satisfied;
 - (d) in respect of the sale of all of the Land, the Farmer shall remain liable for full compliance with all of its obligations under this Agreement including payment of all Water Charges and costs under this Agreement that accrue or have accrued up to the later of the time as the Shares have been transferred to Purchaser (as evidenced by the relevant update to HDWL's share register) and the time that the Purchaser has entered into a new water supply agreement (in a form and substance acceptable to the Company in its sole discretion); and
 - (e) in respect of the sale of any part of the Land, the Farmer shall remain liable for full compliance with all of its obligations under this Agreement, including payment of all Water Charges and costs, in respect of:
 - (i) that part of the Land (and the relevant parcel of Shares) which is retained by the Farmer; and
 - (ii) until the later of the time as the Shares have been transferred to Purchaser (as evidenced by the relevant update to HDWL's share register) and the time that the Purchaser has entered into a new water supply agreement (in a form and substance acceptable to the Company in its sole discretion), that part of the Land which is sold or to be sold to the Purchaser.

- 12.2 If the Farmer wishes to sell or subdivide all or any part of the Farmer's Land other than the Land then appropriate provisions shall be made by the Farmer for the granting of all requisite easements (if any).
- 12.3 If the Farmer shall lease or part with possession of the Land and/or the Farmer's Land or any part thereof other than by sale then the Farmer shall ensure that the lessee or occupier shall comply in all respects with the terms of this Agreement applicable to the Farmer and to the greatest extent permissible by law shall indemnify and hold the Company harmless from any loss, damage or cost that arises as a result of breach of this Agreement by the lessee or occupier. Without limiting the generality of the foregoing, the lessee or occupier must comply with clauses 3, 4, 6, 7, 9, 10, 11, 13, 19 and 20.
- 12.4 Without prejudice to any other rights and remedies of the Company under this Agreement or otherwise, the Company may withhold the supply of water if the Farmer sells, or purports to sell, the Shares or Land otherwise than in accordance with the provisions of this Agreement.
- 12.5 The Company may withhold the supply of water until the Purchaser holds the Shares and has entered into the required form of water supply agreement.
- 12.6 If the continuity of the supply of water becomes uneconomic HDWL may refuse to consent to the transfer of any rights to Shares and water.

13. Company's Rights and Powers

- 13.1 The parties acknowledge that the Company requires access to the Farmer's Land to undertake installation, excavation, works, operation, inspection, investigation, maintenance and repair of Scheme Infrastructure, and accordingly the Company shall have the following rights and powers and at any time and from time to time without committing a trespass or other civil wrong (on reasonable notice in accordance with clause 13.3) and without being liable in any way for damages or loss of any kind to enter and remain upon, and go along and through the Farmer's Land to:
- (a) survey, excavate and undertake such works to install Scheme Infrastructure and other works (including investigations for bores/test pits) which the Company deems necessary for the supply of water to the Land and other properties for the purposes of the Scheme;
 - (b) remove any trees (including shelter belts) or other vegetation which are or are likely in the opinion of the Company:
 - (i) necessary to undertake the installation of the Scheme Infrastructure and other works;
 - (ii) interfering with the operation of the Scheme Infrastructure; or
 - (iii) a danger or a hazard to the safety or operation of the Scheme;
 - (c) upgrade, modify, maintain, inspect, view, operate, clean, repair, renew, replace or reconstruct the Scheme Infrastructure and all other works which the Company deems necessary for the supply of water to the Land and other properties for the purposes of the Scheme;
 - (d) gauge, inspect, investigate or otherwise determine the quantity of water used by the Farmer or other occupier and to view the condition of Scheme Infrastructure and works on the Farmer's Land;
 - (e) convey water and all rights incidental and ancillary to the rights in this clause 13.1 as shall be necessary for the purposes of operating and maintaining the Scheme Infrastructure;

- (f) carry out any maintenance, testing or other work required in order to comply with the Company's duties under the HSWA (including erecting and maintaining signs and notices on the Farmer's Land);
- (g) take such measures as the Company reasonably thinks necessary for the safety of persons and property;
- (h) access any nearby land (including land not owned by the Farmer), including by way of the passage of persons, vehicles, plant, machinery, equipment, fuel, works, topsoil and material;
- (i) ascertain the cause of an interference to the supply of water;
- (j) disconnect or reconnect the supply of water; and
- (k) all other rights and powers which the Company has determined are reasonably necessary for the proper and efficient operation and management of the Scheme Infrastructure and other works.

