

DATED this 3rd day of December 2009

BETWEEN

ELECTRICITY ASHBURTON LIMITED

and

BARRHILL CHERTSEY IRRIGATION LIMITED

HEADS OF AGREEMENT

DATE:

PARTIES:

- (1) ELECTRICITY ASHBURTON LIMITED at Ashburton (*EAL*)
- (2) BARRHILL CHERTSEY IRRIGATION LIMITED at Ashburton (*BCI*)

BACKGROUND

- A BCI holds the resource consents set out in Schedule 1 to take water from the Rakaia River and wishes to use that water for irrigation.
- B BCI wishes to construct a distribution network to distribute that water by lifting it up to the Rangitata Diversion Race (*RDR*) and then distributing it to farmers.
- C EAL is a network operator and wishes to enter into joint venture arrangements with BCI to construct and operate the distribution network and utilise and benefit from the rights under the resource consents referred to in clause 1.1(a) (*the Project*).
- D The parties wish to pursue the above objectives and to enter into this agreement to show that intention.

1 BROAD INTENTION OF THE PARTIES

- 1.1 EAL and BCI intend to establish an unincorporated joint venture (the *JV*) with:
 - (a) the purpose of the *JV* being to own, operate and construct the water distribution network and utilise and benefit from the rights under the resource consents set out in Schedule 1 and any and all additional consents or variations to such consents subsequently acquired in respect of the *Project* and the matters set out in this agreement (the *RMA Consents*);
 - (b) each party having an equal 50% interest in the *JV*;
 - (c) all equity required by the *JV* being contributed so that over time it will be contributed equally by EAL and BCI (the *JV Parties*);
 - (d) a custodian / nominee company holding the assets of the *JV* as bare trustee for the parties;
 - (e) the *JV* holding and/or having the full benefit of the *RMA Consents* (including the rights to the full 17 cumecs of water) including to allow it to operate the water distribution network;

- (f) the parties being party to various agreements with third parties to allow for the above to occur as detailed in clause 6.

1.2 The parties intend to enter into a full unincorporated joint venture agreement (the *JV Agreement*) which will provide (among other things) for the following:

- (a) the establishment of the JV as envisaged above with each party having a 50% Participating Interest (being their equal interest in the capital of the JV giving rights, liabilities and obligations in accordance with the JV Agreement in that percentage) with the effect that each of BCI and EAL holds the JV's assets as tenants in common as to a half each;
- (b) the timing and amounts of contributions from each of the parties, and details and agreements relating to any debt funding for the JV and security for such debt, the intention being that the parties will contribute their respective equity contributions before drawing down any debt facilities;
- (c) the objectives of the JV which shall generally reflect the intention to own, construct and operate a profitable water distribution network and otherwise utilise the RMA Consents for the benefit of the JV;
- (d) the transfer of the RMA Consents to the JV or, alternatively if EAL considers such transfer may put the RMA Consents at risk, BCI continuing to hold the RMA Consents but with the RMA Consents being held by BCI for the full benefit of the JV in all respects in a bare trustee capacity and otherwise on terms acceptable to EAL;
- (e) a nominee or custodian company (the *Company*) to hold the assets of the JV on behalf of the JV Parties for the benefit of the JV Parties;
- (f) the establishment of a management committee to manage and control the JV with each party having equal representation on the management committee;
- (g) provisions relating to the day-to-day management of the JV's business, including insuring the JV's assets;
- (h) agreement as to the financial model for the operation of the JV including pricing and provisions relating to returns to the JV Parties;
- (i) the shareholders of the Company being BCI and EAL in equal shares with the board of the Company reflecting the membership of the management committee;

- (j) an absolute restriction on any party transferring all or part of their Participating Interest or shares in the Company to a third party or assigning or transferring their rights or obligations under the JV Agreement without the prior written consent of the other party or in a default scenario;
- (k) without limiting (j) above, an absolute restriction on any party mortgaging, charging or otherwise encumbering its Participating Interest or shares in the Company, without the prior written consent of the other party;
- (l) appropriate provisions relating to the liability and default including those described in clause 2 below;
- (m) dispute resolution provisions;
- (n) policies and provisions relating to any possible extension of the distribution network, storage of water, generation of electricity relating to the network and the use and application of the full 17 cumecs of water including the balance of the 17 cumecs not utilised as part of the water distribution network referred to above and the Acton arrangements referred to in clause 5.

