

# **WATER SUPPLY AGREEMENT**

between

Kurow-Duntroon Irrigation Company Limited

and

[                      ]

# Water Supply Agreement

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Date:

2020

## Parties

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1. **Kurow-Duntroon Irrigation Company Limited** of Oamaru ("Company")
2. [ ] ("Farmer")

## Background

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- A The Farmer is a registered proprietor of the Property within the Kurow-Duntroon area.
- B The Farmer wishes to be supplied with water by the Company and the Company has agreed to supply the Farmer with water on the terms and conditions set out below and subject always to the Consents and availability of water.

## It Is Agreed

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### 1. Definitions and Interpretation

- 1.1 In this Agreement unless the context otherwise requires:

"**Agreement**" means this Agreement.

"**Annual Volume of the Property**" means the maximum volume of water the Farmer is entitled to take in each Irrigation Season for the Property based on the number of Qualifying Shares held by the Farmer and the volume of water per Qualifying Share entitlement determined by the Company.

"**Board**" means the directors numbering not less than the required quorum acting as the Board of directors of the Company, and where one director is a quorum it means that director so acting alone.

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

"**Consents**" means consents held by the Company to take water together with all renewals, substitution, replacements, variations or amendments to such consents.

"**Construct**" includes expand, install, build, renew, repair, replace, reconstruct, relocate or upgrade and "**Constructed**" and "**Construction**" have a corresponding meaning.

"**Easement**" means any easement registered in favour of the Company over the Property in such form as is generally shown in Schedule 2 (but subject to any reasonable amendments that may be stipulated by the Company) or any separate easement agreement entered into by the parties.

"**Easement Area**" means the Easement area on the Property as defined in the Easement.

"**ECan**" means Canterbury Regional Council.

"**Farmer**" means the registered proprietor of the Property

**“Financier”** means any party providing secured financing to the Company from time to time.

**"FEP"** means Farm Environment Plan (or such equivalent document as required by the regulating authority (ECan) or by the Company) prepared by the Farmer, approved by the Company and submitted by the Company to ECan in respect of a property which identifies the risks arising from the use of irrigation water within the irrigated area and provides details of the practices and procedures to be put in place to manage these, in order to ensure compliance with the conditions of the Consents and to minimise the potential for adverse effects on the environment arising from the exercise of the relevant Consent.

**“HS Act”** means the Health and Safety at Work Act 2015.

**"Irrigation Season"** means the period from 1 August of each year to 31 May of the following year or such other period as the Company may from time to time determine.

**"I Shares"** means a separate class of shares called I Shares entitling the Farmer to irrigate a hectare at an application rate and/or take the volume of water represented by the Shares with such other rights and obligations as set out in the Company's Constitution.

**"Off Take"** means the global positioning system reference point, whether a specific point on the Water Race or Pipes, to which the Company delivers water and from which the Farmer takes water from the Company, and as more specifically described in Schedule 1 or as determined by the Company after consultation with the Farmer.

**“Operate”** includes clean, use, inspect, investigate, maintain and test and **“Operation”** has a corresponding meaning.

**"Pipes"** means pipes and any extension, upgrade or replacements of them which are owned by the Company and convey water within the Scheme.

**"Property"** means the Farmer's property listed in Schedule 1.

**“Qualifying Shares”** means the I Shares and W Shares each of which have an entitlement to irrigation water of 0.5 litres per second for each I Share or W Share held or such other water volume per share as determined by the Board with different rates of application between borderdyke irrigated land and spray irrigated land.

**“Scheme”** means the Company's scheme which provides water and includes the Scheme Infrastructure.

**“Scheme Expansion and Upgrade Project”** means the upgrade of the Scheme Infrastructure from largely open water races to a largely piped scheme, the expansion of the Scheme Infrastructure so that it is capable of servicing a larger amount or area of land, and includes any Construction of Scheme Infrastructure at any time in the future for those or any other purposes.

**“Scheme Infrastructure”** means all existing and future infrastructure Constructed for or in relation to the take, storage and conveyance of water for the Scheme including without limitation pumps, pump sheds, pumping stations, storage tanks, purifying equipment, electrical works, electronic systems, Pipes, valves, the Water Race, water meters, head races, control equipment and gates, measuring devices, monitoring equipment, each Off Take and associated structures, and includes all infrastructure resulting from the Scheme Expansion and Upgrade Project.

**"SMP"** means a Scheme Management Plan submitted by the Company to ECan which provides details of the practice and procedures to be put in place to operate the water take and delivery of

water to the scheme area and to monitor and manage the environmental effects arising from the use of water within the Scheme, in order to ensure compliance with the conditions of the Consents and to minimise the potential for adverse effects on the environment arising from the exercise of the Consents and includes any other plan from time to time required by ECan or the Company so as to comply with the Consents;

**"Share"** means either a W Share or an I Share in the Company and **"Shares"** means all W Shares and I Shares held by the Farmer in the Company.

**"Water Charges"** means charges charged by the Company pursuant to clause 4 of this Agreement.

**"Water Race"** means all existing water races and any extension or future race which the Company maintains or installs to convey water through the Scheme.

