

DATED this day of 20

BETWEEN

BARRHILL CHERTSEY IRRIGATION LIMITED

and

**The Person/Company/Other Entity named
and described in the First Schedule together with the
Successors and Permitted Assigns of that Party**

WATER AGREEMENT

PARTIES:

- (1) BARRHILL CHERTSEY IRRIGATION LIMITED at Ashburton (*the Company*)
- (2) The Person/Company/Other entity named and described in the First Schedule together with the successors and permitted assigns of that party (*the Farmer*)

BACKGROUND

- A The Company is intending to enter into a joint venture with Electricity Ashburton Limited (EAL) to construct an irrigation scheme to supply Water to farmers for the purpose of irrigating farms in the Mid Canterbury region.
- B The Company is raising money from persons who are farming in the Mid Canterbury region by offering shares with those shares having attached thereto the right to certain volumes of Water.
- C The parties to this agreement acknowledge that the supply of Water by the Company to the Farmer is contingent upon the Scheme proceeding and the terms of a joint venture with EAL.
- D The reliability of the supply of Water from the Scheme is not guaranteed due to the terms and provisions of the Resource Consents held by the Company which do not guarantee a continuous supply of Water.
- E The Company, at the request of the Farmer, has agreed to supply the volume of Water to the Farmer in respect of the 'Property' as defined in this agreement and as set out in the Schedule subject to the conditions set out in this agreement being met.
- F The delivery of Water may be from the Scheme or from an Adjoining Scheme (if approved by the Company).
- G The parties acknowledge that the rights to Water, the holding of shares in the Company, and the Property to which the Water is to be supplied are all stapled together so that no one right can be transferred without the other rights being transferred at the same time.

Accordingly the parties agree as follows:

1 DEFINITIONS

- 1.1 In this agreement unless the context otherwise requires:

Adjoining Scheme means the distribution scheme operated by another irrigation company which can deliver water provided by the Company to the Property;

Adjoining Scheme Owner means the Company or other entity that owns an Adjoining Scheme;

Agreement means this agreement to supply irrigation Water by the Company to the Farmer and includes any variations and replacement to this agreement that may be applicable from time to time;

Best Industry Practice means in accordance with the practices usually followed as best practice in the operation of irrigation schemes;

Board means the Board of Directors of the Company;

Business Day means any day of the week other than Saturday, Sunday or statutory holidays on which banks are open for business in Ashburton;

Commencement Date means the date on which delivery of Water is requested by the Farmer or such later date on which the Company can commence the delivery of Water;

Company includes, where the context so permits, or if clause 21 applies the parties to the Joint Venture;

Connection Point means each point designated by the Company where either the Distribution System connects to the Farmer's Works or the Network of an Adjoining Scheme connects to the Farmer's Works;

D Shares means the shares to be issued by the Company for the purposes of funding the Distribution System of the Company;

Default Interest means interest at the highest rate which the Company may be paying on facilities entered into between the Company and its bankers and where such facilities do not exist the rate which the Company would pay on bank overdraft in both cases together with a margin of 4% per annum. The appropriate interest rate shall be determined on the date of default and thereafter on the last business day of each calendar month by reference to the appropriate rate on that date determined as aforesaid;

Delivery Infrastructure means the pipes, valves, plant and equipment required to modify the RDR and the storage dams required to enable water to be delivered to the Distribution System or Adjoining Scheme;

Distribution System means the pipes, valves, gates and other equipment constructed and installed by the Company and owned by the Joint Venture to distribute Water to the relevant Connection Point;

EAL means Electricity Ashburton Limited or a wholly owned subsidiary of EAL that is the party to the Joint Venture;

Excess Water means any Water to which the Farmer is entitled and which that Farmer has not taken as part of that Farmer's daily Water quota;

Farmer's Works means the works to be constructed by the Farmer that connect to the Distribution System to enable the Farmer to take Water from the Distribution System or the Adjoining Scheme;

Fixed D Charge means the Water Charge to cover the costs of constructing, operating and servicing the Distribution System;

Fixed I Charge means the Water Charge to cover all charges payable by the Company for the fixed costs relating to the Delivery Infrastructure and the TrustPower Pumping System, to RDRML for access to, conveying Water through and maintaining the RDR, to cover the cost of constructing, operating and servicing the storage dams and all administration costs of BCI including costs relating to the Resource Consents;

Force Majeure Event means any event or circumstance, or combination of events and circumstances:

- (a) that causes or results in preventing or delaying a party from performing any of its obligations under this Agreement; and
- (b) which is beyond the reasonable control of that party and could not, or the effects of that event or circumstance, or that combination of events or circumstances, could not have been prevented or delayed, overcome or remedied by the exercise by the party of a standard of care and diligence consistent with best industry practice,

which occurs after the date of this Agreement and, provided that the event or circumstance or combination of events or circumstances meets the foregoing criteria, includes:

- (c) an act of god;
- (d) strike or lockout, act of public enemy, war (whether declared or undeclared), blockade, revolution, riot, insurrection, malicious damage, civil commotion;

- (e) lightning, landslide, cyclone, storm, flood, fire, earthquake, explosion, tidal wave, epidemic;
- (f) action, inaction, demand, restraint, restriction, requirement, prevention, frustration or hindrance by any Governmental Agency or other competent authority;
- (g) order of the Court;
- (h) embargo, unavailability or shortage of essential equipment, or other materials, goods, labour or services, lack of transportation or communication;
- (i) any breakage of equipment, machinery, lines or pipes, freezing, or delivery equipment, catering, washout subsidence or cave in; or
- (j) restraint on access to property;