13.2 In exercising its rights under this clause 13 the Farmer acknowledges that the Company may:

- (a) temporarily occupy a designated works area and restrict (including by way of temporary fencing) the Farmer's access to such a work area (whether completely or partially) in the event the Farmer's entry to such work area is not safe or would impede the operation of the works. In addition, where access is permitted while the Company is undertaking the works, the Farmer must only access the work area under the supervision of the Company and strictly in accordance with all directions given by the Company for the purposes of health and safety, to minimise disruptions or to otherwise ensure compliance with all Statutory Requirements;
- (b) upgrade, alter, relocate or remove any improvement to the Farmer's Land (including any farm road, track, carpark, access way, culvert, ford, bridge, irrigation works, water race, fence, gate or conveyance owned by the Farmer on the Farmer's Land);
- (c) construct, upgrade, alter, relocate or remove any temporary structure, (including any building or other structure, road, carpark, track, access way, culvert, ford, bridge, irrigation work, water race, fence, gate or conveyance owned or constructed by the Company on the Farmer's Land); and
- (d) in consultation with the Farmer, move or reconstruct (either above ground or underground) any cable, line or pipe located in, on, over or under the Farmer's Land, and, where the Farmer is not the sole owner of the cable, line or pipe, the Farmer will, to the extent it has the capacity and capability to do so (at the Company's cost), grant to the owner of the cable, line or pipe any easement reasonably required by that owner for the relocated or reconstructed cable line or pipe.

13.3 The parties acknowledge that the Company shall use reasonable endeavours where possible to consult with the Farmer in relation to the exercise of its rights under this clause 13 above, giving reasonable notice (being not less than five Working Days) of its intention to exercise its rights and the purpose for which the right will be exercised. In the event it is not possible or practical (determined in the Company's sole discretion) for the Company to give the Farmer reasonable notice of its intention to exercise its rights under clause 13 the Company may access the Farmer's Land and exercise its rights without any prior notice to the Farmer.

13.4 The Company shall at all times when entering the Farmer's Land in accordance with this clause 13 give due consideration to the Farmer's farming operation with a view to minimising disruption to that operation and shall further comply with its obligations (and ensure that the Company's

workers as defined in the HSWA comply with their obligations) under the HSWA and Best Practice.

13.5 When maintenance or repairs are required during an Irrigation Season, the Company reserves the right to suspend the supply of water to carry out such activities. The Company will use reasonable endeavours to:

- (a) promptly notify the Farmer of any suspension prior to such suspension taking effect; and
- (b) limit the period of suspension to as short a period as possible.

For the avoidance of doubt, any suspension pursuant to this clause 13.5 shall in no way limit the Farmer's obligations under this Agreement including the requirement to pay Water Charges.

13.6 Prior to the initial installation of any Scheme Infrastructure on the Farmer's Land, the Company will provide the Farmer with written notice of its intention to locate and install the Scheme Infrastructure on the Farmer's Land prior to the Company exercising its rights to install such infrastructure under clause 13.1. Any such notice shall describe the Scheme Infrastructure, and the nature, position and area of the Easements relating to that Scheme Infrastructure, which shall be as the Company in its reasonable discretion requires and otherwise in accordance with clause 14.1. For the avoidance of doubt, no compensation shall be payable to the Farmer either in respect of the installation of such Scheme Infrastructure or the grant or registration of the related Easements.

13.7 On completion of any new works carried out under this clause 13, the Company shall undertake to repair and level (to a reasonable contour as agreed with the Farmer) the Farmer's Land. The Farmer is responsible for the cost of re-sowing the Farmer's Land.

14. Easements

14.1 The Farmer agrees to grant such Easements over the Farmer's Land as the Company may reasonably require from time to time in relation to the Scheme Infrastructure as set out in written notice from the Company under clause 13.6, and otherwise as follows:

- (a) the nature of the Easements may include rights to convey water, electricity and/or telecommunications and computer media;
- (b) the Easements shall be in gross for the benefit of the Company or any transferee of or successor to the Company's interest (in all cases) and/or for the benefit of a utility operator nominated by the Company (in the case of rights to convey electricity or telecommunications and computer media);
- (c) the position and area of the Easements shall (subject to final survey) be as described in the Company's notice under clause 13.6; and
- (d) the terms of the Easement shall:
 - (i) where the Easements are for the benefit of the Company, be on the Company's then current standard form easement (the version current as at the date of the PDS is set out in Schedule One); and/or
 - (ii) where the Easements are for the benefit of the utility operator nominated by the Company, be on the then current standard form of the relevant utility operator.

14.2 The Company will prepare at its cost documents and survey plans necessary in order to register the Easements.

14.3 The Farmer agrees to execute all documents and do all things required to procure registration of the Easements (including signing an authority and instruction form authorising its solicitor to

sign and certify the Easements within the LandOnline System) within ten Working Days' (unless otherwise agreed in writing between the parties) of receiving the Company's requirements.

- 14.4 In addition and where required by the Company from time to time, the Farmer will notify its insurers and obtain the written consent of any third party (including any mortgagee) with an interest in the Farmer's Land to the grant and/or registration of the Easements.
- 14.5 If the Farmer fails to sign any documents reasonably required by the Company to Register the Easements pursuant to the terms of this Agreement, all such documents may be signed under power of attorney in accordance with clause 21.
- 14.6 Until the Easements have been registered, the Farmer will be bound by the terms, covenants and provisions contained in the Easements as if the Easements had been registered at the date of the Company's notice under clause 13.6.

15. Encumbrance

- 15.1 The Company may, at its discretion require an Encumbrance to be registered over the Farmer's Land to secure Water Charges and other monies owing by the Farmer to the Company and the Farmer shall consent to the registration of the Company's then current Encumbrance over the Farmer's Land. The provisions of clause 14 above in respect of the Easements shall apply with the reference to "Easements" read to refer to "Encumbrance" with such changes as the context requires.