**"W Shares"** means a separate class of shares in the Company called W Shares being voting shares in the Company entitling the Farmer to irrigate a hectare at an application rate and/or take the volume of water represented by the Shares with such other rights and obligations as set out in the Company's Constitution.

**"Working Day"** means a day on which registered banks in Oamaru are open for business but excluding Saturdays and Sundays. A working day shall be deemed to commence at 9am and to terminate at 5pm.

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

- (a) Singular includes plural and vice versa;
- (b) Any gender includes every gender;
- (c) A reference to a person includes a corporation, trust, association, partnership, government authority or other legal entity, and where necessary, includes a successor body;
- (d) References to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) References to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (f) Headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (g) A reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns and in the case of the Company also includes any person that owns and/or Operates all or any part of the Scheme and/or all or any part of the Scheme Infrastructure at any relevant time.

## 2 Term

2.1 This Agreement shall continue until such time as it is terminated in accordance with the provisions of this Agreement.

### 3 Supply of water

- 3.1 Subject to the terms of the Agreement, the Company will supply water to the Farmer in each Irrigation Season in consideration of the payment of the Water Charges determined in accordance with clause 4. Such water will be delivered by the Company at the Off Take.
- 3.2 Subject to clauses 4.5 and 5, the Farmer shall be entitled to take a volume and/or rate of water represented by the number of Qualifying Shares held by the Farmer as determined by the Company or any other reduced take of water as may be required by the terms of this Agreement, from the Off Take.
- 3.3 The Farmer shall not use water for domestic supply.
- 3.4 The Farmer's entitlement to water in each Irrigation Season shall be limited to the Annual Volume for the Property as set out in Schedule 1 or any other Annual Volume for the Property resulting from a determination by the Company of the volume of water per Qualifying Share entitlement in accordance with clause 3.5.
- 3.5 The Company may from time to time, in its absolute discretion, determine the entitlements to water of the Farmer and other irrigators, including the volume of water per Qualifying Share and the rate of water take to which the Farmer is entitled. These entitlements may differ as between borderdyke irrigators and spray irrigators. Unless stipulated otherwise by the Company, if a Farmer converts from borderdyke to spray irrigation the volume of water per Qualifying Share entitlement shall reduce from 10,000m<sup>3</sup>/Share per annum to 6000m<sup>3</sup>/Share per annum and the Annual Volume for the Property shall reduce accordingly.
- 3.6 Notwithstanding anything else to the contrary contained in this Agreement the Company may cease to supply water to the Farmer immediately once the Annual Volume for the Property has been supplied to a Farmer in any Irrigation Season.
- 3.7 Notwithstanding anything else to the contrary contained in this Agreement, the Farmer acknowledges and agrees that any amount of water available during the months of August and May from the Scheme shall be determined in the absolute and sole discretion of the Company.
- 3.8 The Company may at its sole discretion agree to supply water to any persons other than on the basis of the number of Qualifying Shares held by that person (and whether or not that person holds any Qualifying Shares), if:
- (a) the Company is satisfied that it can do so without affecting the supply of water to all holders of Qualifying Shares including, in the case of the Farmer, the supply of the Annual Volume for the Property; and
  - (b) any consent required from a Financier has been obtained.

The Company may determine the terms of such supply (including water or other charges) in its sole discretion. The Farmer shall have no right to demand that the Company make any such supply of water to it nor any rights against the Company if the Company supplies water to any person other than the Farmer.

### 4 Water charges

- 4.1 The Company may charge on a per Qualifying Share basis, Water Charges at an amount to be determined in the Company's absolute discretion to recover operating and capital costs. The Company may determine a different rate between borderdyke irrigators and spray irrigators, and

different classes of shares, taking into account such factors as it deems appropriate, including volume of water per Share, cost of delivery and efficiency.

4.2 The Water Charges shall be payable at such time and in such manner as Company may from time to time determine. The Board may determine that the Water Charges payable on the I Shares shall be different to the Water Charges payable on the W Shares at the absolute discretion of the Board.

4.3 The Water Charges may include recovery of operating and capital costs including without limiting the generality of the foregoing:

- (a) maintenance and repairs of Scheme Infrastructure;
- (b) Construction and Consent costs in respect of the Scheme ;
- (c) costs for running and administering the Company;
- (d) monitoring and compliance costs;
- (e) cost of obtaining water for the Scheme;
- (f) Scheme-wide electricity costs;
- (g) costs incurred by directors and directors' fees;
- (h) costs payable to professionals and service providers to the Company;
- (i) any rental, premises costs (including utilities), if applicable;
- (j) bank loans, shareholder advances and/or any other loans and any interest, fees and other amounts payable on them;
- (k) any royalty or tax introduced and levied on water to be taken as part of the Scheme;
- (l) administrative costs in relation to administering the Company's obligations under its Consents.