I Shares means the shares to be issued by the Company for the purpose of raising moneys to enable the Company to pay for or contribute to the costs of altering and modifying the RDR to enable Water delivered from the Rakaia River into the RDR to be delivered into the Distribution System or to an Adjoining Scheme;

Irrigation Season means the period beginning on 10 September in any given year and concluding on 9 May in the following year or such other period as the Company may from time to time reasonably determine;

Joint Venture means the joint venture entered into between the Company and EAL to construct and own the Distribution System;

Management Plan means any farm Management Plan implemented from time to time by the Company, and provided to the Farmer, or required to be provided by the Farmer and approved by the Company, and required to be observed by the Farmer in respect of the Farmer's farm practices and management and the use of Water supplied by the Company;

Metering Equipment means the metering equipment to be installed by the Company at the Farmer's Connection Point for the purpose of measuring the total quantity of Water supplied to the Farmer's Connection Point;

Network means the pipes, races and distribution network of an Adjoining Scheme;

Property means the property set out in Schedule 1;

RDR means the Rangitata Diversion Race;

RDRML means Rangitata Diversion Race Management Limited;

Resource Consents means the Resource Consents held by the Company and set out in Schedule 2 together with all renewals, replacements, variations or amendments to the consents and includes where required all conditions relating to those consents;

Scheme means the TrustPower Pumping System, the Delivery Infrastructure, and the Distribution System;

Scheme Management Plan is a plan prepared by the Company for the management and operation of the Scheme as posted from time to time on the Company's website and to be observed by the Farmer;

Shares means the I Shares and D Shares set out in Schedule 1;

Statutory Requirements means all requirements to be met by the Company in relation to the Resource Consents or under any other regulations, by-laws, directions or plans introduced by any local authority, regional council, Government department or other statutory body;

TrustPower means TrustPower Limited;

TrustPower Pumping System is the system to take Water from the Rakaia River and deliver that Water into the RDR at the head pond of the Highbank Power Station;

Variable D Charge means the Water Charge to cover the costs of electricity incurred in delivering pressurised Water through the Distribution System;

Variable I Charge means the Water Charge to cover the costs of electricity incurred by TrustPower for pumping Water from the Rakaia River into the RDR, or equivalent loss of generation income if Rangitata River water is delivered;

Water means any Water supplied under this agreement for irrigation purposes and excludes any Water supplied for stock or other purposes;

Water Charges means the aggregate charges fixed under this agreement from time to time;

Year means each 12 month period commencing on the 1st day of September in each year;

1.2 In the construction of this deed, unless the context requires otherwise:

clauses: reference to a section, clause, sub-clause, schedule or a party is a reference to that section, clause, sub-clause, schedule or party to this deed unless stated otherwise;

headings: headings appear as a matter of convenience and do not affect the construction of this deed;

inclusion: referring to anything after the word "including" does not limit what else might be included and any such reference is without limitation to what else might be included;

joint and several: any covenant or deed on the part of two or more persons shall bind those persons jointly and severally;

legislation: a reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision;

negative obligations: a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;

parties: a reference to a party to this deed or any other document includes that party's successors and permitted assigns;

person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

related terms: where a word or expression is defined in this deed other parts of speech and grammatical forms of that word or expression have corresponding meanings;

schedules: the schedules and any annexures to this deed form part of this deed;

singular, plural and gender: the singular includes the plural and vice versa, and words importing one gender include the other genders.

2 **PRECONDITIONS TO SUPPLY OF WATER**

2.1 The Company shall not be bound to provide Water to the Farmer unless the Company has:

- (a) raised the minimum amount of capital required to enable the Scheme to be constructed; and
- (b) entered into the Joint Venture with EAL.

- 2.2 The supply of Water under this agreement is conditional upon the Scheme being completed by the end of the first quarter of 2011 being 31 March 2011 to enable Water to be supplied for that quarter year;
- 2.3 Where a farmer requires Water to be delivered to the Connection Point from an Adjoining Scheme the Board of the Company:
- (a) has sighted the agreement with the Adjoining Scheme Owner to convey Water for that Farmer from the RDR to the Connection Point; and
 - (b) is satisfied that such Farmer will not be using the Distribution System and accordingly has waived the obligation of that Farmer to hold D Shares; and
 - (c) has entered into a Water Agreement with the Company for the supply of Water.

3 **HOLDING OF SHARES**

- 3.1 The supply of Water by the Company to the Farmer is conditional upon the Farmer holding that number of shares as is set out in Schedule 1 for every litre per second of supply for the of land to be irrigated. The shares to be held shall be both I Shares and D Shares unless otherwise agreed by the Board where the Farmer is taking water through an Adjoining Scheme as approved by the Board pursuant to Clause 2.3.
- 3.2 The Company may change the number of shares required to be held by a Farmer to qualify for the supply of Water provided the same standards as to the number of shares to be held shall apply to all farmers taking water from any part of the Scheme.
- 3.3 The supply of Water under this agreement is conditional upon the Farmer continuing to hold the Shares as set out in Schedule 1 or specified under clause 3.2 to the intent that if the Farmer shall at any time cease to hold those Shares, or cease to use the Water to irrigate the Property, then the Company may terminate the supply of Water to the Farmer. If the Company ceases to supply Water to a Property where a Farmer holds shares then the Company may surrender those shares at their nominal value.
- 3.4 The volume of Water to which a Farmer is entitled shall be transferable by the Farmer only in the circumstances set out below:
- (a) to any other person with the Shares held by the Farmer and conditional upon the delivery of that Water to the Property as set out in Schedule 1; or

- (b) to another property owned or farmed by the Farmer with the prior written consent of the Company, which consent may be withheld without giving any reason or be given on such conditions as the Company determines, provided that the property to which the Water is delivered is within the Distribution System or clause 2.3 applies; or
- (c) the Shares and the right to Water attached thereto may be transferred to a person or entity that owns or farms a property in the area serviced by the Distribution System, or who has entered into an agreement with an Adjoining Scheme Owner as set out in clause 2.3, subject to the prior written consent of the Company which consent may be withheld without giving any reason or may be given on such conditions as the Company determines including the entering into of a Water Supply Agreement.

