

DATED this 30<sup>th</sup> day of November 2009

---

BETWEEN

**BARRHILL CHERTSEY IRRIGATION LIMITED**

and

**ACTON FARM IRRIGATION LIMITED**

## HEADS OF AGREEMENT

David Stock

---

Barrister & Solicitor

**DATE:**

**PARTIES:**

- (1) BARRHILL CHERTSEY IRRIGATION LIMITED (*BCI*)
- (2) ACTON FARM IRRIGATION LIMITED (*AFIL*)

**BACKGROUND**

- A BCI holds resource consent No. CRC 990088.3 to take up to 17 cubic meters per second of water from the Rakaia River at or about map references NZMS260 K36:057-393 and NZMS260 K36:050-393 (*the Resource Consent*).
- B BCI has issued shares to farmers in the Acton area which entitle those farmers as shareholders of BCI to water and those shareholders have formed AFIL to obtain rights to that water.
- C AFIL wishes to obtain a right to take 3 cumecs of water as part of the water available under the Resource Consent with that water to be taken immediately west of the Rakaia Bridge on State Highway 1 at the Acton intake point.
- D BCI have been requested to make that water available to Acton Irrigation Limited (*AIL*) on the basis that AFIL has the right to purchase all of the shares in AIL from Rooney Earthmoving Limited.
- E BCI is prepared to grant a licence to AIL for 3 cumecs of water on the terms and conditions set out in the licence agreement attached hereto as Schedule 1 subject to BCI receiving payment for that water (*the Licence Agreement*) and the terms of that Licence Agreement being finalised between AFIL, BCI and AIL.
- F AFIL has agreed to make a payment to BCI for the 3 cumecs of water to be made available to AIL on the terms and conditions set out under the Licence Agreement and the terms of this agreement.
- G The entering into of this agreement is subject to the boards of both BCI and AFIL approving the provisions of this agreement and without entering into a binding commitment by either party.

**Accordingly the parties record their intention as follows:**

**1 No Binding Agreement**

- 1.1 That this document is subject to the boards of each of BCI and AFIL approving the provisions of this agreement and there is no binding

commitment on the part of either BCI or AFIL in entering into these heads of agreement.

## **2 Rights to Water**

- 2.1 BCI issued a prospectus dated 30 January 2009 to farmers in the Acton area which gave persons applying for shares under that prospectus rights to .45 litres per second of water per hectare for every 150 shares held (*the Acton Prospectus*). Those shareholders of BCI have now decided to form AFIL for the purpose of obtaining those rights to take water. AFIL covenants with BCI that under this agreement AFIL and AIL will assume liability and responsibility (either directly or indirectly) to deliver that water to those shareholders to meet the obligations of BCI pursuant to that Prospectus.
- 2.2 That AFIL will enter into arrangements with the shareholders of BCI entitled to the Acton 3 cumecs of water under which:
- (a) Those shareholders will accept that such water will be delivered by AFIL or AIL to those BCI shareholders in lieu of BCI;
  - (b) Each person to whom water, is delivered for irrigation purposes by AFIL or AIL will hold 187 shares in BCI for every 1 litre per second of water entitlement and AFIL will facilitate and implement the requirement by farmers taking any of the Acton Water, by ensuring those farmers are all BCI shareholders.
- 2.3 To implement subclause 2.2(b) AFIL will arrange for farmers in the Acton area who are shareholders of BCI under the Acton Prospectus to:
- (a) surrender that number of shares that are in excess of their required shareholding to obtain an entitlement to water for the future based on 187 shares to be held in BCI for every 1 litre per second of water available with that rearrangement of shareholding to be an obligation under the water agreement entered into with AFIL or AIL by those farmers;
  - (b) surrender their shares at a surrender value of \$1.00 per share such amount to be payable by BCI on the date when other farmers in the Acton area apply to BCI for new shares at the rate of 187 shares issued for \$1.00 for every 1 litre per second of water to be provided as required under clause 2.2(b) above forthwith after the closing date in the prospectus to be issued by BCI under clause 2.4.
- 2.4 BCI will issue a new prospectus in a form agreed with AFIL to issue the equivalent number of shares that have been surrendered by farmers to those farmers who do not hold the required number of shares and who wish to take up water and are required to hold 187 shares in BCI for every

1 litre per second of water up to the maximum allocation of 3 cumecs of water.