4.4 In addition to the Water Charges the Farmer may be charged the costs incurred by the Company which are particular to the Farmer in relation to the access to Water and which may include (without limiting the generality of the foregoing) any costs relating to:

- (a) maintenance and repairs of the Scheme which are specific to the Farmer;
- (b) electricity and other utility costs which are specific to the Farmer;
- (c) Construction and Consent costs in respect of the Off Take and other Scheme Infrastructure required to ensure and maintain access to water by the Farmer;
- (d) costs incurred as a result of the Farmer breaching this Agreement and conditions in relation to his or her water take.
- (e) costs recoverable under clause 6.2;
- (f) administering the efficient use of water and the Company's water Consent conditions generally;

- (g) contributions made to the Company by each class of shareholders in being issued Qualifying Shares in the Company.
- 4.5 Notwithstanding any other term of this Agreement, the Farmer agrees that the Water Charges or other amounts determined in accordance with clause 4 shall be payable by the Farmer to the Company whether or not the Farmer takes water during the Irrigation Season and notwithstanding that the water supply may be reduced or stopped for any reason whatsoever, including, without limiting the generality of the foregoing, water shortage, regulatory reasons outside the control of the Company, or due to a failure by the Farmer or other irrigators to comply with Consent conditions, or if the Company fails to comply with any obligation under this Agreement.
- 4.6 Farmers acknowledge that Water Charges are used partly to meet commitments of the Company to lenders to the Company and that notwithstanding water may not be able to be supplied to shareholders those Water Charges will continue until all indebtedness to lenders has been repaid.
- 4.7 In the event of non-payment of any Water Charges or any other amounts due under this Agreement, then without prejudice to the Company's other rights and remedies, penalty interest at a rate of 4% above the Company's then current bank's commercial overdraft rate per annum shall accrue from the date of non-payment to the date the payment is actually made.
- 5 Water Take**
- 5.1 If the Farmer has applied to initially not take any water ("non-active status") under any Share issued to the Farmer as part of the equity raising for the Scheme Expansion and Upgrade Project and the Company has accepted the Farmer's application to have non-active status on any such Share (each such Share being a "Non-Active Share") then the following terms and conditions will apply:
- (a) Each Non-Active Share will have non-active status for a maximum period of 7 years commencing on 1 July 2018 and ending on 30 June 2025 ("the non-active period"), subject to paragraph (i) below;
  - (b) For so long as a Non-Active Share has non-active status, the Farmer shall have no right to vote on resolutions of Shareholders or at Shareholder meetings in respect of his/her Non-Active Shares;
  - (c) Subject to paragraphs (e) and (i) below If the Farmer wishes to commence taking water in respect of Non-Active Shares during the non-active period then the Farmer must provide the Company with notice in writing no later than 1 April prior to the start of the Irrigation Season during which the Farmer wishes to commence taking water ("Notice"). Such Notice must be in respect of all Non-Active Shares held by the Farmer (and not some only) and, once given, will be irrevocable. From the date of such Notice:
    - (i) the Non-Active Shares will cease to have non-active status (and such Shares cannot revert to having non-active status at any time in the future) and will cease to be Non-Active Shares;
    - (ii) Water Charges will be payable by the Farmer from the 1<sup>st</sup> of September immediately following the date of the Notice, regardless of whether KDIC supplies water or the Farmer takes water (subject to paragraph (i) below);
    - (iii) each Share will confer the right to one vote on resolutions of Shareholders (subject to the terms of the Company's constitution).
  - (d) The Farmer cannot give a Notice to commence taking water part way through an Irrigation Season;
  - (e) The Farmer does not have an automatic right to receive water on providing a Notice to the Company under paragraph (c) above (or being deemed to have provided a Notice under paragraph (g) below). Without limiting the Company's other rights under this

Agreement, if the Board determines (in its sole discretion) that there is insufficient water available, or that water is not available for any other reason, or that it is not in the Company's best interests to supply Scheme Water, then the Company shall not be obliged to supply water (or may reduce or limit the supply of water) to the Farmer in respect of Non-Active Shares and the Farmer shall have no claim whatsoever against the Company for such non-supply or reduced supply;