16. Caveat

- 16.1 The parties acknowledge and agree that the Company is entitled to lodge a caveat against any Computer Register(s) for the Farmer's Land to protect its interests under this Agreement. The Company will withdraw any caveat upon registration of the Easements and the Encumbrance (if required by the Company) in respect of the Scheme. The Company will not unreasonably withhold or delay its consent to any dealing with the Farmer's Land where such dealing does not adversely affect the Company's rights under this Agreement.

17. Default

- 17.1 The Farmer will be in default of this Agreement if one or more of the following events occur:
- (a) the Farmer breaches, or does or omits to do anything which causes the Company to breach, any of the Consents or the Consent Conditions;
 - (b) the Farmer commits any other breach of this Agreement (including failing to make any payment due to the Company under this Agreement) and fails to remedy that breach within five Working Days after receipt of notice requiring the breach to be remedied;
 - (c) the Farmer ceases to be a shareholder of HDWL and ceases in the opinion of the Directors of the Company to be associated or connected with the Shares other than in accordance with the term of this Agreement. The Farmer shall remain liable for payment of all monies owing (including Water Charges) and for any breach of this Agreement up to the date of termination of this Agreement;
 - (d) the Farmer fails to contest within ten Working Days of service any petition for bankruptcy or winding up;
 - (e) any execution, levy or distress is levied against the Farmer or the assets of the Farmer's business;
 - (f) the Farmer purports to assign or charge its rights or interest under this Agreement without complying with the provisions of this Agreement;

- (g) the Farmer makes any composition with or enters into any arrangement with its creditors;
- (h) the Farmer is in default under the Company's Easements.

17.2

- (a) the Farmer must inform the Company if any receiver, manager or other custodian is appointed (either temporary or permanent) with respect to the Farmer or in respect of all or any part of the Farmer's business.
- (b) If the Farmer fails to inform the Company within a reasonable timeframe of an event as described in 17.2(a) then the Farmer will be in default of this Agreement.

18. Remedies

18.1 If the Farmer commits an event of default in accordance with clause 17 above then the Company may (without limitation to the Company's rights at law or under this Agreement) do all or any of the following:

- (a) without payment of any compensation to the Farmer or any other person and without notice to the Farmer or any other person, immediately reduce or cut off the supply of water to the Land. The Farmer gives the Company authority to enter on to the Land and/or the Farmer's Land and disconnect the supply of water to the Land in such manner as the Company thinks fit, and to secure or lock off the Farm Turn-out, gate, screen, Water Pipe and/or control device (if applicable) and thereafter no person shall be entitled to be supplied with any further water to the Land from the Company until such time as the breach has been made good to the satisfaction of the Company;
- (b) require the Farmer to pay the costs of any action (on a solicitor/client basis) required by the Company as a result of the failure to fully implement any farming and/or irrigation practices prescribed by the Company;
- (c) require the Farmer to pay the costs of any FEP Audit which is required by the Company and/or the relevant local authority to ensure the Company can comply with its Consent Conditions or any RMA Plan;
- (d) cancel the Agreement by giving ten Working Days' written notice to the Farmer.

18.2 Without prejudice to any other right or remedy of the Company under this Agreement or at law, where a Farmer breaches any restriction on water supply or use provided in the Consents, an RMA Plan or other Statutory Requirement, Irrigation Scheme Management Plan, FEP or applicable Company policies, or puts the Company in breach of any such restriction, the Company may refuse to initially supply, cease to supply or restrict the volume of water delivered to the Farmer until the restriction is complied with.

18.3 If the Farmer fails to carry out any work or make good any damage in accordance with any notice given by or on behalf of the Company within a reasonable time after receipt of such notice then the Company shall be entitled to enter upon the Farmer's Land and carry out all or any of the required work or repairs as the Company shall think fit and shall be entitled to recover the costs thereof from the Farmer together with interest thereon at the rate set out in clause 5.7. Where the Company in its sole discretion considers urgent action is required, it shall not be obliged to give the Farmer any notice before it carries out the required work or repairs.

19. Contract Review

19.1 The Company may at any time and without the consent of the Farmer review and amend the terms and conditions of this Agreement including:

- (a) to take account of changes and ensure compliance with the Consents, RMA Plans, the Licence and all Statutory Requirements;
- (b) to take account of farming and irrigation practice (to be determined by the Company in its sole discretion);
- (c) to make such changes or fix any errors as may in the Company's sole discretion be necessary from time to time;
- (d) to meet the requirements of the Financiers in connection with the financing of the Scheme; and
- (e) to take into account any changes to the number of Shares, the Land details, the Irrigable Area, type of irrigation, the water allocation rates and the special conditions.

19.2 The Farmer shall become bound by an amendment under clause 19.1 on receiving written notice of the change. Without limiting the effect of the preceding sentence, the Company may from time to time require the Farmer to enter into a new water supply agreement on the Company's then current form and pay all the Company's costs in respect of that agreement.