2 **LIABILITY AND DEFAULT**

- 2.1 As a general principle, the rights, duties, obligations and liabilities of the parties under the JV Agreement will be several to the extent of their Participating Interests and not joint or collective except as otherwise agreed. Having said that, the parties acknowledge that under the documents noted in clauses 6.1(b) and (c) below, the parties' obligations to the other party to each of those documents (being TrustPower Limited and Rangitata Diversion Race Management Limited (*RDRM*)) is joint and several.
- 2.2 In respect of any circumstances where the JV Parties' liability is joint and several (such as in the documents noted in clauses 6.1(b) and (c)), each party agrees to indemnify the other for any liability incurred by it which exceeds its 50% share of that liability.
- 2.3 Each party (the defaulting party) shall fully indemnify the other (the non-defaulting party) for liability and losses arising from:
 - (a) any breach of the JV Agreement by the defaulting party;
 - (b) any failure to perform its obligations in respect of the Project;
 - (c) any failure to fully perform in its capacity as a party to any agreement to which either or both of the parties are parties or

otherwise relating to the Project, including all the documents listed in clause 6.

- 2.4 As a general principle, BCI will assume and manage the risk of its farmers breaching the water supply agreements referred to in clause 6.1(f). Accordingly, BCI shall be liable to pay the charges under the agreement referred to in clause 6.1(a) whether or not it has received payment from farmers under its water supply agreements with farmers, and EAL shall have the right to cause the JV Parties to charge to BCI default interest on any charges not paid by BCI under the agreement referred to in clause 6.1(a).
- 2.5 In the event that one of the JV Parties commits a minor breach under any agreement or arrangement that is capable of being remedied within a specified period under the relevant agreement or arrangement without either or both of the JV Parties suffering any penalty or liability, then provided the JV Party that has committed the breach remedies such breach within the specified period, as between the JV Parties the defaulting JV Party shall not be liable to the non-defaulting JV Party.
- 2.6 The parties agree that if a party commits a material default in respect of its obligations to the other or otherwise under the Project including under the agreements listed in clause 6, then the non-defaulting party should have certain specific rights to protect its position. For this purpose, the parties intend to negotiate and agree two materiality thresholds that, if breached, will give specific rights to the non-defaulting party. In both cases, the parties intend that where applicable and possible the defaulting party should have a reasonable opportunity to remedy the relevant material default.
- 2.7 A breach of the first materiality threshold would give the non-defaulting party the right to step-in and operate the assets as if it was the sole owner of the assets and shall only be bound to account to the defaulting party for any profits earned from those assets after deducting the direct and indirect costs and losses suffered by the non-defaulting party as a result of the breach and exercising this remedy.
- 2.8 The second materiality threshold would be a significantly greater materiality threshold than the first materiality threshold. A breach of the second materiality threshold would give the non-defaulting party the right to effectively have transferred to it the defaulting party's interest in the JV and the JV's rights and assets (including the RMA Consents and the agreements under clause 6 that the non-defaulting party wishes to have transferred to it) at the lower of market value and book value, less the direct and indirect costs and losses suffered by the non-defaulting party as a result of the breach. An example of a breach that would fall within this category would include a party going into liquidation, or breaching



either of the agreements in clauses 6.1(b) and (c) where such breach could or does result in the termination of either of those agreements.

2.9 The parties agree and acknowledge that in the event of default:

- (a) wherever practicable, the parties will consult in good faith in respect of the default to discuss the best proposed course of action in the circumstances;
- (b) the non-defaulting party will act reasonably in exercising any rights available to it.

2.10 The parties agree to negotiate in good faith the default provisions for the purposes of the full unincorporated joint venture agreement noting that the general provisions described in this clause 2 will not necessarily cover all matters that need to be dealt with in this context in the full unincorporated joint venture agreement.

3 **CAPITAL RAISING BY BCI**

3.1 BCI shall keep EAL fully informed on the progress of BCI in:

- (a) arranging share capital after the date of this Agreement;
- (b) obtaining applications from potential users of water to provide long term capital and take water.