- (f) Prior to agreeing to issue or sell Shares to any third parties, for so long as any Farmer holds Non-Active Shares, the Company shall first provide notice to all holders of Non-Active Shares that it has received an application for Shares from a third party. Each holder of Non-Active Shares shall then have 10 working days from the date of the Company's notice to irrevocably advise the Company whether or not they wish to commence receiving Water in respect of all their Non-Active Shares from the start of the next Irrigation Season. If any Farmer(s) advise the Company that they wish to commence receiving water from the commencement of the next Irrigation Season ("the opting in Farmers"), the Company shall not accept the application for Shares from the third party if in the Board's discretion it shall have the effect of reducing the Scheme Water available to opting in Farmers. If any Farmer(s) advise the Company that they do not wish to commence receiving water from the commencement of the next Irrigation Season or if fail to notify the Company of their election within the 10 working day period ("the declining Farmers"), then the Company shall be entitled to issue or sell Shares to the third party applicant without any need for the Board to have regard to the impact or potential impact on water which may be available to the declining Farmers;
  - (g) Subject to paragraphs (e) and (i), if the Farmer does not notify the Company that it wishes to commence taking water by or before 1 April 2025, the Farmer will be deemed to have given a Notice dated 1 April 2025 and paragraph (c) will apply to all Non-Active Shares held by the Farmer;
  - (h) Notwithstanding paragraph (g) above, if the Board determines (in its sole discretion) that there is insufficient water available, that water is not available for any other reason or that it is not in the Company's best interests to supply water, the Company may require that the Farmer's Non-Active Shares continue to retain their non-active status until such date on which the Board (in its sole discretion) determines that the Non-Active Shares cease to have non-active status;
  - (i) Water Charges will not be payable on Non-Active Shares until:
    - (i) the earlier of (A) the Farmer providing a Notice as contemplated in paragraph (c) above, or (B) the Farmer being deemed to have provided a Notice under paragraph (g) above, or (C) 1 July 2025, or (D) the Non-Active Shares ceasing to have non-active status (as determined by the Company) for any other reason; or
    - (ii) if paragraph (h) applies, such later date on which the Non-Active Shares cease to have non-active status (as determined by the Board);
  - (j) At the earliest date on which Water Charges become payable, the Farmer will pay those charges as determined by the Company in its sole discretion in respect of all Shares, irrespective of whether the Company supplies water or the Farmer actually takes water;
  - (k) For the avoidance of doubt, the Farmer may no longer apply for any Non-Active Shares.
- 5.2 The Company shall from time to time determine in its absolute discretion the water take rates and annual volume of water take for borderdyke irrigators and spray irrigators. The rates of take and volumes shall at all times comply with the relevant resource consent held by the Company.
- 5.3 The Company shall ensure that the Scheme Infrastructure is installed to the Farmer's farm off-take (being the farm off-take approved and agreed to by the Company) pursuant to the Scheme Expansion and Upgrade Project in respect of all the Farmer's Shares and regardless of whether the Farmer has elected to have Non-Active Shares.



## 6 Farmer's obligations

### 6.1 The Farmer shall:

- (a) Immediately notify the Company of any damage to the Water Race or Pipes or any other Scheme Infrastructure running through the Property. Any repair of damage caused by the Farmer (whether by act or omission) shall be undertaken by the Company but at the Farmer's expense;
- (b) Control or eliminate any noxious weeds growing alongside the Water Race and shall not plant trees within 10 metres, or such other distance as advised by the Company, from the Pipes;
- (c) Promptly remove at the expense of the Farmer all trees presently growing beside the Water Race or Pipes which may be identified by the Company as having the potential to limit the efficient maintenance, flow and operation of the Water Race or Pipes;
- (d) Not interfere with or attempt to alter any Water Race, Pipes or Off Take or any other Scheme Infrastructure without the prior written consent of the Company and then only upon and subject to the terms and conditions stipulated by the Company;
- (e) Repair and maintain all fences along that portion of the Water Race which crosses throughout the Property to the satisfaction of the Company;
- (f) Maintain any drainage works on the Property carrying surplus irrigation or flood water to such a standard as will permit the proper functioning of the Water Race;
- (g) Not to permit the discharge of run off, chemicals, effluent, debris, dead stock or other toxic matter into any Water Race, Pipe or flood channel;
- (h) Remove all debris from the Water Race;
- (i) Allow the Company ready access at all times to the Water Race, Pipes, and any other Scheme Infrastructure, and to and on the Easement Area, for the Construction or Operation of Scheme Infrastructure or for the purposes of clause 8;
- (j) To observe and comply with the Company's Constitution, Consents, Consent conditions and irrigation practices and procedures determined from time to time by the Company;
- (k) Ensure that any lessee or other occupier of the Property complies in all respects with the terms of this Agreement;
- (l) Not permit any improvement or structure to be erected or altered on the Easement Area, or enter into any improvement or structure or fenced area comprised in the Scheme Infrastructure, without the prior written approval of the Company and then only upon and subject to the terms and conditions stipulated by the Company in its absolute discretion; and
- (m) Install, at the expense of the Farmer such on-farm infrastructure and/or additional infrastructure at the Off Take as is required by the Company at any time. This may include but not be limited to the installation of pressure reducing valves, non-return valves and/or such other infrastructure as the Company may require.

