

# Water Agreement (Long Form)

(Version: 06.12.18)

Between

**Ashburton Lyndhurst Irrigation Limited**

and

***[The Property Owner named  
and described in the First Schedule]***



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## **PARTIES:**

- (1) ASHBURTON LYNDHURST 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 a shareholder in Rangitata Diversion Race Management Limited (*RDRML*) and has a right to 13.287 cumecs of water from the Rangitata Diversion Race (*RDR*) for irrigation purposes.
- B The water is distributed by the Company to Farmers within an area situated North of the Ashburton River and such other areas as determined by the Board.
- C The Company wishes to update the water supply agreement entered into between the Company and Farmers as permitted under existing water agreements.
- 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 RDRML 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 from the Scheme is subject to availability from the RDR or from ponds established 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 and must be held by the same party being the Farmer so that, subject to the exemptions permitted under this agreement, 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:

*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;

*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 the Company acting through the Board;

*Connection Point* means each point designated by the Company where the Distribution System connects to the Farmer's Works and unless otherwise specified means the turnout from the Distribution System.

*Default Interest* means interest at 2% per calendar month compounded from the last date in each month. Interest at such rate shall be determined on and as from the date of default and thereafter on the last business day of each calendar month;

*Distribution System* means the electronic systems, telemetry, Connection Points, races, pipes, valves, gates, ponds and other infrastructure constructed and installed by the Company to and including the relevant Connection Point;

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

*Farmer's Works* means the works to be constructed by the Farmer that connect at the Connection Point to the Distribution System to enable the Farmer to take Water from the Distribution System;

*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 which, 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 Good 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:

- (a) an act of God;

- (b) strike or lockout, act of public enemy, war (whether declared or undeclared), blockade, revolution, riot, insurrection, malicious damage, civil commotion;
- (c) lightning, landslide, cyclone, storm, flood, fire, earthquake, explosion, tidal wave, epidemic or freezing;
- (d) action, inaction, demand, restraint, restriction, requirement, prevention, frustration or hindrance by any Governmental Agency or other competent authority;
- (e) order of the Court;
- (f) embargo, unavailability or shortage of essential equipment, or other materials, goods, labour or services, lack of transportation or communication;
- (g) any breakage of plant, equipment, machinery, lines or pipes, , or , washout, subsidence or cave in or water pressure stoppages; or
- (h) restraint on access to property;

*Good Industry Practice* means the exercise of that degree of skill, diligence, prudence, foresight and economic management which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of services, the same as or similar to those provided under the same or similar circumstances as apply at that time in New Zealand;

*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;

*Management Plan* means any farm management plan required to be observed by the Farmer (including a Scheme Management Plan) in respect of the Farmer's farm practices and management, compliance with environmental or regulatory requirements as to the use of Water supplied by the Company implemented from time to time:

- (a) by the Company, and provided to the Farmer; or
- (b) by the Company requiring the Farmer to provide that plan to the Company for approval.

*Maximum Supply Rate* means the delivery of 0.58 litres per second of water for each hectare of land to be irrigated by the Farmer (with variation to that rate where water is being taken for storage) or such other rate as may be determined by the Board.

*Metering Equipment* means the metering equipment including any electronic telemetry at the Farmer's Connection Point for the purpose of measuring the total quantity of Water supplied by the Company to the Farmer's Connection Point;

*Nominal Value* in relation to shares in the Company means for each ordinary share the available subscribed capital of the Company divided by the number of ordinary shares having rights to water;

*Property* means the property set out in Schedule 1;

*RDR* means the Rangitata Diversion Race;

*RDRML* means Rangitata Diversion Race Management Limited;

*Regulatory Policies* means any policies, guidelines, or requirements introduced or imposed by any statutory authority having jurisdiction that is applicable to the taking, storing and distribution of water for irrigation;

*Resource Consents* means the Resource Consents held by RDRML and/or the Company together with all renewals, replacements, variations or amendments to the consents and includes where required all conditions relating to those consents;

*Scheme* includes the Distribution System and the right to 13.1 cumecs of water from RDRML;

*Scheme Area* means the area north and west of Ashburton to which the Company distributes irrigation water through the existing water distribution network and those further properties as determined by the Board to which irrigation water can be economically delivered;