4 **SUPPLY OF WATER**

- 4.1 The Water to be supplied by the Company to the Farmer from the Commencement Date and shall only be used for irrigating the Property set out in Schedule 1 and shall not be used for any other purpose except with the consent of the Company the giving of such consent being at the sole discretion of the Company.
- 4.2 The supply of Water is always subject to the availability of Water, compliance with the Resource Consents, any Management Plan that has been implemented, the Scheme Management Plan and with all Statutory Requirements. The Company will use all reasonable endeavours, but does not guarantee, to provide to the Farmer the volume of Water as set out in Schedule 1 during the Irrigation Season.
- 4.3 Water will only be available to the Farmer during such periods as the Company has Water available for supply to the Farmer and the Company cannot and will not guarantee that Water will be supplied at the delivery rate referred to in Schedule 1.
- 4.4 The maximum supply of Water to which the Farmer is entitled under this agreement is set out in Schedule 1 and such Water is to be supplied at such intervals as the Company may from time to time determine in accordance with Clause 5.
- 4.5 Water shall only be supplied during the Irrigation Season and no Farmer shall be entitled to or shall seek the delivery of Water outside the Irrigation Season.
- 4.6 **Volume of Water to be Supplied**
The volume of Water that will be supplied by the Company to the Farmer is at a delivery rate not exceeding 0.6 litres per second per hectare for each hectare of the Property owned by the Farmer.

5 **DELIVERY SYSTEM FOR WATER**

5.1 The Company shall on a regular basis and from time to time provide to all farmers who are entitled to Water from the Scheme a policy relating to the delivery of that Water taking into account the following factors:

- (a) the restrictions that may be placed on the supply of that Water due to insufficient Water being available for take from the Rakaia River under the Resource Consents and the requirement for that Water to be equitably distributed to all farmers entitled to that Water;
- (b) any failure of the TrustPower Pumping System on which the Company is relying for delivery of Water into the RDR;
- (c) the requirement under the Management Plan and Scheme Management Plan for restricting the supply of Water;
- (d) any requirements under any Statutory Requirements for restricting the supply of that Water;
- (e) the right to manage the supply of that Water so it is supplied at varying intervals and for varying periods during the Irrigation Season to meet as far as may be practicable the requirements of farmers during the Irrigation Season.

5.2 The Company shall not be liable to any farmer for any failure to deliver Water at any time during an Irrigation Season provided the Company shall use all reasonable endeavours to ensure Water will be supplied if available.

5.3 The Company will at all times seek to act in an equitable manner as between all farmers entitled to Water so that they all receive a fair proportion of Water, based on the volume to which they are entitled, during each Irrigation Season provided that if the Farmer shall act in a way that could prejudice or breach in any manner the Resource Consents held by the Company, or acts in breach of any Management Plan or the Scheme Management Plan of the Company then the Company may restrict the supply of Water to that Farmer after giving reasonable notice to that Farmer of the requirement to so comply with those requirements.

6 **EXCESS WATER**

6.1 If during an Irrigation Season the Company has Water that is not being used by farmers, and which can be made available to other farmers who have a right to Water under a Water Agreement, then the Company may:

- (a) Provide that Water to other farmers provided that no farmer who is entitled to Water shall be prejudiced by that supply;

- (b) Place conditions on the supply of that Water so that the farmers who are otherwise entitled to that Water are not placed in a position where the supply is to their operational or financial detriment;
- 6.2 Where, due to mechanical failure or other inability to deliver water, a farmer fails to receive an equitable quantity of available water then that shortfall shall be made up before excess water is made available to other farmers.
- 6.3 The allocation of Water under clause 6.1 is entirely at the discretion of the Company and there shall be no right of the Farmer to demand the supply of any excess Water. The Company shall use reasonable endeavours to act in an equitable manner when allocating Excess Water.

7 INSTALLATION OF FARMER'S WORKS

- 7.1 The Farmer shall be responsible for installing and maintaining all of the Farmer's Works as may be required by the Farmer to take and distribute Water beyond the Connection Point.
- 7.2 The Farmer shall only use the volume of Water as set out in Schedule 1 and to be supplied by the Company on the Property and in distributing the Water on that Property the Farmer shall:
- (a) only distribute that Water in accordance with Best Industry Practice in compliance of the Resource Consents and the requirements of any statutory body;
 - (b) utilise a system and equipment, and apply and use methodologies as may be prescribed by the Company as being Best Industry Practice from time to time;
 - (c) comply with any Management Plan approved by the Company under Clause 8 and the Scheme Management Plan;
 - (d) comply with the policy notified to farmers under clause 5.1.
- 7.3 The Farmer shall not operate any plant, equipment or other works on the Farmer's Property in a manner that could affect the distribution of Water by the Company damage any part of the Scheme or the Distribution System or in a manner that may be detrimental to the Scheme or the Distribution System.
- 7.4 The Farmer and the Company shall ensure that all irrigation on the Property to which Water is distributed shall be carried out in accordance with Best Industry Practice and also in accordance with any Management Plan and related environmental requirements from time to time applicable to the distribution of Water and which traverses all terms and provisions of Resource Consents, Statutory Requirements, Best Industry Practice

and company policies including the Scheme Management Plan that may be applicable from time to time.