- 6.2 The Farmer shall at the Company's request allow the Company or Company contractor /employee to attend to any of the repairs and/or work set out in clause 6.1 above with the cost of such work being recovered from the Farmer through Water Charges set out in clause 4.
- 6.3 The Farmer shall allow water to be held or conveyed over its Property whether via a Water Race or Pipe or pumping station or other Scheme Infrastructure and the Company shall have the rights and powers set out in clause 12 in respect of the same.
- 6.4 The Farmer will register an encumbrance, or where an encumbrance is already registered shall enter into and execute a variation of encumbrance over the Property which it irrigates pursuant to the Farmer's Shares in favour of the Company as a first registered charge and on the basis of at least a one hectare encumbered for every one Share held in the Company, in either case, in the form required by the Company (collectively referred to as "the KDICL Encumbrance"). The KDICL Encumbrance shall secure payment of any and all amounts owing to the Company by the Farmer, including but not limited to, Water Charges and any amounts unpaid on the Farmer's Shares, and compliance with the terms and conditions of this Water Supply Agreement. The Company shall by virtue of the KDICL Encumbrance and in respect of the Property be entitled to all the powers and remedies given to an encumbrancee/mortgagee by the Land Transfer Act 1952 and the Property Law Act 2007 and any amendment or re-enactment thereof.
- 6.5 The terms of the KDICL Encumbrance registered pursuant to this Agreement shall bind the Farmer's successors; and
- (a) where the encumbrance is granted over Property which comprises a pastoral lease, any person with an interest in the pastoral lease;
  - (b) any person with an interest in the Property; and
  - (c) all occupiers of the Property,
- and their respective successors and assigns.
- 6.6 For the avoidance of doubt no water will be made available to the Farmer until the KDICL Encumbrance referred to in this clause is registered.

## **7 Company's obligations**

- 7.1 The Company shall:
- (a) Take all reasonable steps to maintain the Consents.
  - (b) Comply with the provisions of the Companies Act 1993 and Financial Reporting Act 2013 and without limiting the generality of the foregoing provide the Farmer, as a shareholder, with annual reports and annual accounts detailing income received in the form of Water Charges and expenses incurred.
  - (c) Promptly pay and discharge all amounts due by it or obligations imposed on it by ECan in respect of the Consents held in relation to the taking of the water.
  - (d) Comply with its obligations and ensure that the Company's workers (as defined in the HS Act) comply with their obligations under the HS Act and all regulations made under the HS Act and take reasonable steps to mitigate damage and cause as little interruption as possible to the Property and the carrying on by the Farmer of its farming operations.

- (e) Operate the Scheme in a professional manner and to the appropriate industry standards of which may be updated from time to time.

## 8 Environment provisions

- 8.1 The Farmer acknowledges that the Company must comply with the Resource Management Act 1991, all relevant Regional and District planning documents and all resource consents that it holds (including but not limited to the Consents). The Farmer further acknowledges that to ensure compliance with the same the Company shall from time to time prescribe certain irrigation and other practices to the Farmer, and the Farmer agrees to comply with and be bound by such requirements.
- 8.2 Without limiting clause 6.1(g) or clause 8.1 in any way, the Farmer shall take all necessary steps to minimise run off from the Property back into the Water Race or any river, tributary or waterway.
- 8.3 Notwithstanding anything to the contrary contained or implied in this Agreement, the Farmer acknowledges that the supply of water under this Agreement is expressly subject to and conditional upon the restrictions and limitations placed on the Company by its Consents (including the requirement to prepare and periodically review an SMP), and the lawful requirements of the relevant consent authorities. The Farmer expressly acknowledges and agrees that the Company may cease to supply water or restrict water to the Farmer if required under the Consents to do so.
- 8.4 The Farmer agrees and undertakes to comply with any water supply restrictions imposed from time to time as a consequence of the restrictions and limitations set out in clause 8.3, and to reduce his or her water take immediately following notification of such restrictions.
- 8.5 The Farmer shall comply at their own cost with the conditions set out in the Consents from time to time including without limitation, at the date of this Agreement, the following:
  - (a) All practices and procedures set out in the SMP;
  - (b) All practices and procedures as to preparing and submitting an FEP, and as to nitrate-nitrogen modelling in respect of the Farmer's Property;
  - (c) All requirements as to fencing and riparian planting in respect of the Farmer's Property;
  - (d) All requirements as to fertiliser application in respect of the Farmer's property; and
  - (e) Any requirements as to the design and accreditation of new irrigation infrastructure.
- 8.6 The Company will not provide water to the Farmer unless the Farmer has prepared an FEP in accordance with the Consent conditions, that FEP has been approved by the Company and is reviewed in accordance with lawful ECan or SMP requirements, and that FEP is complied with at all times. In particular the Farmer shall not take more water than the annual volume set out in the FEP for the Property.
- 8.7 Without limiting clauses 8.5 or 8.6:
  - (a) The FEP and annual volume shall be audited by an appropriate qualified independent person each year for three years from the date of issue of the Consent and thereafter at least once every three years. A copy of the audit shall be provided to ECan, c/- RMA Compliance Enforcement Manager; and
  - (b) The Company's manager or nominated representative shall be allowed access to the Property in order to undertake such an audit, to undertake spot checks of compliance

and implementation of requirements of the FEP or to undertake environmental monitoring in accordance with the requirements of the Company's Consents.

- 8.8 Without limiting clause 8.5(e), all new irrigation infrastructure shall be designed and accredited by a qualified professional, and installed in accordance with the accredited design. The design shall take into account the specific requirements of the property's soil types..