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

*Shares* means the Shares in the Company set out in Schedule 1;

*Special Charges* means any charges which the Board determines should be paid by all shareholders or by any group of shareholders relating to the Scheme including any charge payable on particular shares, or payable by a specified group of shareholders;

*Statutory Requirements* means all requirements to be met by the Company and the Farmer 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;

*Standard Charges* means the costs and expenses of the Company in operating, maintaining, servicing and managing the Distribution System which charges are payable in proportion to each Farmer's shareholding or as otherwise determined by the Board;

*Water* means any Water supplied under this agreement for irrigation purposes and except where approved by the Board excludes any Water supplied for stock or other purposes or right to generate electricity from Water;

*Water Charges* means the aggregate charges fixed under this agreement from time to time including any Standard Charges and Special Charges as determined from time to time by the Board;

*Year* means each 12 month period commencing on the 1<sup>st</sup> day of June in each year and ending the following 31 May;

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 gender.

## **2 PRECONDITIONS TO SUPPLY OF WATER**

2.1 This agreement comes into force when the Farmer has entered into this Agreement and holds 1 share for every 0.01 litres per second of water to be supplied for irrigation with the Company delivering in each Irrigation Season to the Property specified by the Farmer set out in Schedule 1 but subject at all times to the Maximum Supply Rate under the other provisions of this Agreement and the availability of water under Resource Consents.

2.2 The Company may at any time give notice that is applicable to all Farmers taking water from the Company that:

(a) the number of shares required to be held by each Farmer to obtain a specified quantity of water has been altered; and/or

(b) the volume of water available for distribution has been altered.

### **2.3 Transitional Provisions**

2.4 The Company shall continue to make supply of water to those farmers not taking water continuously for spray irrigation as at the Commencement Date at a standard flow of approximately 230 litres per second, for 18 minutes per week, for every 41 shares held (or part thereof) on a rostered basis as determined by the Board until such time as those farmers request the Company to make supply, and the Company makes supply, for spray irrigation, or such earlier date as reasonably determined by the Board.

2.5 The Company shall otherwise make supply of water to those farmers using the water for spray irrigation at a standard flow of 0.01 litres per second for every share held by the farmer.

## **3 HOLDING OF SHARES**

3.1 The supply of Water by the Company to the Farmer is conditional upon the Farmer holding one share for every 0.01 litre per second of water to be supplied for the Property to be irrigated as set out in Schedule 1, or such other number of shares as specified by the Board as provided for in clause 3.2.

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 standard 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, except as provided for under clause 3.4(d), then the Company may exercise a number of rights including suspending the supply of water, varying that supply or terminating the supply of Water to the Farmer. If the Company ceases to supply Water to a Property except where a Farmer requests a suspension in the supply of water for a specified period, 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) **Sale of Property**

Where the Property to which the shares relate is being transferred with the Shares held by the Farmer relating to that Property (as set out in Schedule 1) by that transferee signing a Water Agreement and holding the Property and Shares in the same names; or

(b) **Transfer to another Property**

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 Scheme Area and can be economically serviced from the Distribution System; or

(c) **Transfer of Shares and Water Rights**

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 Scheme Area subject to:

- (i) 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;
- (ii) the Distribution System having the capacity and capability of delivering that water to the property in the Scheme Area as requested by the proposed transferee of shares; and
- (iii) The Farmer complying with any policy determined by the Board.

(d) **Licensing of Water**

A Farmer may license the right to Water to a person who farms a property within the Scheme Area which is serviced by the Distribution System (or may be serviced pursuant to clause 3.5) subject to:

- (i) the prior written consent of the Company; and
- (ii) that licensee signing such documents as may be required by the Company; and
- (iii) the Farmer holding that right to Water continuing to be liable to pay all Water Charges and being responsible for compliance by that licensee with all obligations under this agreement; and
- (iv) any licensing of that Water being notified to the Company prior to the start of an Irrigation Season or as approved by the Board; and
- (v) such other terms and conditions as the Company considers appropriate;
- (vi) the licensing is for a specified term as notified to and approved by the Company; and
- (vii) the distribution of that Water will comply with and meet the requirements of all Statutory Requirements and any Regulatory Policies;
- (viii) the Distribution System having the capacity and capability of delivering that water to the farm of that licensed person.