4 **REQUIRING AUTHORITY STATUS**

4.1 The parties confirm that BCI will continue to hold its requiring authority status to purchase land and carry out any other rights held by it by virtue of its requiring authority status. If any land is required for the purposes of creating infrastructure to deliver water as part of the Project then BCI, after due consultation with EAL, will use its requiring authority to acquire land as agreed with EAL.

4.2 If requested by EAL BCI will use its said authority to acquire land or exercise other rights arising from its requiring authority status for BCI to enable the water distribution network to proceed. The parties will instigate an appropriate process to acquire any land required or exercise any rights including proper consultation and negotiation with any vendor of land.

4.3 The parties would equally contribute to the costs incurred (including the purchase price of any land acquired) in the event that BCI uses its requiring authority status as contemplated by this clause with the consent of EAL, and any land or rights acquired would be acquired for the benefit of the JV and transferred to and owned by the JV.

5 ACTON AND ASHBURTON DISTRICT COUNCIL

- 5.1 BCI acknowledges that it will hold the benefit of the agreements entered into with Acton Irrigation Limited (*AIL*) and Acton Farm Irrigation Limited (*AFIL*) for the Joint Venture. Those agreements provide for:
- (a) BCI to receive a payment from AFIL of \$2 million (plus GST) for every 1 cumec of water delivered to AIL up to a maximum of 3 cumecs. If not paid this amount will be a loan from BCI (on behalf of *the JV Parties*) up to 15 September 2015 with interest at cost of funds to 15 September 2011 and then at 12% per annum with the amount due CPI adjusted from 15 September 2010.
 - (b) BCI to licence AIL the right to take up to 3 cumecs of water from the BCI Consents being cumecs 9 to 11 (in order of priority) for the purpose of delivering that water to farmers in the Acton area. The right to take the water is subject to AFIL being liable for the payments in (a) above.
- 5.2 The JV Parties intend to jointly approach Ashburton District Council (*ADC*) for support in respect of the funding and uptake of the JV's activities.

6 AGREEMENTS

- 6.1 In addition to the JV Agreement, the parties envisage that the following arrangements relating to the Project will be negotiated and documented:
- (a) an agreement between the JV Parties and BCI under which the JV Parties agree to supply water to BCI using the water distribution network (which water will then be distributed by BCI to its farmers);
 - (b) an agreement between the JV Parties and TrustPower Limited to pump water from the Rakaia River up on to the RDR;
 - (c) an agreement between the JV Parties and RDR to use RDRM's canal and infrastructure to convey water;
 - (d) an agreement with Tyco Flow Control Pacific Pty Ltd to design and construct the water distribution network;
 - (e) documentation relating to the Acton arrangements described in clause 5;
 - (f) the BCI prospectus and the water supply agreements between BCI and its shareholders.
- 6.2 EAL and BCI will consult in respect of the terms of such arrangements.
- 6.3 BCI will enter into water supply agreements with its shareholder farmers. Those agreements shall contain appropriate provisions

allowing EAL to take an assignment of such agreements in the event of default by BCI and shall also specifically provide that the obligations of the shareholder farmers are for the benefit of EAL (as well as BCI) and may be enforced by EAL for the purposes of the Contracts (Privity) Act 1982.

7 CONDITIONS AND OTHER MATTERS

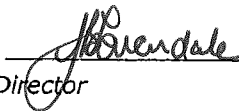
- 7.1 The parties agree that they are not, and do not intend to be, legally bound by the provisions of this Agreement except that this clause 7.1 and clauses 7.3, 7.4 and 7.5 shall legally bind the parties.
- 7.2 The parties agree that any legally binding arrangements subsequently entered into will not occur until the following matters have been satisfied, or will be subject to that matters being satisfied:
- (a) EAL being satisfied with and entering into the final form of the JV Agreement and all associated arrangements;
 - (b) BCI completing its capital raising and reaching the minimum subscription requirements provided for in its prospectus;
 - (c) EAL being satisfied with the terms of the agreements referred to in clause 6 and any other agreements relating to the Project including BCI's water supply agreements with its farmers.
- 7.3 Each party shall preserve the confidentiality of information of the other party and the existence and contents of this agreement but may disclose information to their professional advisers on a strictly confidential basis, or as otherwise agreed by the parties. The parties shall consult with each other in good faith before making any public announcements relating to matters covered by this Agreement.
- 7.4 Unless EAL agrees in writing, BCI shall not act or omit to act in any way that could affect the validity and/or the existing terms of the RMA Consents, including without limitation, seeking any variations to any of the RMA Consents. BCI shall at all times keep EAL fully informed in respect of all matters relating to the RMA Consents and the matters contemplated by this Agreement.
- 7.5 The parties expressly record and acknowledge that they are parties to:
- (a) the agreement dated 19 March 2007 and entitled "Preliminary Agreement for Irrigation and Electricity Generation Scheme"; and
 - (b) an agreement extending the above Preliminary Agreement;

Both agreements are attached and BCI and EAL agree the indemnity given by BCI in favour of EAL in the Preliminary Agreement continues in full force and effect.