## 9 **Health and Safety**

- 9.1 The Farmer agrees to:

- (a) consult, cooperate and coordinate activities with the Company so far as is reasonably practical;
- (b) ensure its directors, contractors, servants, employees, agents and invitees comply with all reasonable health and safety directions given by the Company;
- (c) comply with all obligations imposed on the Farmer and its workers (as defined in the HS Act) under the HS Act and all regulations made under the HS Act and at law as owner of the Property in relation to the health and safety of persons on or in the vicinity of the Property;
- (d) produce a health and safety plan for the Property when required by the Company;
- (e) provide a register of all known hazards in respect of the Property when required by the Company and immediately advise the Company should they become aware of any new hazards having arisen; and
- (f) allow the Company from time to time if it considers there is an emergency involving health and safety to temporarily exclude entry by all persons to the Easement Area.

## 10 **Metering**

- 10.1 The Company may install meters at Off Takes to meter the water take to ensure compliance by the Company with the terms and conditions of its Consents and compliance by the Farmer with the terms of this Agreement.
- 10.2 The Farmer shall under no circumstances tamper or interfere with the metering device and shall take reasonable steps at the direction of the Company to prevent interference and tampering by outsiders and trespassers.
- 10.3 The Company shall have the right at any time and from time to time without being deemed to commit a trespass, to enter into the Property to install, maintain or repair any metering device on the Property.

## 11 **Sale or lease**

- 11.1 If the Farmer proposes to transfer all or any part of the Property (whether as a consequence of sale or otherwise) then:
- (a) the Company shall be under no obligation to pay for any costs relating to on farm or other works required to be made to ensure the continuity of water supply following a change in the ownership in any part of the Property thereof;

- (b) the rights and obligations under this Agreement shall be fairly apportioned by the Company so that the Farmer and the purchaser of the Property shall have the benefit and bear the obligations of this Agreement. As a condition precedent to the supply of water and the transfer of Qualifying Shares the purchaser of the Property must enter into the Company's then current Water Supply Agreement.
  - (c) appropriate provision shall be made for the granting of all requisite easements and other rights and the continued registration of the KDICL Encumbrance or the registration of a new KDICL Encumbrance in accordance with clauses 6.5 and 6.6;
  - (d) On or prior to the sale, the Farmer shall ensure that its Shares (or appropriate parcel of Shares in the event of a subdivision) are transferred to the purchaser of the Property and that the purchaser enters into the Company's then current Water Supply Agreement and completes any audit requirements as required by the current Consent conditions as at the time of transfer of the Shares. The Farmer shall ensure that the intending purchaser or purchasers shall pay and discharge all the Company's costs and charges related to the granting of the Company's consent to the transfer of Qualifying Shares and all legal costs and disbursements relating to the compliance with this clause 11, the Constitution, or anything required to be done by the Company in relation to the sale or subdivision.
- 11.2 If the Farmer shall lease or otherwise allow any other person to occupy or use the Property or any part thereof other than by sale then the Farmer shall ensure that the lessee or occupier or user of the Property or any part thereof shall comply in all respects with the terms of this Agreement and shall indemnify and hold the Company harmless from any breach of this Agreement by the lessee or occupier.

## **12 Company's further rights and powers**

- 12.1 The Company shall have the right at any time and from time to time without being deemed to commit a trespass to enter upon the Property to Construct and Operate the Water Race, Pipes, Off Take(s), other Scheme Infrastructure and all other works which the Company deems desirable for the Scheme and to gauge or otherwise determine the quantity of water used by the Farmer or other occupier and to view the condition of such Water Races, Pipes, Off Take, other Scheme Infrastructure and works on the Property. Without limiting the foregoing, this right includes all rights necessary to undertake all works necessary or desirable for the purposes of the Scheme Expansion and Upgrade Project. In exercising its rights under this clause, the Company shall cause as little interruption as practicable to the Property and the carrying on by the Farmer of his farming operations.
- 12.2 The Company shall have the following rights, powers, and easements (which the Farmer acknowledges and grants) over, along and through the Property:
- (a) The right to locate, relocate and maintain on the Property the Water Race and/or Pipes for the purposes of conveyancing water across the Property;
  - (b) the right to Construct and Operate on the Property Scheme Infrastructure and all incidental and ancillary rights;
  - (c) the right to store and convey water and all incidental and ancillary rights ;
  - (d) a right of access over the Property to Scheme Infrastructure for the above purposes;

- (e) all other rights and powers which the Company reasonably determines are desirable for the Construction and Operation of Scheme Infrastructure.

and the Farmer undertakes not to hinder or restrict the Company in the obtaining and/or exercise of any of the aforementioned rights powers and easements.