8 **MANAGEMENT PLANS**

8.1 **Farm Management Plan**

Each Farmer who is taking Water from the Company may be required to prepare and implement a farm Management Plan for irrigated land use to demonstrate how the Farmer is actively managing use of the Water to achieve high standards of environmental management and optimise on the Property production from irrigation. For this purpose:

- (a) the Farmer will submit a farm Management Plan to the Company within 60 working days from such date as specified by the Company;
- (b) that plan shall provide a risk management plan and approach to environmental protection enhancement on the Property;
- (c) that plan shall include the following matters:
 - (i) irrigation management;
 - (ii) soils management;
 - (iii) nutrient management;
 - (iv) collected animal effluent management;
 - (v) biodiversity and ecosystem management;
 - (vi) Waterway and riparian management;

and such other matters as the Company may require from time to time.

8.2 Each Farmer shall also in addition to the requirements any approved Farm Management Plan comply with all other industry quality assurance programmes, codes of practices, specific regulatory and legal requirements, and all other requirements to ensure Best Industry Practice is maintained in respect of the operation of irrigation on the Farmer's Property.

8.3 The Company shall have the following rights in respect of a Management Plan submitted by the Farmer:

- (a) to require alterations and additions to that plan to ensure that it meets with Best Industry Practice and company policies;

(b) to impose further terms and conditions that must be included in that Management Plan to ensure that the plan meets Best Industry Practice and also meets all requirements under any statute, regulation, by-law or other Statutory Requirements including the directions or requirements of any regulatory authority.

8.4 The Farmer and the Company agree to comply with all codes of practice and guidelines which are applicable to the use of Water for irrigation and will also comply with any restriction or request given to the Farmer by any regulatory authority in respect of farm management practices on the Property.

8.5 The Company may publish on its website a Scheme Management Plan for management of the irrigation Scheme. The Company will at all times be responsible for the enforcement of any applicable Scheme Management Plan and, to the extent required, the Farmer will comply with the terms and provisions of the Scheme Management Plan. The Farmer acknowledges that the Scheme Management Plan is an essential element for the continuity of the Resource Consents held by the Company and must be complied with in all material respects.

8.6 In the event that the Farmer breaches any of the terms and conditions of this agreement or any of the provisions contained in the Management Plan (if applicable) or Scheme Management Plan then the Company may give notice of breach to the Farmer as set out in clause 18 and if necessary terminate this agreement as set out in clause 19.

9 MANAGEMENT OF THE SUPPLY OF WATER

9.1 For the purpose of giving any notice to the Farmer of the Water which is available by the Company to the Farmer the Company shall post on its website on a weekly basis the volumes of Water which are available or are likely to be available for the next seven day period. If during that period the volume of Water available shall change then a further notification shall be made on the website of the Company. Postings of the amount of Water available on the website of the Company shall be deemed sufficient notice to the Farmer.

9.2 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.

(b) the Water may not be potable and may not be suitable for use by stock or for any purpose except irrigation;

- (c) 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 and post on the Company's website;
- (d) if during the Irrigation Season the availability of Water to the Company for distribution to farmers is diminished or must be suspended in any way then the Company shall make Water available to the Farmers only insofar as it is practicable for it to do so and in an equitable manner between all farmers entitled to that Water. If the Company has to reduce supply then it shall be entitled to do so in such manner and in such shares and proportions as in its sole discretion the Company may determine;
- (e) that if under any resource consents relating to the Property there is a restriction as to the volume of water per day that can be applied per hectare on that Property or any other like restriction then if the Farmer has more than one supply of water for irrigation and breaches any such restriction the Company may reduce the volume of water delivered to the Farmer or cease supplying water until that restriction is met.

9.3 The Farmer shall have no right of action against the Company nor any entitlement for damages or compensation of any nature whatsoever in any of the following circumstances:

- (a) a failure by the Company to supply Water in terms of this agreement; or
- (b) as a result of any reduction in the supply of Water; or
- (c) if there shall be any matter relating to the quantity or quality of Water supplied to the Farmer; or
- (d) any failure of the TrustPower Pumping System.

9.4 The Water shall be available at such Connection Point as the Company may from time to time determine and shall be measured by a device specified by the Company and maintained by the Company. The Company shall have the right at any time to enter the Property and change the device used for measuring and controlling water supplied to the Farmer.

9.5 The Farmer shall not alter or interfere with such metering equipment or allow any person to do so. The Farmer shall be responsible for any damage caused to the metering equipment (fair wear and tear excepted) and shall pay the costs incurred by the Company in replacing the metering equipment if damaged due to the act or omission of the Farmer.

- 9.6 The Farmer shall not take from a Connection Point more Water than the Farmer's entitlement pursuant to this agreement or otherwise than in accordance with any Resource Consent, Management Plan or Scheme Management Plan.
- 9.7 The Company shall read the metering equipment at such intervals as the Company determines and advise the Farmer of the volume of water used. The information from the metering equipment shall be taken to be correct unless there is a manifest error in that information.