## **2.5 Shareholding in BCI**

It is a condition of the above agreement that all of the shareholders of AFIL remain or become shareholders in BCI and hold 187 shares in BCI for every 1 litre of water taken as part of the 3 cumecs available. AFIL shall ensure that every farmer taking water from AIL or AFIL shall:

- (a) become a shareholder of BCI;
- (b) take up shares in BCI on the same basis as shareholders under the Acton Prospectus adjusted to 187 shares for every 1 litre per second of water available;
- (c) continue to hold those shares for such time as the water provided from the BCI Resource Consent continues to be provided to AIL, AFIL or their successors in title.

## **3 Provision of Water**

- 3.1 BCI agrees, at the request of AFIL, to provide to AIL 3 cumecs of water in satisfaction of BCI's obligation to provide that water to the Acton farmers who are shareholders of BCI on the terms and conditions and on the basis set out in the Licence Agreement.
- 3.2 A term and condition of the provision of the 3 cumecs of water to AIL is that BCI receives from AFIL \$2,000,000 (plus GST) for each 1 cumec of water provided to AIL. If AFIL cannot pay that amount then BCI will provide funding to AFIL for 95% of the amount payable to enable AFIL to pay that amount over a period not exceeding five years.
- 3.3 The funding provided by BCI will be subject to the bankers to BCI confirming availability of that funding and the amount owing to BCI being secured by a first ranking general security agreement over all assets of AFIL.
- 3.4 The funding will be for a maximum period of five years but with the expectation that it will be repaid by 15 September 2011 being one year after the proposed irrigation scheme first delivers water.
- 3.5 Such five year period is intended to give AFIL sufficient time within which to raise capital to purchase all of the shares in AIL and make payment to BCI for the water as set out as aforesaid.

## **4 Consideration Payable**

- 4.1 AFIL agrees to pay to BCI \$2,000,000 for every 1 cumec of water taken by AIL pursuant to the licence agreement.

- 4.2 The minimum amount of water which AIL shall be entitled to take as from 15 September 2010 (*the Commencement Date*) shall be 1.6 cumecs of water and the remaining 1.4 cumecs may be taken at the rate of .1 of a cumec by one month's notice to that intent being given by AFIL or AIL to BCI.
- 4.3 AFIL shall pay to BCI 5% of the amount due under clause 4.4 with the initial minimum payment of \$160,000 (plus GST) being paid within 4 months from the date of this agreement. Five percent (5%) of the amount due for each additional .1 cumec (plus GST) of water, in excess of 1.6 cumecs, shall be payable on the date that such excess water is requested by AFIL. The price payable by AFIL to BCI for each .1 cumec is \$200,000 (plus GST) with the deposit being at the rate of \$10,000 for each .1 of a cumec taken, on the terms and conditions set out in clause 4.4:
- 4.4 The payments to be made AIL to BCI shall be as follows:
- (a) On the Commencement Date AIL shall be liable to pay to BCI the balance of the minimum \$3.2 million (after the 5% deposit is paid under clause 4.3) and that payment shall give AIL or AFIL the right to take 1.6 cumecs of water in accordance with the Licence Agreement;
  - (b) Thereafter AFIL or AIL may take water at the rate of .1 of a cumec by AFIL being liable to pay to BCI \$200,000 (plus GST) for every .1 of a cumec taken up to a maximum of 3 cumecs (including the 1.6 cumecs taken under sub-clause (a) above);
  - (c) In the event AFIL cannot make any payment as aforesaid to BCI then BCI will provide funding to AFIL from the commencement on the terms and provisions set out in clause 4.5.
- 4.5 In the event that AFIL cannot make the payments as set out in clause 4.4 above to BCI then BCI will provide funding for the amount owing by AFIL to BCI on the following terms and conditions:
- (a) interest shall be paid on the amount owing at the same cost of funds (including all fees and legal payments) as BCI incur in borrowing moneys (payable monthly in arrears) from the Commencement Date on the minimum amount of \$3.2 million;
  - (b) the GST that is payable in addition to the said sums shall be paid by AFIL to BCI by AFIL making an immediately claim for the GST so payable (on a monthly cycle basis) and then accounting to BCI for that payment immediately it is received by AFIL or entering into an arrangement with the IRD to set off that GST;

- (c) In the event that the advance has not been repaid by AFIL to BCI on or before 15 September 2011 then the interest rate shall increase to 12% per annum payable monthly in arrears;
- (d) If repayment of the principal and all interest has not been made by 15 September 2011 then as from the Commencement Date the amount owing shall be increased by the CPI (all indices) on a quarterly basis and interest shall then be calculated on the principal sum adjusted by the CPI factor.
- (e) On repayment the amount payable, adjusted by the CPI as set out in (d) above, shall be paid.
- (f) interest shall be payable on the amount payable by AFIL to BCI as set out in this clause 4.5;
- (g) in addition to interest which is payable as aforesaid AFIL shall pay to BCI any amount which the bankers to BCI require to be paid to amortise the aforesaid advance. Any moneys paid in reduction of the amount owing shall cease to have interest paid thereon and shall be in part payment of the initial amount owing for the water provided by BCI to AIL or AFIL. Any amortisation of the advance shall be subject to the approval of AFIL.