3.5 Where a Farmer requests the Company to deliver Water to a Property within the Scheme Area that is not connected to the Distribution System then the following provisions shall apply:

- (a) the Company may decline or accept such request on such terms and conditions as the Company determines;
- (b) as part of the terms and conditions in giving approval the Company may require the Farmer making such request to:
  - (i) pay all costs and expenses in installing a Connection Point or other connection and any race or pipeline, including any Metering Equipment as specified by the Company, from the Distribution System to the relevant Property; and
  - (ii) obtain all easements, consents and approvals (to be registered in favour of the Company) required to install, lay, maintain and replace any structure, race or pipeline; and

- (iii) vest all easements and any new structures including the extended races and pipelines in the Company; and
  - (iv) obtain and implement all electricity and media easements including the installing of all media lines, electricity lines and telemetry needed or required to support the delivery of water; and
  - (v) pay all charges in connecting the Farmers Works to the Connection Point for delivery of water.
  - (vi) obtain all resource consents, and other statutory and regulatory consents required or necessary to carry out and implement that extension to the Distribution System;
- (c) The consent and approval of the Company may be given subject to such other terms and conditions (including any variation to the requirements of sub-clause 3.5(b)) as the Company considers appropriate.

3.6 Where under clause 3.5 the Company is required to upgrade the Distribution System then notwithstanding that the Farmer may be required to meet the cost of upgrading the Distribution System all rights to, and property in, the upgrade, up to the Farmer's side of the Connection Point, shall be the property of the Company.

3.7 The Company may issue partly paid shares and may require a Farmer who takes up partly paid shares to pay interest at such rate as the Board considers is reasonable on any unpaid calls on those partly paid shares. In the event that any calls are not paid on due date Default Interest shall be payable on any unpaid calls from the due date. The Board may impose other terms and conditions on the issue of partly paid shares.

#### 4 **SUPPLY OF WATER**

##### 4.1 **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 0.01 litres per second of water for every one share held with that water to be delivered to the Property to be irrigated by the Farmer, that Property being as set out in Schedule 1.

4.2 The water to be supplied by the Company to the Farmer is to be used for irrigation purposes and such other purposes that comply with all conditions of any Resource Consent and any further purposes which are approved by the Board in any relevant policy statement posted on the Website of the Company.

4.3 The supply of Water is always subject to the availability of Water from RDRML, compliance with the Resource Consents, any Management Plan that has been implemented, any 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. The Company will give all Farmers the priority right to Water to which the Company is entitled to take for irrigation purposes during the Irrigation Season from the RDR.

- 4.4 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 does not guarantee that Water will be supplied at the delivery rate referred to in Schedule 1 and specified elsewhere in this agreement.
- 4.5 The 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.
- 4.6 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.
- 4.7 The Company agrees that subject to availability of Water from the RDR, and any restrictions that may be placed on that supply of water, the Company will provide to the Farmer during each Irrigation Season the volume of Water set out in Schedule 1 at a delivery rate not exceeding the Maximum Supply Rate.
- 4.8 On completion of the upgrade to the Distribution System so that water can be delivered under pressure the Company will use reasonable endeavours to deliver water under pressure but the Company shall have no liability in the event that certain levels of pressure are not attained or cannot be consistently maintained.

## **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 supply of that Water , which policy must be complied with by all farmers, 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 RDR under the Resource Consents and the requirement for that Water to be equitably distributed to all farmers entitled to that Water;
  - (b) the utilisation of water from ponds established by the Company;
  - (c) any requirements under any Statutory Requirements for restricting the supply of that Water;
  - (d) the right to manage the supply of that Water so it is supplied at varying intervals and rates 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 shall have the right, in priority to Farmers, to take water for the purposes of storing that water in storage ponds controlled by the Company. In respect of any water stored in those ponds the Company:
- (a) shall have a discretion as to how and when that stored water is released to Farmers; and
  - (b) the Company shall ensure that all Farmers have the first right to utilise that stored water for irrigation in priority to any other user of that water.
- 5.4 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. If the Farmer acts 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 or suspend the supply of Water to that Farmer from the Distribution System, the RDR or from ponds owned by the Company. This restriction or suspension will only apply after the Company has given reasonable notice to that Farmer of the requirement to remedy those breaches and the Farmer has failed to do so.