10 **INTERRUPTION TO SUPPLY OF WATER**

- 10.1 The Company may interrupt or reduce the supply of Water at any time the Company reasonably considers it necessary to do so for planned and unplanned interruptions in accordance with this clause.

Planned Interruptions

- (a) In situations where the Company determines the need for the interruption in accordance with Best Industry Practice to:
- (i) enable the Company to inspect, effect alterations, maintenance, repairs or additions to any part of the Irrigation Infrastructure; or
 - (ii) avoid the risk of danger to persons, damage to Property or interference with the regularity or efficiency of the supply of Water; or
 - (iii) preserve and protect the proper working of the Irrigation Infrastructure.

Unplanned Interruptions

- (b) In situations where the Company does not know of the need for the interruption in advance, including without limitation:
- (i) faults in the Irrigation Infrastructure caused by equipment failure, accident, storm or similar event; or
 - (ii) emergencies; or
 - (iii) an event of Force Majeure.

- 10.2 Where the Company interrupts delivery pursuant to clause 10.1(a) the Company shall give prior written notice to the Farmer and the Company shall liaise with the Farmer over the timing of the interruption to minimise inconvenience to the Farmer. The parties agree that where reasonably practicable planned interruptions shall occur outside of the Irrigation Season.

10.3 Where the Company interrupts supply pursuant to clause 10.1(b), as soon as it is practicable the Company shall report to the Farmer:

- (a) the area affected by the interruption;
- (b) the reasons for the interruption; and
- (c) the expected duration of the interruption.

10.4 In all situations of interruptions the Company shall use reasonable endeavours to minimise the period of interruption.

11 **RESPONSIBILITY OF FARMER**

11.1 The Farmer shall be responsible for all work carried out on the Farmer's Property from the Connection Point including the installation of all plant, equipment, pipes, electrical connections and other works to distribute Water on the Farmer's Property and for any other works to be carried on that Property for the use of the Water provided by the Company.

11.2 Where Water is made available to the Farmer away from the Property boundary or from an Adjoining Scheme Owner the Farmer shall be responsible at the Farmer's cost for arranging all pipes, connections and other equipment to deliver Water over the Property or any adjacent Property to that point of supply and for obtaining any easements or rights necessary for the delivery of such Water.

11.3 The Farmer shall at all times hold the number and classes of shares as set out in Schedule 1 or as specified from time to time by the Company. Such Shares must be held at all times while this agreement remains in force.

11.4 If the Property shall be sold the Farmer shall ensure that at the same time:

- (a) notice of that sale is given to the Company;
- (b) the Shares shall be transferred to the Purchaser of the Property;
- (c) the Purchaser shall be required to enter into a new Water agreement with the Company in the form then applicable;
- (d) if the Farmer conveys Water through an Adjoining Scheme the board of the Company approves all arrangements and agreements with the Adjoining Scheme Owner.

The Company may withhold the supply of Water if the Farmer sells the Shares, or the Property, without at the same time complying with the foregoing provisions.

- 11.5 If part of the Property, and rights to Water, are to be transferred the Farmer must agree with the Company the basis for a new Water agreement to be executed, the Shares to be held and the Water to be supplied to the parts of the Property affected by such sale. The Company may withhold the supply of Water until Shares are held by, and a Water agreement is entered into, with the Purchaser of part of the Property and the rights under this agreement have been reviewed to take into account the transfer of part of the Property. If the continuity of the supply of Water becomes uneconomic the Company may refuse to consent to the transfer of any rights to Water.
- 11.6 If under any Statutory Requirements the volume of water available to the Farmer for irrigation under any consents, including the Resource Consents, is restricted or limited then the Farmer agrees to limit the water taken under all consents to ensure the Statutory Requirements or any other conditions or requirements of any consents (including the Resource Consents) are met and complied with in all respects.

12 **WATER CHARGES**

- 12.1 The Company shall in each year prior to the commencement of the Irrigation Season determine and fix Water Charges at such figures as the Company shall in its sole discretion determine, having regard to the amounts required to fund its funding and operational requirements for that year which Water Charges shall be charged to, invoiced and paid by the Farmer monthly or at such other time or times as the Company may require and shall be on the following basis:
- (a) Fixed I Charges to cover all charges payable by the Company for the fixed costs relating to the Delivery Infrastructure and the TrustPower Pumping System, to RDRML for access to, conveying Water through and maintaining the RDR, to cover the cost of constructing, operating and servicing the storage dams and all administration costs of BCI including costs relating to the Resource Consents ;
 - (b) Variable I Charges to cover the costs of electricity incurred by TrustPower for pumping Water from the Rakaia River into the RDR, or equivalent loss of generation income if Rangitata River water is delivered;
 - (c) Fixed D Charges to cover the costs of constructing, operating and servicing the Distribution System;
 - (d) Variable D Charges to cover the costs of electricity incurred in delivering pressurised Water through the Distribution System;
 - (e) The Water Charges may be reviewed annually and may increase

by such sum as the Company shall determine having regard to:

- (i) the annual cost of the Scheme including financing and debt repayments; and
 - (ii) any necessary capital works required in respect of infrastructure within the Scheme;
 - (iii) external factors such as interest rates, contract charges for use of other facilities or similar charges then the charges
- (f) The charges under (a), and (c) are payable regardless of the volume of Water supplied or used:
- (i) The charges under (a) to (d) are payable by all Farmers connected to the Distribution System;
 - (ii) The charges under (a) and (b) are payable by all Farmers taking water but not utilising the Distribution System.
- (g) All Water Charges shall be reviewable annually by the Company and payable monthly, levied on the basis of the flow rate available and total number of cubic metres of Water supplied to the Farmer during the relevant charging period.
- (h) All Water Charges shall be payable monthly and paid by direct debit or automatic payment from the bank account specified by the Farmer and credited to the Company. The parties will sign all forms necessary to enable Water Charges to be paid by this method.