20. Limitation of Liability

20.1 If the supply of water provided for under this Agreement is reduced, stopped or unable to be delivered for any reason whatsoever, including water shortage, regulatory reasons or any other reason whatsoever, or due to a failure by the Farmer or other farmers to comply with the Consent Conditions, then such reduction, stoppage or failure to supply shall in no way give the Farmer any right to any claim, compensation or other remedy against the Company or HDWL.

20.2 The Company and HDWL shall be under no liability to the Farmer (whether in contract, tort or otherwise) for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply the water under this Agreement.

20.3 If, notwithstanding clauses 20.1 and 20.2, the Company or HDWL is found to be liable to the Farmer in any circumstances then the maximum amount the Company or HDWL will be liable for to the Farmer under this Agreement or in any way whatsoever, is an amount equal to the lesser of:

- (a) last season's Water Charges; or
- (b) the actual loss or damage suffered.

20.4 To the extent permissible by law, the Farmer shall keep the Company and HDWL indemnified against all costs, claims, demands, expenses, losses and liabilities of whatsoever nature, including, without limiting the generality of the foregoing, claims for consequential loss (including loss of profits/production) which may be made against the Company and/or HDWL (as applicable) and which the Company and/or HDWL (as applicable) may sustain, pay or incur as a result of or in connection with a breach by the Farmer (or the Farmer's directors, employees, contractors, servants, agents or invitees) of its obligations under this Agreement.

21. Power of Attorney

21.1 For valuable consideration and without releasing the Farmer from any obligation under this Agreement, the Farmer hereby irrevocably appoints the directors for the time being of the Company severally to be the attorney of the Farmer to do anything and execute any document which the Farmer covenants or agrees to do or execute under this Agreement and has failed to do or execute after ten Working Days' notice from the Company.

22. Delegation

22.1 The Company may at any time and from time to time validly delegate any of its powers, rights and discretions hereunder to any person or persons (employees, contractors, servants, agents or otherwise) and the exercise of any such power, rights, or discretion by any such person or persons shall be deemed to be a valid exercise thereof by the Company.

23. Exclusion of Partnership and Agency

23.1 Nothing in this Agreement shall create, or constitute or be deemed to create or constitute a partnership between the parties, nor to constitute or create or be deemed to create or constitute a party as an agent of any other party for any purpose whatsoever.

23.2 Save as provided for in this Agreement, no party shall have any authority or power whatsoever to bind or commit, act, represent or hold itself out as having authority to act as an agent of, or in any way bind or commit the other.

24. Dispute Resolution

24.1 Without limiting clause 18, if either party has any dispute with the other in connection with this Agreement:

- (a) that party will promptly give full written particulars of the dispute to the other party;
- (b) the parties will promptly meet together and in good faith try and resolve the dispute.

24.2 If the dispute is not resolved within ten Working Days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.

24.3 A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings. The mediation will be conducted by a LEADR New Zealand Incorporated panel mediator chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.

24.4 If the dispute is not resolved by mediation within twenty Working Days of the appointment of a mediator under clause 24.3, the parties will refer the dispute to a single arbitrator. The single arbitrator will be chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee. The arbitration will be conducted in accordance with the Arbitration Act 1996.

24.5 The parties must always act in good faith and co-operate with each other to promptly resolve any dispute.

24.6 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.

24.7 The parties must continue to comply with their obligations under this Agreement during the dispute resolution process.

24.8 Nothing in this clause 24 shall preclude a party from taking immediate steps to seek equitable relief before a New Zealand Court or limit the Company's rights under clause 18.

25. Conflict

25.1 In the event of any conflict between this Agreement and the Company's Easements or Encumbrance then this Agreement shall prevail, except and to the extent that the Company's Easements or Encumbrance (as applicable) expand the rights or powers of the Company.

26. Governing Law

26.1 This Agreement shall be governed by and interpreted according to the laws of New Zealand. Each party irrevocably submits itself to the jurisdiction of the Courts of New Zealand in respect of any proceedings arising out of, or relating to this Agreement.

27. No Waiver

27.1 No failure or delay on the part of any party in exercising any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power hereunder.

28. Assignment

28.1 The Farmer shall not assign, transfer, mortgage, charge or encumber the Farmer's interest in this Agreement without the prior written approval of the Company.

28.2 The Company may at any time assign the rights and interests of the Company, or transfer the rights, interests and obligations of the Company in this Agreement, any Encumbrances and/or the Company's Easements without the consent of the Farmer. The Farmer agrees to do or execute anything reasonably required by the Company to effect any assignment, transfer, novation or other dealing under this clause 28.2.

29. Notices

29.1 All demands, consents and notices authorised or required to be made under this Agreement shall be in writing and may be given to, or served upon a party by:

- (a) being left at the party's address as stated below; or
- (b) by email, to the recipient party's notified email address stated below.