## 6 **EXCESS WATER**

- 6.1 For the avoidance of doubt this clause applies to any Water which the Board determines is Water to which a Farmer is entitled that is not being taken and utilised by that Farmer . That water being Excess Water may be dealt with by the Company provided that the right of the Farmer to take a full allocation of Water under this agreement is not detrimentally affected but subject to the provisions of Clause 6.2. The Company may enter into arrangements relating to Excess Water by:
- (a) allocating or licensing the right to use that Excess Water on such terms and conditions as the Company considers appropriate;
  - (b) establishing a trading platform or system (including policies and guidelines for implementing the same) for trading rights to any Excess Water;
  - (c) determining the terms and conditions under which that Excess Water is allocated and/or distributed within the Scheme Area.
  - (d) requiring those farmers who are allocated Excess Water to pay such charges as the Board determines for the supply of that water including

any water taken above the weekly allocation of water at the Maximum Supply Rate.

- 6.2 Where, due to the mechanical failure or other inability to deliver water in respect of the Scheme, 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 acknowledges that:
- (a) the Connection Point on each Farmer's Property shall be the property of, and owned by, the Company; and
  - (b) the Metering Equipment on the Property shall be owned by the Company.
  - (c) If the Farmer installs any metering equipment that relates to the supply of water from the Company then if reasonably and properly required for the purpose of monitoring the supply of Water under this agreement the Company shall be entitled to all data from that metering equipment for monitoring purposes with all such data to remain confidential unless otherwise required to be disclosed by law.
  - (d) All improvements made to the Distribution System up to the Connection Point shall be the property of the Company notwithstanding any payment made by the Farmer for those improvements.
- 7.3 The Farmer acknowledges that in respect of any water released to the Farmers Property that the Farmer shall:
- (a) only use and distribute that Water in accordance with Good 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 Good 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;
- (e) comply with the requirements in clauses 8.1 and 8.2.

7.4 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.

7.5 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 Good 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 matters shall traverse all terms and provisions of Resource Consents, Statutory Requirements, Good Industry Practice and company policies including the Scheme Management Plan that may be applicable from time to time.

## 8 **MANAGEMENT PLANS**

### 8.1 **Regulatory Authority Requirements**

Each Farmer shall comply with and meet the requirements of any Regulatory Authority to provide such farm environment plan, farm operating plan or other plans as determined by that Regulatory Authority and in accordance with the requirements of that Regulatory Authority.

### 8.2 **Audit**

The Company may implement an audited self management plan under which each Farmer shall:

- (a) carry out an audit of the farm practices and environmental management for the relevant Property; and
- (b) provide such information, questionnaires and reports to the Company as reasonably required by the Company;
- (c) be subject to such external audit as determined by the Company to audit the Farmer's compliance with all Regulatory Policies;
- (d) comply with any requirements of RDRML and the Company in respect of farm and water management policies required and imposed, by RDRML on all farmers taking water conveyed by the RDR, the Company and the Distribution System.

### 8.3 **Farm Management Plan**



If required by the Company each Farmer who has the right to receive Water from the Company shall prepare and implement a farm Management Plan for irrigated land use to demonstrate how the Farmer is actively managing the use of the Water to achieve high standards of environmental management and optimise on the Property production from irrigation. That plan shall include such matters as the Company may require from time to time and shall be provided within a time period required by the Company.

- 8.4 Each Farmer shall also in addition to the requirements of any approved Farm Management Plan comply with all other industry quality assurance programmes, codes of practices, specific Regulatory Policies and legal requirements, and all other requirements to ensure Good Industry Practice is maintained in respect of the operation of irrigation on the Farmer's 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 RDRML 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 the Scheme Management Plan then the Company may give notice of breach to the Farmer as set out in clause 19 and if necessary terminate this agreement as set out in clause 20.