12.2 Charges for Excess Water shall be on a cubic metre basis as the Company shall determine from time to time.

12.3 If the Farmer does not make payment of Water Charges on due date then, (provided written demand has been made) the Company shall be entitled to charge the Farmer interest on any amount outstanding from due date until payment in full at the Default Rate. Such sum may be recovered as a liquidated debt due by the Farmer to the Company and is a secured payment under this encumbrance.

12.4 The Farmer acknowledges that the total charges payable under clause 12.1(a) and (c) shall be payable by the Farmer notwithstanding that:

- (a) The Farmer may not have consumed any Water during the relevant Charging Period; or
- (b) The Company may have been unable to supply Water to the

Farmer for all or part of the relevant Charging Period (provided that such non-supply was not due to the wilful default of the Company).

12.5 The Company may in relief of the charges payable by a Farmer, where the Farmer has not commenced taking delivery of any Water under this Agreement, rebate to a Farmer the Water Charges under clauses 12.1(b) and (d) incurred by the Company in pumping water for delivery.

12.6 All charges shall be on a plus GST basis.

13 **ADJUSTMENTS TO WATER CHARGES**

Throughout the term of this Agreement the Company may vary the prices which give rise to any charges to effect an equitable pass through of any increase or decrease in the prices charged to the Company in respect of any of the components of the Water Charge (including without limitation charges relating to the supply of electricity necessary to operate the Scheme) where any increase or decrease in price may occur.

14 **EASEMENTS**

14.1 The Farmer agrees to grant such easements in gross over the Farmer's land as the Company may reasonably require in relation to the laying of pipes, electricity lines, communications and the installation of plant, equipment and measuring devices relating to the Irrigation Infrastructure including any repairs, extension or renewal thereof as needed for the Irrigation Scheme from time to time. The Company will prepare at its cost any easements and survey plans necessary for those easements and the Farmer will ensure the owner of the Property promptly executes and facilitates registration of those easements. The Farmer will bear any costs incurred by the Farmer in relation to the registration of those easements.

14.2 If the Farmer shall fail to sign any easement or documents reasonably required by the Company pursuant to the terms of this Agreement then after giving 10 business days notice of its intention to do so any two directors of the Company may sign those easements or documents on behalf of the Farmer and the Farmer hereby irrevocably appoints each director of the Company as the attorney of the Farmer for those purposes.

15 **TERM OF AGREEMENT**

This Agreement shall come into force and effect on the Commencement Date and shall continue until 28 January 2035. If the RMA Consents held by the Company are renewed or extended beyond 28 January 2035 so that Water can continue to be delivered on the terms and conditions of this Agreement (or any varied agreement pursuant to clause 25) then this Agreement shall be extended for the further period of such Resource Consents.

16 **RIGHT OF ENTRY**

The Company and its servants, agents, employees, contractors and workmen, shall have the right at any time from time to time without being deemed to commit a trespass and without payment of compensation for damages to enter upon the land of the Farmer or any land connected or associated with the Farmer for all or any of the following purposes:

- (a) To gauge or otherwise determine the quantity of Water used by the Farmer.
- (b) To view the condition of pipes, works and Metering Equipment at the Connection Points.

The Farmer shall ensure that access to any pipeline, water race or other structure or device used in the control and management of the Water conveyed in the Delivery Infrastructure is kept available and in respect of any future structures, works or developments on the Farmer's land will ensure that such development does not impede, restrict, limit or otherwise in any way inhibit or impair access or adversely effect such pipelines, Water races, structures or devices.

17 **ACCESS TO IRRIGATION INFRASTRUCTURE**

17.1 The Farmer also agrees to provide the Company at all reasonable times with safe and unobstructed access to any part of the Farmer's Works:

- (a) to install, replace, modify, repair or maintain equipment and associated fittings and any other pipes or equipment forming or to form part of the Irrigation Infrastructure;
- (b) examine, read or test any metering equipment, whether measuring supply under this Agreement;
- (c) to protect or prevent danger or damage to persons or Property;
- (d) to ascertain the cause of any interference to the supply of Water;
- (e) to disconnect or reconnect the supply of Water;
- (f) any other purpose reasonably connected to the supply of Water by the Company to the Farmer.

17.2 In exercising its rights of access the Company shall use all reasonable endeavours to ensure that:

- (a) where practicable the Farmer is given reasonable notice of intention to, and the purpose for which right of access will be exercised;

- (b) as little interference to the Farmer's farming requirements as practicable occurs in carrying out such works; and
- (c) Best Industry Practice is complied with.

18 BREACH OF AGREEMENT

In the event of the Farmer committing any breach of the terms of this Agreement and such breach continues for 20 Business Days after written notice from the Company requiring such breach to be remedied, the Company may without payment of any damages or compensation to the Farmer or any other person:

- (a) reduce the supply of Water to the Farmer either permanently or until such time as such breaches have been made good provided that the Farmer shall nevertheless remain liable to continue paying the Water Charges in accordance with this Agreement.
- (b) stop the supply of Water to the Farmer either permanently or until such time as all breaches have been made good provided that the Farmer shall nevertheless remain liable to continue paying the Water Charges in accordance with the Agreement.
- (c) after the breach has continued for 60 Business Days forfeit the Farmer's Shares in the Company.