29.2 The notified postal addresses and email addresses of the parties are as follows:

Company

Company Secretary

Hunter Downs Irrigation

PO Box 418

Timaru 7940

info@hdi.co.nz

Farmer

The address of the Farmer set out in the Application Form

30. Consumer Guarantees Act

30.1 The Farmer agrees that the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement.

31. Costs

31.1 Each party shall bear its own costs relating to this Agreement.

32. Further Assurances

32.1 The Farmer shall do all things and sign all documents necessary to discharge its obligations under this Agreement.

33. Entire Agreement

33.1 Except to the extent provided in any other duly executed agreement between the parties in relation to the Land and/or the Farmer's Land, HDWL's constitution or the terms of issue of any Shares, this Agreement sets out the entire agreement and understanding between the parties in relation to the matters contemplated by this Agreement and in particular supersedes any prior agreement, correspondence, or undertaking made between them.

34. Financiers

34.1 The Farmer acknowledges that:

- (a) the Company may assign, and/or charge by way of security all and/or mortgage all or any part of its rights or interests in this Agreement, any Encumbrances and/or any of the Company's Easements to the Financiers;
- (b) the Financiers may at any time assign the rights and interests of the Company, or transfer the rights, interests and obligations of the Company in this Agreement, any Encumbrances and/or any of the Company's Easements without the consent of the Farmer.

34.2 The Farmer agrees to do or execute anything reasonably required by the Financiers to effect any assignment, transfer, novation or other dealing under this clause 34.

34.3 For the purposes of the Contracts (Privity) Act 1982, each Financier is entitled to enforce against the Farmer the provisions of this clause 34.

34.4 The remedies of damages and cancellation as against any Financier under or in connection with the assignment by way of security of the Company's rights under this Agreement, any Encumbrances and any of the Company's Easements made pursuant to the security documents the Company has granted in favour of the Financiers are hereby expressly excluded for the purpose of section 11 of the Contractual Remedies Act 1979.

35. Independent Advice

35.1 The Farmer acknowledges that the Company's solicitors act for the Company only and that the Farmer has either obtained independent legal advice or has declined to do so having been advised to obtain independent advice.

36. Counterparts

36.1 This Agreement may be executed in any number of counterparts and all the counterparts when taken together will constitute one document and Agreement. Each party may execute and enter into the Agreement by executing a counterpart. The parties acknowledge that the agreements may be executed by an exchange of facsimile and/or scanned and emailed PDF copies and execution of this Agreement by these means is valid and sufficient execution.

37. Limitation of Liability of Independent Trustee

37.1 The liability of an independent trustee under this Agreement is not personal, but shall be limited to the net assets from time to time of the relevant trust unless by reason of a breach of trust, that trustee is not entitled to be indemnified from the assets of the trust, in which case the limit on liability in this clause will not apply.

38. Severance

38.1 If any provision or part of a provision of these terms and conditions shall not be enforceable, then that provision or part provision shall be deemed to be deleted and the rest of these terms and conditions shall remain in full force and effect.

38.2 Where a provision or part of a provision is unenforceable the parties shall negotiate in good faith to agree a valid and enforceable provision to replace the invalid provision which has as near as possible the same effect as the deleted provision.

Schedule One – Form of Easement

Form B

Easement instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

Grantee

HUNTER DOWNS WATER LIMITED

Grant of Easement or *Profit à prendre* or Creation of Covenant

The Grantor being the registered proprietor of the servient tenement(s) set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, **or creates** the covenant(s) **set out** in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A
Annexure Schedule, if required

Continue in additional

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
--	------------------------	---------------------------------------	---

<p>To convey water and electricity and telecommunications and computer media</p>	<p>Marked [“ ”] on DP []</p>	<p>[]</p>	<p>In gross</p>
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Form B - continued

Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)

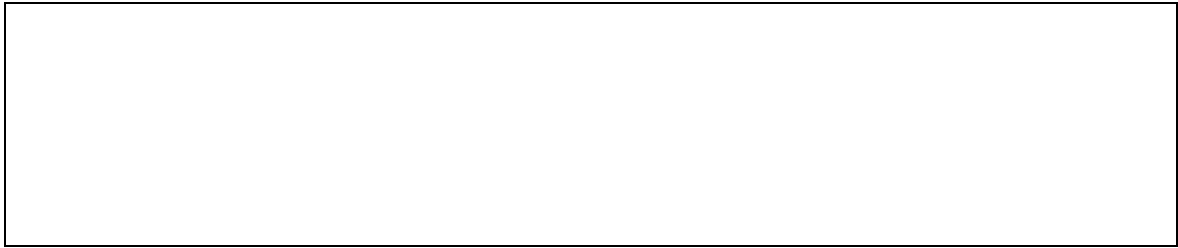
Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied]~~ ~~[negated]~~ ~~[added to]~~ or **[substituted]** by:

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

[the provisions set out in Annexure Schedule 1]



Covenant provisions

Delete phrases in [] and insert Memorandum number as require; continue in additional Annexure Schedule, if required

~~The provisions applying to the specified covenants are those set out in:~~

~~[Memorandum number _____, registered under section 155A of the Land Transfer Act 1952]~~

~~[Annexure Schedule _____]~~

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

ANNEXURE SCHEDULE 1

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: Unless a contrary intention appears:

"Associated Plant and Equipment" means underground electricity and communication lines, off take structures, monitoring and control gear, fences and any other plant or equipment deemed by the Grantee to be necessary or desirable for the Operation of the Pipeline for irrigation purposes.