- 12.3 The Company shall further have the right to (and the Farmer agrees to grant over that part of the Property on which there is Scheme Infrastructure and such surrounding area as required by the Company to be described as the "stipulated course or stipulated area" for the purposes of the Easement, in favour of the Company or nominee at the expense of the Company) a formal registered Easement in gross being a "right to convey water" as that term is defined in clause 3 of Schedule 4 of the Land Transfer Regulations 2002 (and where the Company deems necessary a "right to convey electricity, telecommunications and computer media") giving effect to clause 12.2 with all such incidental and ancillary rights as prudently ought to be incorporated therein in a form and on terms determined by the Company. Notwithstanding the terms of the Company's Constitution or any grant of option to take easement, no Farmer shall have any right to compensation in respect of any Easement or any right to compensation (including but not limited to for loss of production) arising from or in relation to the exercise of any rights or the performance of any obligations under or in relation to the Easement including damage to a Property that may be caused by the Company but the Company will reinstate that part(s) of the Property where the Scheme infrastructure is situated.
- 12.4 The Company shall consult with the Farmer in relation to the exercise of its rights under clause 12.1 and 12.2, giving reasonable notice of its intention to exercise its rights and giving due consideration to the Farmer's farming operation with a view to minimising disruption to that operation. For the avoidance of any doubt, the Company may exercise its rights under clauses 12.1 and 12.2 through its employees, servants, agents, contractors and consultants.
- 12.5 This clause 12 (including in relation to the form and content of any Easement to be registered) will prevail over any other agreement between the Company and the Farmer in the event of any conflict.

### 13 **Default**

- 13.1 The Farmer will be in default under this Agreement if one or more of the following events occur ("Event of Default"):
  - (a) the Farmer fails to make any payment due to the Company under this Agreement;
  - (b) the Farmer fails to contest within two (2) weeks of service any petition of bankruptcy or for winding up;
  - (c) any execution, levy or distress is levied against the Farmer or the assets of the Farmer's business;
  - (d) any receiver, manager or other custodian (either temporary or permanent) is appointed with respect to the Farmer or in respect of all or any part of the Farmer's business;
  - (e) the Farmer purports to assign or charge his rights or interest under this Agreement without complying with the provisions of this Agreement;
  - (f) the Farmer makes any compromise with or enters into any arrangement with his creditors;

- (g) the Farmer fails to comply with any condition, provision or covenant of this Agreement, any Easement, the KDICL Encumbrance or the Company's Constitution and such default remains un-remedied for a period of seven (7) days from the date of receiving notice from the Company in writing recording the default and requiring the Farmer to remedy the same.

## 14 Remedies

### 14.1 If an Event of Default occurs then the Company may:

- (a) without payment of any compensation to the Farmer or any other person immediately cut off the supply of water to the Property in such manner as the Company thinks fit and thereafter no person shall be entitled to be supplied with any further water to the Property from the Company until such time as such breach has been made good to the satisfaction on the Company; and/or
- (b) terminate the Agreement by giving fourteen (14) days written notice to the Farmer; and/or
- (c) take any steps necessary to enforce some or all of the Company's rights as encumbrancee under the KDICL Encumbrance, being the full rights of an encumbrancee/mortgagee under the Land Transfer Act 1952 and Property Law Act 2007.

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

## 15 Contract Review and Amendments

### 15.1 The Company may at any time review the terms and conditions of this Agreement including:

- (a) to take into account changes in legislation;
- (b) take into account changes in and ensure compliance with the relevant laws, district or regional plans or the Consents;
- (c) take account of farming and irrigation practice (to be determined by the Company in its sole discretion);
- (d) make such changes or fix any errors (for example to correct the property details as set out in Schedule 1) as may be necessary from time to time;
- (e) take account of any requirements of Financiers in connection with the financing of the Scheme or that are operationally essential to the Company supply.

### 15.2 The Farmer shall become bound by any amendment to the terms of this Agreement upon receiving written notice from the Company setting out such amendments or alternatively, at the discretion of the Company, shall be required to enter into a new Water Supply Agreement and pay all the Company costs in respect of that new Water Supply Agreement.

**16 Limitation of Liability**

- 16.1 If the supply of water provided for under this Agreement is reduced or stopped, for any reason whatsoever, including, without limiting the generality of the foregoing, water shortage, regulatory reasons or any other reason outside the control of the Company or due to a failure by the Farmer or other irrigators to comply with Consent conditions, or if the Company fails to comply with any obligation under this Agreement, then such reduction, stoppage or failure to supply or comply shall in no way give rise to any right to any claim in compensation or other remedy against the Company.
- 16.2 The Company shall be under no liability to the Farmer (whether in contract, tort or otherwise) for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply the services under this Agreement.
- 16.3 If, notwithstanding clauses 16.1 and 16.2, the Company is found to be liable to the Farmer in any circumstances then the maximum amount the Company will be liable for to the Farmer under this Agreement or in any way whatsoever, is an amount equal to the lesser of:
- (a) the amount of the last Irrigation Season's Water Charges paid by the Farmer; and
  - (b) the actual loss or damage suffered.
- 16.4 The Farmer shall keep the Company indemnified against all costs, claims, demands, expenses, losses and liabilities of whatsoever nature, including without limiting the generality of the foregoing, claims for consequential loss (including loss of profits) which may be made against the Company and which the Company may sustain, pay or incur as a result of an act or omission of the Farmer or a breach by the Farmer of the terms of this Agreement (including, in both cases, the Farmers agents, servants and contractors).
- 16.5 For the purposes of this clause 16, references to the Company shall include the Company's directors, employees, contractors, servants or agents.