Liability of the Farmer for Water Charges shall continue as provided by clause 12 notwithstanding any of the above actions by the Company.

19 TERMINATION

19.1 The Company shall be entitled at any time immediately to terminate this Agreement if the Farmer ceases to be a shareholder in the Company or ceases in the opinion of the directors of the Company to be associated or connected with Shares in the capital of the Company sufficient to warrant supply in terms of the Constitution of the Company but the Farmer shall remain liable for payment of all monies owing and for any antecedent breach of this Agreement up to the date of termination of this Agreement and for payment of all Water Charges until such liability is taken over by another Farmer or Farmers.

19.2 The Company shall be entitled at any time to immediately terminate this Agreement if the Farmer takes Excess Water without prior agreement with the Company but the Farmer shall remain liable for all monies owing and for any antecedent breach of this Agreement up to the date of termination of this Agreement.

19.3 The Company shall be entitled to immediately terminate this Agreement if the Farmer interferes with the metering equipment without the consent of the Company or fails to take reasonable care of the metering equipment.

19.4 In the event the Farmer has failed to pay a call due on any Share allotted to the Farmer in the Company in accordance with any demand made for such outstanding amount as shall be due on such Shares, such demand remaining unsatisfied for not less than 30 Business Days after being due and payable, the Company may immediately terminate this Agreement but the Farmer shall remain liable for all monies owing and for any antecedent breach of this Agreement up to the date of termination of this Agreement and for payment of all Water Charges until such liability is taken over by another Farmer or Farmers.

19.5 In the event of the Company terminating this Agreement for any reason then the Company shall not be liable to the Farmer for any costs, damages, claims or compensation of any kind or nature whatsoever nor shall the Farmer have any right of action against the Company.

20 **ASSIGNMENT**

20.1 The Farmer shall not assign transfer mortgage or charge the Farmer's interest in this Agreement without the prior written approval of the directors of the Company (which consent shall not be unreasonably withheld). No such consent will be granted where there is any actual or contingent breach of this Agreement payment or liability outstanding and due to be met by the Farmer, until such breach or default is remedied and no such consent to transfer will be provided unless the transferee qualifies as a shareholder according to the requirements contained in the constitution of the Company holds the required shares in the Company and has executed a Water Agreement.

20.2 If there is a change of trustees of a trust who are parties to this agreement then the rights are assignable to the new trustees provided there is no change to the property to which water is being delivered.

21 **ASSIGNMENT BY THE COMPANY**

21.1 The Company may at any time assign and transfer the benefit of this Agreement, or any of the Resource Consents, to the Joint Venture parties or to Electricity Ashburton Limited (*EAL*). Thereupon that assignee shall be required to comply with the obligations of the Company under this Agreement.

21.2 The Company may assign the benefit of any payments due and payable under this Agreement to any of the following persons:

- (a) The Joint Venture parties; or
- (b) To EAL;
- (c) Any financier (including a bank) which has lent moneys to the Company or the Joint Venture.

21.3 The Farmer agrees that the benefit of this Agreement is also held for EAL pursuant to the Contracts (Privity) Act 1982 and may be enforced by EAL against the Farmer independently of BCI.

21.4 If any assignment occurs under clauses 21.1 or 21.2 all references in this Agreement to the '*Company*' shall thereafter be interpreted and construed as if that reference was to the relevant assignee of that benefit.

22 **NON-WAIVER**

The failure of either party to insist in any one or more instances upon a strict performance of any of the terms of this Agreement or the waiver by either party of any term or right hereunder or any default by the other party shall not be deemed or construed as a waiver by such party of any such term, right or default in the future.

23 **FORCE MAJEURE**

23.1 If either party is unable to carry out any of its obligations under the agreement because of any event or circumstance of Force Majeure, the agreement shall remain in effect but except as otherwise provided, both parties' obligations, (other than obligations as to payment of Water charges), shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:

- (a) the non-performing party gives the other party prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (c) no obligations of either party that accrued before the Force Majeure caused the suspension of performance are excused as a result of the Force Majeure;
- (d) the non-performing party uses all reasonable efforts to remedy its inability to perform as quickly as possible.

23.2 If the event or circumstance of Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either party to resume its obligations under the Agreement, the parties agree to negotiate in good faith as to how this agreement may be mitigated or terminated having regard to the financial obligations then remaining or continuing that need to be met, utilising if necessary the Dispute Resolution procedures set out in clause 24.

24 **DISPUTE RESOLUTION**

24.1 **Negotiation**

The Farmer and the Company shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under this Agreement.

24.2 **Mediation**

Every dispute or difference that is not resolved by discussion between the Farmer and the Company may be referred by either party to mediation.

24.3 If a dispute has been referred to mediation then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The parties shall each bear the party's own costs in the mediation, and shall each pay half the costs of the mediator.

24.4 **Arbitration**

The matter in dispute shall be referred to arbitration if:

- (a) the parties have been unable to agree upon a mediator within 10 Business Days of the dispute being referred to mediation; or
- (b) mediation has taken place and no agreement has been reached.

24.5 The dispute or difference shall be referred to a sole arbitrator for resolution if the Farmer and the Company agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days, an arbitrator will be appointed by the President for the time being of the Canterbury Branch of the New Zealand Law Society at the request of either or both of them.

24.6 Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.

24.7 The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this clause and the decision of the arbitrator will be final and binding on the parties.