"Construct" includes construct, lay, inspect, Maintain, repair, renew, upgrade, replace and remove, and "Construction" and "Constructed" have corresponding meanings.

"Easement Land" means the land marked on Deposited Plan.

"Irrigation Scheme" means the scheme constructed and/or operated by the Grantee using water taken from the Waitaki River to irrigate land located north of the Waitaki River and provide associated ancillary functions (including small scale hydro generation and the supply of water for environmental purposes).

"Land" means the Servient Tenement in Schedule A.

"Maintain" includes repair, renew, alter, inspect and improve and "Maintenance" has a corresponding meaning.

"Operate" means operate, inspect and test the Pipeline and the Associated Plant and Equipment and "Operation" and "Operated" have corresponding meanings.

"Persons under the control of the Grantee" include any engineers, surveyors, workmen, contractors, agents, professional advisers or other employees, licensees, lessees or invitees (but excluding members of the public), with or without any vehicle, machinery or equipment, of or authorised by the Grantee.

"Pipeline" means the underground Pipeline Constructed by the Grantee on the Servient Tenement as part of the Irrigation Scheme for the purpose of conveying water.

"Quarried Material" means soil, mud, gravel, rock, sediment and other excavated material.

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

"Survey" means survey, site investigation and pegging; and

"Working Day" means any day other than a Saturday, a Sunday, a public holiday in Canterbury, and any day in the period 25 December to 2 January (inclusive).

1.2 **Interpretation:** Unless a contrary intention appears:

- (a) A reference to a person includes any other entity or association recognised by law and the reverse;
- (b) Words referring to the singular number include the plural number and the reverse;
- (c) Words referring to one gender include every other gender;
- (d) Any reference to any of the parties by their defined terms includes that party's executors, administrators or permitted assigns or both or being a company its successors or permitted assigns or both;
- (e) Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) Every agreement or undertaking expressed or implied by which more persons than one agree or undertake any obligation or derive any benefit under this Easement Instrument, or both, binds and is for the benefit of such persons jointly and severally;
- (g) Clause headings are for reference purposes only;
- (h) A reference to an item is a reference to the corresponding item in the Schedule;
- (i) Where any words or phrases are given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (j) A reference to an exhibit, annexure or schedule is a reference to the corresponding exhibit, annexure or schedule to this Easement Instrument;
- (k) A reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; and

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

- (l) The calculation of all periods of time or notice exclude the day on which the period or notice is given and the day on which the period or notice expires.

2. GRANT OF RIGHTS POWERS AND PRIVILEGES

2.1 Grant of right to convey water: The Grantor hereby grants to the Grantee an easement in gross in perpetuity to Construct and Operate a Pipeline, and to convey water in any quantity capable of being safely conveyed from time to time in free and unimpeded flow through the Pipeline under the Easement Land together with and subject to the following rights, powers and privileges for the Grantee and Persons under control of the Grantee:

- (a) **Right to remove vegetation:** The right to keep the Easement Land clear of, and remove, any vegetation or structures which are or are likely in the opinion of the Grantee to:
 - (i) Be a danger or a hazard to the safety or the Operation of the Pipeline and the Associated Plant and Equipment; or
 - (ii) Otherwise interfere with the Operation of the Pipeline and the Associated Plant and Equipment,Either before or after the date of commencement of the Construction.

(b) **Right to maintain Pipeline:** The right to maintain the Pipeline and the Associated Plant and Equipment on the Easement Land.

(c) **Right of entry:** The right to enter on the Land, and to remain on the Land with or without equipment or vehicles for any purposes associated with the Construction, Maintenance and Operation of the Pipeline and the Associated Plant and Equipment.

(d) **Right to erect notices:** The right to erect and maintain on the Easement Land signs and notices. The Grantee will consult the Grantor about reasonable locations for the signs.

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

- (e) **Right to take safety measures:** Without limitation to the Grantee's obligations under clause 4.9, the right to take such measures as the Grantee reasonably thinks necessary for the safety of persons and property.
 - (f) **Right to access:** The right to have reasonable access to the Easement Land through the Land and any other land of the Grantor adjacent to it for the purposes of exercising any of the powers granted in this Easement Instrument at any time and with and without vehicles, plant and equipment provided that:
 - (i) Such rights shall be exercised only over routes and in such manner agreed in advance between the Grantor and Grantee (acting reasonably), provided that routes adequate to the Grantee's reasonable requirements shall be available to the Grantee at all times;
 - (ii) Such rights shall be exercised in such manner as will minimise damage to the land and disturbance to any occupier; and
 - (iii) The Grantee will promptly make good any damage caused by the Grantee to the Land, any other land or the Grantor's property.
 - (g) **Easement Land as access:** The right to use the Easement Land for access to those parts of the Pipeline and the Associated Plant and Equipment situated on land other than the Easement Land.
 - (h) **Other rights:** Any other rights set out in this Easement Instrument.
- 2.2 **Grant of right to convey electricity, telecommunications and computer media:** The Grantor hereby grants to the Grantee an easement in gross in perpetuity to convey electricity, telecommunications and computer media, under the ground of the Easement Land together with and subject to the rights, powers and privileges for the Grantee and persons under control of the Grantee implied in the specified classes of easement by the Land Transfer Regulations 2002, varied as follows:
- (A) The definition of "easement facility" in clause 1(b) of the Fourth Schedule of the Land Transfer Regulations 2002 is deleted and the following is substituted:
 - "(b) in relation to a right to convey electricity and a right to convey telecommunications and computer media means wires, cables (containing wire or other media conducting materials) transformers, switching gear and other

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equipment suitable for that purpose located under the ground and includes anything in substitution or replacement."