## **9 MANAGEMENT OF THE SUPPLY OF WATER**

- 9.1 For the purpose of giving any notice to the Farmer of the volume of Water which is available from the Company to the Farmer the Company shall have the right to post on the website of the Company at such intervals as the Company may determine or provide that information by other electronic means the volumes of Water which are likely to be available for any specified period and any restrictions on the availability of Water due to reliability of supply or other factors. 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 or suspend 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) 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 or suspend 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 or suspension in delivery 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 RDRML to deliver water into the Distribution 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 the Metering Equipment specified by the Company and maintained by the Company. The Company shall have the right at any time to enter the Property and maintain and change the device used for measuring and controlling water supplied to the Farmer.
- 9.5 The Farmer shall not alter or interfere with the 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

in replacing the Metering Equipment if damaged due to the act or omission of the Farmer, and as required by the Company.

9.6 The Farmer shall not take from a Connection Point more Water than the Farmer's entitlement pursuant to this agreement (including any Excess Water allocated to that Farmer) or otherwise than in accordance with any Resource Consent, Management Plan or Scheme Management Plan including the right to any water stored by the Company for release.

9.7 The Company shall read the Metering Equipment, or the information available from telemetry, at such intervals as the Company determines and advise or otherwise make available to the Farmer by electronic means the volume of water used. The information from the metering or telemetry 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 Good Industry Practice to:

- (i) enable the Company to inspect, and to 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 Distribution System.

### **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 Distribution System caused by equipment failure, accident, storm or similar event; or
- (ii) wilful or reckless damage to the Distribution System; or
- (iii) emergencies; or
- (iv) an event of Force Majeure.

10.2 Where the Company interrupts delivery pursuant to clause 10.1(a) the Company shall give prior notice to the Farmer , by electronic means including email or texting, 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 advise the Farmer of:

- (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 beyond the Connection Point including the installation of all plant, equipment, pipes, electrical connections and other works to distribute Water on the Farmer's Property.

11.2 The Farmer shall be responsible for maintaining, keeping clear, and managing all land above any pipelines within the Property of the Farmer so that no damage occurs to the pipeline. The Company shall have rights of access to the Property to ensure the obligations under this clause are being met.

11.3 The Company may require the Farmer to install, at the cost of the Farmer, plant and equipment to prevent or control among other matters backflow, pressure relief, measurement of water and such other matters reasonably required by the Company.

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

11.5 The Farmer agrees that the provisions of the Third Schedule to the water agreement previously applicable to the parties and being replaced by this agreement shall continue to apply. The Company may from time to time post on the website of the Company rules and requirements which must be met by all farmers in relation to the use of Water delivered to, and the protection of the Scheme infrastructure situated on, the Property of the Farmer.

- 11.6 The Farmer agrees that if any damage is caused to the property of the Company situated on the Farmer's Property then the Farmer is liable for all costs relating to any repairs, replacement and reinstatement of that damaged property.
- 11.7 The Company may require the Farmer to comply with policies and rules relating to the use of the Water. The policies may be posted on the website of the Company and, if so posted, shall be complied with at all times by the Farmer. The Company may replace those policies and rules at any time by giving notice to the Farmer and placing the new rules and policies on the website of the Company.
- 11.8 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.
- 11.9 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;
- 11.10 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.
- 11.11 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 and the costs of installing a further Water Connection and any further works to be carried out to deliver water. 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. 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.
- 11.12 The Farmer shall only use the Water for irrigation and will not use the Water for any other purpose (including as potable water, for generation of electricity or

any other purpose) except with the prior written consent of the Company which consent may be arbitrarily withheld.

## 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. The charges shall include all charges payable by the Company for the fixed costs relating to the Distribution System, including the costs for access to, conveying Water through and maintaining the RDR, and to cover all administration costs of the Company and may include such other charges as are reasonable.

### 12.2 **Difference between Standard Charges and Special Charges**

The Water Charges shall be separated out into:

- (a) A Standard Charge that shall be determined for each Year and advised to all Farmers and applicable from 31 May in each year. The Standard Charge shall be payable by all Farmers in proportion to their shareholding as set out in Schedule 1;
- (b) A Special Charge that shall be payable as determined by the Board and may be a charge payable by all Farmers, or a specified group of Farmers, in such manner and proportions as the Board determines is equitable.
- (c) The decision by the Board on the allocation and recovery of the Water Charges shall be final and binding on the Farmer and all shareholders of the Company.

12.3 All Water Charges may be reviewed annually and may increase by such sum as the Company shall determine having regard to:

- (a) the annual cost of the Scheme including financing and debt repayments; and
- (b) any necessary capital works required in respect of infrastructure within the Scheme; and
- (c) external factors such as interest rates, contract charges for use of other facilities or similar charges;
- (d) a review of all operating expenses including contributions to RDRML.