7.6 The parties agree to review their arrangements in good faith on an ongoing basis (and at least annually) throughout the term of the JV. Any changes to the agreed arrangements would require the approval of both parties.

EXECUTION:

Electricity Ashburton Limited by:

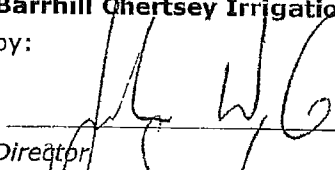


Director




Director

Barrhill Chertsey Irrigation Limited
by:



Director



Director



SCHEDULE 1

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.

PRELIMINARY AGREEMENT FOR IRRIGATION AND ELECTRICITY GENERATION SCHEME

Date

PARTIES

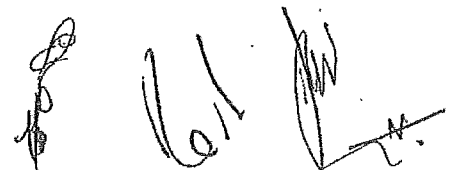
- 1 Electricity Ashburton Limited ("EAL")
- 2 Barrhill Chertsey Irrigation Limited ("BCI")

BACKGROUND

- A. The parties have agreed to negotiate in good faith with a view to reaching an agreement to carry out a joint venture for the creation of an irrigation and electricity generation scheme, generally in accordance with the attached plan, (the "Joint Venture Agreement") whereby there will be constructed a water intake facility, settling pond, channel, control gates, generation turbines, water off-take facility, generation facility, and a discharge facility with a minimum carrying capacity of 17 cumecs (the "Infrastructure").
- B. Because of the expiry period of resource consents currently held by BCI that will need to be used for the joint venture it is necessary for feasibility studies and preliminary steps under the proposed Joint Venture Agreement to be completed before it is determined whether a joint venture will proceed.
- C. The parties wish to record their agreement relating to carrying out of the feasibility studies and preliminary steps.

OPERATIVE PART

1. **Joint Venture Agreement**
 - 1.1 BCI and EAL shall negotiate in good faith with a view to entering into a Joint Venture Agreement on or before 30 September 2007 (the "Lapse Date").
 - 1.2 If no Joint Venture Agreement is executed by the Lapse Date then neither party shall be under any obligation to continue negotiations.
2. **License of Consents**
 - 2.1 BCI hereby licenses to EAL for the purpose of developing proposals for a joint venture and for the period ending on the Lapse Date the full rights and benefits in resource consents CRC990088, CRC990089, CRC000132, CRC9900133, CRC000133, and CRC000134.
 - 2.2 BCI may use the resource consents during the license period to the extent and in a manner that is not inconsistent with EAL's rights under this agreement and the good faith obligations of the parties. Without limitation to the foregoing BCI shall not during the license period grant priority or other rights to any other person to use the resource consents.



3. Feasibility Studies and Preliminary Steps

3.1 Upon formation of this agreement EAL shall:

3.1.1 Initiate such studies, tests, assessments, enquiries, reports, surveys, and any other things reasonably considered necessary by EAL for the purpose of determining the practical and economic feasibility of the proposed joint venture (the "Feasibility Studies");

3.1.2 Purchase the land contained in certificate of title CB45A/1109 (the "Holmes Land") for a price of approximately \$4,000,000.00 plus GST;

3.1.3 Acquire from Mark Davey (or the relevant Davey entity) such of his land as would be required for the carrying out of the joint venture (the "Davey Land") (the consideration for which may include, without limitation, a land swap or swaps of Holmes Land for Davey Land).

3.2 EAL shall consult with BCI in good faith in relation to the Feasibility Studies and the acquisition of the Holmes Land and the Davey Land.