- (B) Clause 14 of the Fourth Schedule of the Land Transfer Regulations 2002 is deleted and substituted by the following clause:

"14 where there is a conflict between the provisions of the Fourth Schedule of the Land Transfer Regulations 2002 and the provisions of this Easement Instrument, the provisions of this Easement Instrument shall prevail."

3. GRANTOR'S USE OF AND EFFECTS ON EASEMENT LAND

3.1 **Use:** For the avoidance of doubt, the Grantor shall have the right to use the Easement Land, provided it does not interfere with or affect in any way the rights of the Grantee granted in this Easement Instrument.

3.2 **Excavation:** The Grantor shall not:

- (a) Remove any soil, mud, gravel, rock, sediment and other excavated material from the Land; or
- (b) Disturb any soil, mud, gravel, rock, sediment and other excavated material on the Land,

Where any such work may have an adverse effect on the Pipeline or the Easement Land without either:

- (a) The prior written consent of the Grantee; or
- (b) A certificate being provided to the Grantee prior to such work commencing by a Chartered Engineer that there will be no adverse effect on the Pipeline or the Easement Land as a result of the planned work.

3.3 **Improvements:** The Grantor shall not without the prior written consent of the Grantee:

- (a) Build or effect any improvements (including without limitation any fence) on or in the Easement Land; or
- (b) Permit any utilities to be located within the Easement Land.

3.4 **Trees:** The Grantor shall not plant any trees upon the Easement Land.

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- 3.5 **Fires:** The Grantor shall not light any fires or burn off vegetation on the land within ten (10) metres of the Easement Land.
- 3.6 **Interference:** The Grantor shall not obstruct or interfere in any way with the Construction, Operation or use of the Pipeline and the Irrigation Scheme by the Grantee or Persons under the control of the Grantee.
- 3.7 **No negative effect:** The Grantor shall not undertake any act or omission which may in the reasonable opinion of the Grantee have a negative effect on the Pipeline, Associated Plant and Equipment and/or the Irrigation Scheme or their use.
- 3.8 **Ownership:** The Grantor acknowledges that the Grantee is and remains at all times the legal and beneficial owner of the Pipeline and all Associated Plant and Equipment and all other structures that the Grantee or any Persons under the control of the Grantee construct on the Easement Land, and neither the Grantor nor any mortgagee, encumbrancee nor any chargeholder of the Grantor shall have any interest in such structures.
- 1.2 **Right to mortgage:** The Grantor acknowledges that the Grantee has a right to and may elect to register a mortgage of its interest under this Easement.
- 3.9 **Grantee may remedy:** The Grantee shall be entitled to take all reasonable steps to abate or remedy any breach by the Grantor of this Easement Instrument, and to recover any costs and expenses incurred by the Grantee from the Grantor, provided always that before taking any such steps the Grantee shall first give the Grantor a reasonable opportunity to remedy the breach. The Grantee shall not be liable to the Grantor in any way for any loss or damage suffered by the Grantor as a result of the Grantee exercising its rights under this clause.
- 3.10 **Emergencies:** The Grantee may from time to time, if it considers that there is an emergency involving public safety, temporarily exclude entry by all persons to the Easement Land. The Grantee shall notify the Grantor of the situation as soon as reasonably practicable.
- 3.11 **Breach of Easement Instrument:** The Grantor indemnifies, and keeps indemnified, the Grantee for any reasonably foreseeable costs, losses, expenses, damages or claims incurred or suffered by the Grantee resulting from any breach by the Grantor of the terms of this Easement Instrument.