12.4 The Company may require the Farmer to pay all Water Charges by direct debit from the bank account specified by the Farmer and the parties will sign all forms necessary to enable Water Charges to be paid by this method.

12.5 Charges for Excess Water shall be on a litre per second basis or such other basis as the Company shall determine from time to time.

12.6 The Company may determine fees payable by a Farmer for utilising the water within the Scheme for generating mechanical or electrical power from turbines or such other use as may be approved by the Board. All fees for the same type of approved use shall be consistent for all Farmers.

12.7 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 Interest 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.

12.8 The Farmer acknowledges that the Water Charges shall be payable by the Farmer notwithstanding that:

(a) The Farmer may not have consumed any Water during the relevant period for charging the Farmer; or

(b) The Company may have been unable to supply Water to the Farmer for all or part of the relevant period for charging the Farmer (provided that such non-supply was not due to the wilful default of the Company).

12.9 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 Property as the Company may reasonably require in relation to the laying of races, canals, pipes, concrete structures, electricity lines, telemetry, communications and the installation of plant, equipment and measuring devices relating to the Distribution System including any repairs, extension or renewal thereof as needed for the Scheme from time to time. Such easements shall be granted with no compensation being payable to the Farmer by the

Company. 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 Company will bear any reasonable costs pre-approved by the Company and 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.

14.3 The Company will give notice to the Farmer of the requirement to obtain any easements and consult with the Farmer in respect thereof. The Company will only exercise its power under this clause to obtain such easements as may be reasonably required for the effective operation of the Scheme and will take into account the reasonable requirements of any Farmer in exercising the said rights.

14.4 The Company and its agents and contractors may remove such soil and gravels (material) as required to construct any infrastructure on the Property as provided for in the easement. The Farmer may request the Company to transfer that material and utilise the material within the Property in proximity to the location where the material is extracted. Otherwise the Company shall remove the material from the Property and ownership of that material shall pass to the Company. The parties may by agreement determine other methods of disposal of that material.

14.5 If any material is extracted as set out in clause 14.4 the Company may temporarily store that material on the Property adjacent to the area from which the material is extracted. The Company shall reinstate as near as may be reasonably practicable to its original state the area on which the material is stored after its removal.

## 15 **ELECTRICITY LINES**

The parties acknowledge that it may be necessary to upgrade and to construct and maintain new underground electricity 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 creating 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.

## 16 **TERM OF AGREEMENT**

This Agreement shall come into force and effect on the Commencement Date and subject to the rights to terminate this agreement shall continue until the date on which



RDRML or the Company cannot provide water to the Farmer. If the RMA Consents held by RDRML or the Company are not renewed or extended so that Water can continue to be delivered on the terms and conditions of this Agreement then this Agreement shall be terminated.

**17 RIGHT OF ENTRY**

The Company and its servants, agents, employees, contractors and workmen, shall have the right at any time and from time to time without being deemed to commit a trespass, taking due care and attention to minimise any loss or damage for the Farmer 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 without thereby restricting those purposes:

- (a) To gauge or otherwise determine the quantity of Water used by the Farmer.
- (b) To view the condition of canals, structures, pipes, works telemetry, and Metering Equipment at the Connection Points;
- (c) to enter the Property to carry out inspections, maintenance and replacement of any Company infrastructure.
- (d) To construct any electricity connections or other easement works as permitted by easements to which the Company is entitled under this agreement.
- (e) To repair and replace any works carried out on the Property necessary for the operations of the Distribution System.

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 for the Scheme is kept open and available for use by the Company and its agents and contractors. In respect of any future structures, works or developments on the Farmer's land carried out by the Farmer these shall not be constructed to impede or prevent any future access as aforesaid. The Farmer will ensure that such development does not impede, restrict, limit or otherwise in any way inhibit or impair access or adversely affect access to or any such pipelines, water races, structures or devices.

**18 ACCESS TO FARMER'S WORKS**

18.1 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 Farmer's Works;
- (b) examine, read or test any metering equipment, measuring supply of Water under this Agreement;

- (c) to protect or prevent danger or damage to persons or property;
- (d) to ascertain and remedy 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.