25 **ELECTRICITY LINES**

The parties acknowledge that it will be necessary to upgrade and to construct and maintain new electricity lines and/or underground cables to enable the Company to establish, extend and operate the Scheme. The Farmer will not unreasonably withhold consent to such electricity lines and, where necessary, will grant the persons nominated by the Company reasonable access to the Farmer's land for the purpose of building and operating such electricity line and any necessary easements. The Company will install such lines and cables to work in with the farming operation of the Farmer and to create minimal interference for those operations.

26 **VARIATION/REPLACEMENT TO AGREEMENT**

The Company reserves the right to vary or replace this agreement by introducing alterations to or a new agreement that will apply to all farmers taking Water from the Distribution System. Any such variation or replacement to this agreement shall be carried out in the following manner:

26.1 The Company shall post a copy of the variation or new agreement on the website of the Company;

26.2 A copy of the variation or new agreement, or summary thereto, shall be sent by post or email to the last known address (or email address) of the Farmer;

26.3 The variation or new agreement shall come into effect 10 Business Days after sub-clauses 26.1 and 26.2 have been complied with by the Company or such later date as specified by the Company.

There shall be no requirement for the Farmer to execute a new agreement or variation and notice as set out in clause 26.1 above shall be sufficient to create a variation to or new binding agreement between the Farmer and the Company.

27 **REORGANISATION OF RESOURCE CONSENTS**

In the event that the manner in which Water is delivered into the RDR or the Distribution system is materially changed then the Company may restructure and alter the provisions of this Agreement to give effect to any such change. The Company will consult with all Farmers prior to making any such change.

28 **TRUSTPOWER EXCLUSION OF LIABILITY**

The Farmer agrees and covenants that TrustPower shall have no liability or any duty of care to the Farmer whatsoever and the Farmer waives all rights of action against TrustPower. The parties acknowledge and agree that this clause 28 confers benefits on, and is enforceable by, TrustPower for the purposes of the Contracts (Privity) Act 1982.

29 **RDRML EXCLUSION OF LIABILITY**

The Farmer agrees and covenants that RDRML shall have no liability or any duty of care to the Farmer whatsoever and the Farmer waives all liability and rights of action against RDRML. The parties acknowledge and agree that this clause 29 confers benefits on, and is enforceable by, RDRML for the purposes of the Contracts (Privity) Act 1982.

30 **RDRML/PRIVITY OF CONTRACT**

The Farmer agrees and covenants that no action will be taken and no omission made that might or could detrimentally affect the resource consents held by RDRML at any time. In the event that the Farmer breaches the provisions of this clause then RDRML shall have a right to take action against the Farmer to rectify the position in relation to the breach for any loss or damage suffered by RDRML arising from the breach. The parties acknowledge and agree that this clause 30 confers benefits on, and is enforceable by, RDRML for the purposes of the Contracts (Privity) Act 1982.

31 **CONSUMER GUARANTEES ACT 1993**

Water is being supplied to the Farmer for the purposes of a business and the Farmer agrees, pursuant to section 43(2) of the Consumer Guarantees Act 1993 to exclude the application of that Act for the benefit of the Company.

32 **SEVERABILITY**

Should any part or portion of this Agreement be held invalid, the remainder of the Agreement shall continue in force and effect as if the invalid provision had been deleted provided however that the parties to the Agreement shall negotiate in good faith a valid and enforceable provision and replacement of the invalid provision to achieve as near as reasonably practicable the same effect as the deleted provision.

SCHEDULE 1

Full name of Farmer:

Note 1: *If a company put in full name of company. If a trust put in full names of all trustees. If individual(s) put in full names of individuals.*

Address of Farmer:

Primary contact name:

Telephone Number:

Facsimile Number:

Email Address:

Property: Area (ha)

**Details of Property:
(ADC Property Number)**

Requested Commencement Date:

**Delivery Pipeline: Highbank / Methven / Forks / Buccleugh / Mayfield
(Circle)**

**Or Approved Adjoining Scheme for Delivery: ALIS / VIS / MHIS
(Circle)**

Volume of Water Sought:
(litres per second)

Shares to be Held: [] I Shares

(670 per litre/second of water to be delivered)

[] D Shares

(1,330 per litre/second of water to be delivered)

Note 2: *Minimum holding of 10,050 I Shares and 19,950 D Shares (15 l/s delivery).*

SCHEDULE 2

BARRHILL CHERTSEY IRRIGATION LIMITED

Consent No:	Permit To:
CRC990088	Take up to 17 cubic metres per second of water and to divert up to 40 cubic metres per second of water from the Rakaia River, at or about map references NZMS 260 K36:057-393 and NZMS K36:050-393 respectively, for the purpose of irrigation of up to 40,000 hectares and electricity generation.
CRC990089	Discharge up to 80 cubic metres per second of water and sediment to the Rakaia, at or about map reference NZMS 260 K36:058-394
CRC000132	Discharge up to 17 cubic metres per second, and up to seven cubic metres per second of bywash water into the Rakaia River, at or about map reference NZMS 260 L36:152-283 and NZMS L36:200-240, respectively.
CRC990133	Disturb the bed of the Rakaia River to maintain existing river bank protection and facilitate the diversion of water to an intake structure and discharge of water and sediment between map references NZMS 260 K36:030-400 and NZMS 260 K36:068-387
CRC00134	Disturb the bed of the Rakaia River to facilitate the discharge of water and to form discharge channels, at or about map references NZMS 260 L36:152-283 and NZMS 260 L36:200-240
CRC000133	Place an intake structure on, and disturb the bed of the Rakaia River, at or about map reference NZMS 260 K36:050-393.