## 5 Ongoing Arrangement

5.1 The shareholders of BCI, who become shareholders of BCI under the Acton Prospectus,, will acknowledge that:

- (a) The moneys provided under the share issue in the Acton Prospectus have all been expended to enable the total scheme to proceed and to secure variations of consents to enable 3 cumecs of water to be delivered into the Acton Scheme and there is now no asset or capital backing for those shares so issued;
- (b) That if any of the Acton shares are surrendered then the surrender value will be 1 cent per share and each BCI shareholder in the Acton Area will acknowledge and consent to this in the water agreement. This shall constitute an agreement under Section 22(1)(c) of the Cooperative Companies Act 1996.
- (c) That all benefit from the 3 cumecs of water allocated and licensed to AIL/AFIL and available from the Acton intake onwards shall be to the account of AFIL and if any future benefits arise BCI will account on an equitable basis to AFIL for those benefits. AFIL shall have no right or claim on any benefits arising from the balance of the 17 cumecs (being 14 cumecs) held by BCI.

5.2 All AFIL shareholders having a right to any water from the 3 cumecs made available by BCI shall enter into an agreement under which they are liable for their fair and reasonable proportionate share of the following costs and expenses of BCI:

- (a) all administration costs excluding those relating to the administration of the upper plains scheme;
- (b) all costs relating to consents (including variations and extensions thereto) necessary to implement the Acton Scheme;
- (c) all costs required to maintain renew and vary the water take consents held by BCI where AFIL receives a direct or indirect benefit from those consents.

5.3 Every seven (7) years during the continuance of the arrangements herein the parties will review those arrangements in good faith to determine if they should be:

- (a) continued in the same form;
- (b) varied; or
- (c) discontinued on a mutually agreed basis.

5.4 BCI agrees that if in the development or operation of the Upper Plains scheme of BCI there is a shortfall of capital, development and/or operating costs and expenses at any time then the shareholders of BCI who are taking water in the Acton Scheme area, shall not be required to contribute to any shortfall as aforesaid provided that if any of those shareholders are also taking water from the Upper Plains Scheme this shall not relieve those shareholders from any liability to contribute as a participant in the Upper Plains Scheme.

## 6 **Further Documents**

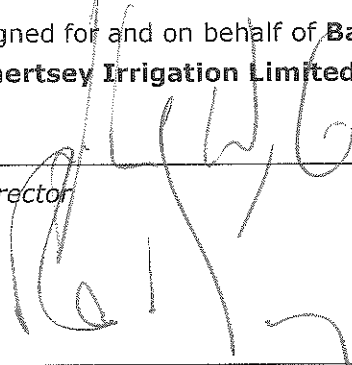
The parties will enter into, and AFIL will require any of its shareholders taking water, to enter into such further agreements and documents required to give effect to the arrangements in this agreement.

## 7 **Electricity Ashburton Limited (EAL)**

AFIL acknowledges that the payments by AFIL under the agreement are payable to a joint venture entered into between EAL and BCI and that EAL has concurrent rights with BCI pursuant to this agreement.

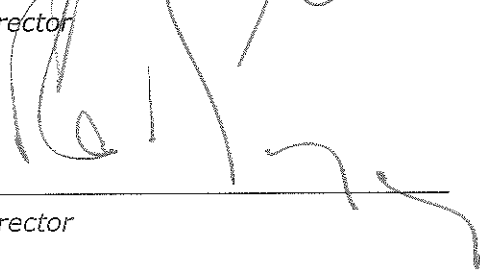
EXECUTED:

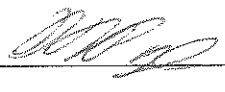
Signed for and on behalf of **Barrhill  
Chertsey Irrigation Limited** by:

  
\_\_\_\_\_  
Director

Signed for and on behalf of **Acton  
Farm Irrigation Limited** by:

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director