3.3 No benefit shall be conferred by this agreement on any person other than the parties to this agreement.

4. Expiry of Agreement

4.1 If no Joint Venture Agreement is executed by the Lapse Date then EAL shall have the right to require BCI upon demand to indemnify EAL and hold EAL harmless for:

4.1.1 All costs incurred and harm suffered in relation to the Feasibility Studies;

4.1.2 All losses including, without limitation, interest and holding costs on sale of the Holmes Land and Davey Land;

4.2 If the indemnity in clause 4.1 is called upon by EAL then BCI shall use all reasonable endeavours to sell or enter into other arrangements relating to the Resource Consents to maximise the amount recoverable by BCI. In any event the amount recoverable by EAL under clause 4.1 will be limited to the net amount so realised by BCI after BCI has met all of its costs and expenses relating to or arising out of this agreement.

4.3 BCI shall make payment of its indemnities no later than 90 days after demand is made or, as otherwise mutually agreed by the parties.

4.4 BCI shall do all things reasonably necessary to effect such sale to its best advantage to the extent necessary to enable BCI to satisfy its indemnity liability to EAL.

4.5 "sell" and "sale" in clauses 4.2 and 4.4 includes a transaction, or series of transactions, which although not of the same or similar legal type as a sale of the resource consents produces an economic or financial effect similar to that which would be produced by a sale of the resource consents to the extent that there is, as a result of that transaction or series of transactions, a change in the effective management or control of the resource consents. This includes, without limitation, takeover of BCI.

5. Confidentiality and Public Announcement

5.1 Each party shall, within the confines of the law, preserve the confidentiality of information of the other party and the existence and contents of this agreement but may disclose information to their professional advisers on a strictly confidential basis.

5.2 The parties shall consult with each other in good faith before making any public announcements relating to the matters covered by this agreement.

6. **Good Faith**

6.1 The parties shall act in good faith towards each other.

7. **Legally Binding and Enforceable**

7.1 This agreement shall be legally binding and enforceable.

7.2 The parties agree that it is their intention that any ambiguity in this agreement or omission from this agreement which might cause the agreement to be void or voidable or unenforceable shall be remedied by the Court having reference to the standard of reasonableness and the intention of the parties as set out in the recitals contained in the Background of this agreement.


Signed as a deed this 19th day of March 2007

SIGNED by Electricity Ashburton
Limited by two of its directors:

)
)

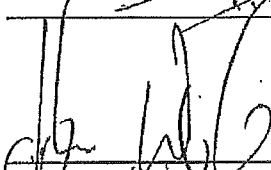


)
)

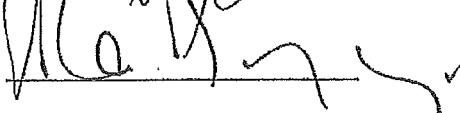


SIGNED by Barrhill Chertsey Irrigation)
Limited by two of its directors:

)
)



)
)



AGREEMENT TO EXTEND TERM OF PRELIMINARY AGREEMENT FOR IRRIGATION AND ELECTRICITY GENERATION SCHEME

PARTIES

- 1 Electricity Ashburton Limited ("EAL")
- 2 Barrhill Chertsey Irrigation Limited ("BCI")

BACKGROUND

- A. EAL and BCI are parties to the annexed Deed dated the 19 day of March 2007 [the Preliminary Agreement] whereby they agreed to negotiate in good faith with a view to carrying out a joint venture for the creation of an irrigation and electricity generation scheme.
 - B. The parties continue to negotiate towards the establishment of the joint venture but wish to extend the lapse date which is defined in the Preliminary Agreement as 30 September 2007 from 30 September 2007 to ~~30 November 2007~~ 31 March 2008
 - C. The parties wish to record their agreement to extend the lapse date accordingly.
1. The Lapse Date in clause 1.1 of the Preliminary Agreement is hereby extended from 30 September 2007 to ~~30 November 2007~~ 31 March 2008
 2. In all other respects the parties confirm the terms of the Preliminary Agreement dated 19 March 2007.

Signed as a deed this day of 2007

SIGNED by Electricity Ashburton Limited by two of its directors:)

Edam Glass

)

Wendate

SIGNED by Barrhill Chertsey Irrigation Limited by two of its directors:)

)

W B
W C