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- 4. OBLIGATIONS OF THE GRANTEE**
- 4.1 **Maintenance:** The Grantee shall maintain the Pipeline and the Associated Plant and Equipment in good repair.
- 4.2 **Disturbance:** Without limiting the rights of the Grantee under this Easement Instrument, the Grantee shall carry out works permitted by this Easement Instrument as expeditiously as possible.
- 4.3 **Disturbance to stock:** Where any activity carried out by the Grantee involves the use of heavy machinery or equipment which is likely to cause a significant disturbance to stock on the Grantor's land due to noise and/or vibration, the Grantee shall consult with the Grantor in good faith prior to undertaking such activity in accordance with its rights under this Easement Instrument, so as to reduce the impact on stock by operating the machinery or equipment at appropriate times.
- 4.4 **Reinstatement:** The Grantee shall reinstate any pipes, cables, or other service conduits of the Grantor or any third party having the right to lay, use or maintain them on any part of the Land which are damaged by the carrying on by the Grantee of any work.
- 4.5 **Gates:** The Grantee shall leave all gates on the Land open or closed as it finds them. The Grantor shall provide to the Grantee, at the expense of the Grantee, copies of keys to any locks fitted to any of the gates on the Land required by the Grantee to exercise its rights in accordance with this Easement Instrument.
- 4.6 **No obligation to convey:** For the avoidance of doubt, the Grantee is not obliged by this Easement Instrument to convey water through the Pipeline. The Grantee is entitled at its discretion to discontinue and thereafter recommence the conveyance of water through the same at any time and from time to time.
- 4.7 **Obligations of the Grantee:** The Grantee shall:
- (a) Comply with, and ensure that all Persons under the control of the Grantee comply with, at all times, the Grantor's health and safety policies as amended from time to time when accessing the land and exercising the Grantee's rights; and

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- (b) Comply with the provisions of all statutes, ordinances, regulations and by-laws issued made or given by any competent authority in any way relating to its use of the Easement Land.
- 4.8 **Interference:** Except as expressly authorised by this Easement Instrument, the Grantee shall:
 - (a) Not unreasonably interfere with the Grantor's ordinary use of the Land; or
 - (b) Damage the Grantor's property.
- 4.9 **Safety:** The Grantee shall operate and maintain the Pipeline and the Associated Plant and Equipment in a safe manner and any equipment shall be left in as safe a condition as is reasonably practicable.
- 4.10 **Breach of Easement Instrument:** The Grantee indemnifies, and keeps indemnified, the Grantor for any reasonably foreseeable costs, losses, expenses, damages or claims incurred or suffered by the Grantor resulting from any breach by the Grantee of the terms of this Easement Instrument.
- 4.11 **Insurance:** The Grantee will maintain public liability insurance at a reasonable cover level commensurate with operating the Pipeline and irrigation scheme. The Grantee will provide a copy of the insurance cover upon reasonable request by the Grantor.
- 4.12 **Loss:** The Grantee will not be responsible for any loss or damage suffered by the Grantor except where such loss or damage is due to the negligent or wilful acts or omissions of the Grantee or any Persons under the control of the Grantee.
- 5. **CONTACT DETAILS**

The Grantor and the Grantee shall each provide to the other, and update from time to time as necessary, the names and contact details (including urgent contact details) of their representatives for the purposes of this Easement Instrument.
- 6. **ASSIGNMENT**

The Grantee may, with the prior notice to the Grantor, transfer, lease, assign or licence all or any part of its estate or interest in the Easement Land and / or the rights in this Easement Instrument or any parts of those rights.

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7. BINDING

This Easement Instrument shall be binding on and enure for the benefit of the executors, administrators, successors and assigns of both parties.

8. FURTHER ASSURANCE

The Grantor shall immediately at the request of the Grantee execute and deliver any further documents or assurances and do all acts and things reasonably required by the other party to give full force and effect to the provisions of this Easement Instrument.

9. NO DETERMINATION

No power is implied in respect of this Easement Instrument for the Grantor to determine the Easement Instrument for breach of any provision of this Easement Instrument, it being the intention of the parties that the Easement Instrument shall subsist unless surrendered in writing.

10. NON MERGER

The agreements, obligations and warranties of the parties shall not merge on registration of this Easement Instrument.

11. GOVERNING LAW

This Easement Instrument is governed by and construed in accordance with the laws of New Zealand.

12. DISPUTES

12.1 Dispute resolution process: Subject to clause 12.2, neither the Grantee nor the Grantor may commence any proceedings relating to any dispute which touches the Construction, meaning or effect of this Easement Instrument or the rights or liabilities of the parties to this Easement Instrument unless the party has taken all reasonable steps to comply with the following provisions:

- (a) If there is a dispute between the Grantee and the Grantor in relation to this Easement Instrument, the parties shall endeavour to resolve the dispute by agreement.

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- (b) If the parties do not reach an agreement, either the Grantee or the Grantor may by notice to the other party refer the dispute to mediation. The mediation will be in Christchurch and conducted under the LEADR New Zealand Incorporated (“LEADR”) standard mediation agreement. If the Grantee and the Grantor do not agree on a mediator or the mediator’s fees, the mediator shall be appointed or the fees set by the chair of LEADR (or his/her nominee) at the request of either party. The Grantee and the Grantor shall bear the mediator’s fees equally.
- (c) If the dispute is not resolved within fifteen (15) working days of the appointment of the mediator, either the Grantee or the Grantor may by notice to the other party refer the dispute to arbitration. The arbitration will be conducted in Christchurch by a single arbitrator under the Arbitration Act 1996. If the Grantee and the Grantor do not agree on an arbitrator within five (5) business days of receipt of the notice of arbitration, the arbitrator shall be appointed by the president of the New Zealand Law Society (or his/her nominee) at the request of either party.
- 12.2 Nothing in clause 12.1 shall preclude the Grantee or the Grantor from seeking urgent equitable relief before a court.