18.2 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) Good Industry Practice is complied with.

## 19 BREACH OF AGREEMENT

19.1 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 and any unpaid calls on shares 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 and any call on Shares in accordance with the Agreement.
- (c) after the breach has continued for 60 Business Days forfeit the Farmer's Shares in the Company.

19.2 The liability of the Farmer for interest on any Water Charges and any other payments not paid on due date shall be calculated to the end of each month and shall be payable by the 15<sup>th</sup> day (or the nearest Business Day thereto) in the next month.

## 20 TERMINATION

- 20.1 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.
- 20.2 The Company shall be entitled at any time to immediately terminate this Agreement by notice given to the Farmer if the Farmer takes Excess Water without prior authorisation from the Company as set out in clause 6.1, 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.
- 20.3 The Company shall be entitled to immediately terminate this Agreement if the Farmer interferes with
- (a) the Metering Equipment without the consent of the Company or fails to take reasonable care of the Metering Equipment; or
  - (b) any other metering equipment owned by the Farmer and relied on by the Company to provide data on the volume of water supplied by the Company to the Farmer..
- 20.4 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 on a continuing basis until such liability is taken over by another Farmer or Farmers.
- 20.5 In the event that a Farmer fails to pay Water Charges on the due date for payment and that default continues for 30 business days then the Company may by giving 20 business days notice to that effect cancel this agreement and terminate the supply of Water but reserving the right to recover all Water Charges and interest thereon.
- 20.6 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.

21 **ASSIGNMENT**

21.1 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 or 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.

21.2 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.

22 **ASSIGNMENT BY THE COMPANY**

22.1 The Company may at any time assign and transfer the benefit of this Agreement. Thereupon that assignee shall be required to comply with the obligations of the Company under this Agreement. The Company may assign by way of mortgage the benefit of any payments due and payable under this Agreement to any financier (including a bank) which has lent moneys to the Company.

22.2 The Farmer agrees that the benefit of this Agreement relating to compliance with Resource Consents is also held for RDRML pursuant to the Contracts (Privity) Act 1982 and may be enforced by RDRML against the Farmer independently of the Company.

22.3 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.

23 **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.

24 **FORCE MAJEURE**

24.1 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.

24.2 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 varied 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.

## 25 **DISPUTE RESOLUTION**

### 25.1 **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.

### 25.2 **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.

25.3 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.

### 25.4 **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.

25.5 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.

25.6 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.

25.7 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.

## **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 notice of the variation or new agreement on the website of the Company;

26.2 Notice that a new agreement has been posted on the website of the Company shall be sent by post or email to the last known address, or email address, of the Farmer;

26.3 On request from any Farmer a copy of the new agreement shall be posted to that Farmer at the last known address of that Farmer;

26.4 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 this agreement, 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 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 in relation to the supply of Water to the Company by RDRML for supply of that Water to the Farmer. The parties acknowledge and agree that this clause 28 confers benefits on, and is enforceable by, RDRML for the purposes of the Contracts (Privity) Act 1982.

**29 RDRML/RESOURCE CONSENTS**

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 or the Company at any time.

**30 TRUSTEES LIABILITY**

Where this agreement is entered into by the trustees of a trust then any professional trustee under that trust, who has no financial or beneficial interest in the trust, shall have no personal liability for any moneys or other monetary liabilities payable or to be complied with under this agreement.

**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.

**33 DELEGATION**

The Company may seek at any time and from time to time to delegate any of its powers rights or discretions hereunder to any person or persons, and the exercise of such power right or discretion by any such person or persons shall be deemed to be a valid exercise thereof by the Company.

**34 COSTS**

Each party shall bear its own costs relating to this Agreement. If a Farmer shall seek any changes to this Agreement the costs of the Company in considering those changes shall be paid by the Farmer and recoverable from the Farmer. Each new party agrees to pay all reasonable costs incurred in becoming a party to this agreement.

**35 EXECUTION**

35.1 This agreement may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart





SIGNED by [*name of Farmer*] )  
)

\_\_\_\_\_  
Director/Trustee/Individual

\_\_\_\_\_  
Director/Trustee/Individual

In the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

## SCHEDULE 1

**SCHEDULE 2: MAP OF THE PROPERTY**