**17 Power of Attorney**

- 17.1 The Farmer hereby irrevocably appoints the directors for the time being of the Company severally to be the Attorney of the Farmer to do and execute anything which the Farmer has covenanted or agreed to do or execute under the terms of this Agreement and has failed to after ten (10) Working Days' notice from the Company requesting the Farmer to do or execute.

**18 Delegation**

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

**19 Liability of Trustees**

- 19.1 Where the Farmer is a trust and the Trustees of that trust have become parties to this agreement, then if any of the trustees is acting in a professional capacity and is not, and cannot become, a beneficiary of that trust, then the liability of that professional trustee is limited to the assets of that trust and no personal liability shall arise. This exclusion shall not apply where the professional trustee has been negligent or is dishonest or fraudulent.



## 20 Exclusion of Partnership and Agency

- 20.1 Nothing in this Agreement shall create or constitute, or be deemed to create or constitute, a partnership between the parties nor to create or constitute, or be deemed to create or constitute, a party as an agent of any other party for any purpose whatsoever.
- 20.2 Save as provided for in this Agreement, no party shall have any authority or power whatsoever to bind or commit, act or represent or hold itself out as having authority to act as an agent of, or in any way bind or commit the other party to any obligations.

## 21 Arbitration

- 21.1 In the event of any disagreement or dispute arising under this Agreement either party may refer the matter to Arbitration "On the Papers" pursuant to the Arbitration Act 1996. The parties shall agree a person to act as Arbitrator and in the absence of agreement within ten (10) Working Days of either party giving notice invoking this clause, then an arbitrator chosen by the President for the time being of the New Zealand Law Society or his or her nominee.

## 22 Company Ability to Assign

- 22.1 The Company may at any time assign and transfer the rights and interests of the Company under this Agreement without the consent of the Farmer.
- 22.2 In addition to the above, the Farmer agrees and acknowledges that:
- (a) The Company may assign, charge by way of security or mortgage all or any part of its rights and interests under this Agreement to the Financiers; and
  - (b) The Financiers may at any time assign and transfer the rights and interests of the Company under this Agreement, in each case without the consent of the Farmer. The Farmer agrees to do or execute anything reasonably required by the Company, the Financiers or any other assignee to effect any assignment, transfer, novation or other dealing under this clause.
- 22.3 If any assignment, transfer or novation occurs under this clause 21 then all references in this Agreement to the 'Company' shall thereafter be interpreted and construed as if that reference was to the relevant assignee or transferee.
- 22.4 For the purposes of the Contract and Commercial Law Act 2017, the Financier is entitled to enforce against the Farmer the provisions of this clause 21.
- 22.5 The remedies of damages and cancellation as against any Financier under or in connection with the assignment by way of security of the Company's rights under this Agreement made pursuant to the security documents the Company has granted in favour of the Financiers are hereby expressly excluded for the purpose of section 11 of the Contract and Commercial Law Act 2017.

## 23 Miscellaneous

- 23.1 This Agreement shall be governed by and interpreted according to the laws of New Zealand. Each party irrevocably submits itself to the jurisdiction of the Courts of New Zealand over any proceedings arising out of, or relating to this Agreement.
- 23.2 No failure or delay on the part of any party in exercising any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power hereunder.

- 23.3 Subject to clause 11.1, the Farmer shall not assign, transfer, novate, mortgage or charge the Farmer's interest in this Agreement without the consent of the Company (which the Company may or may not give in its sole and absolute discretion).
- 23.4 Subject to clause 15.2, no modification or alteration of, or addition to any of the provisions of this Agreement shall be made unless agreed to by the parties in writing.
- 23.5 The Farmer shall pay the Company's costs in relation to the preparation and finalisation of this Agreement.
- 23.6 The Farmer shall do all things and sign all documents necessary to discharge his obligations under this Agreement.
- 23.7 If any provision or part of a provision of this Agreement shall not be enforceable, then that provision or part provision shall be deemed to be deleted and the rest of this Agreement shall remain in full force and effect.
- 23.8 This Agreement may be executed in any number of counterparts and all the counterparts when taken together will constitute one document and Agreement. Each party may execute and enter into the Agreement by executing a counterpart. The parties acknowledge that the agreements may be executed by an exchange of facsimile and/or scanned and emailed PDF copies and execution of this Agreement by these means is valid and sufficient execution.
- 23.9 In the event of any conflict between the terms of this Agreement and the terms of any encumbrance held by a company over the Farmer's Property, then the terms of this Agreement shall prevail.
- 23.10 The Farmer agrees that the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement.

## 24 Notice

- 24.1 Each notice, demand, consent or other communication expressly contemplated under this Agreement (each a "notice") will be in writing and delivered personally or sent by post, facsimile or email.
- 24.2 Each notice will be sent to:
- (a) in the case of the Farmer, the address of the Farmer recorded in the Company's share register;
  - (b) in the case of the Company, the address set out below,
- or to any other address from time to time designated for that purpose by at least five (5) Working Days' prior notice to the other party.
- P O Box 77 Kurow 9446
- Phone: 021 190 8559
- Email: office@kdic.co.nz
- 24.3 A notice under this Agreement is deemed to be received if:
- (a) delivered personally, when delivered;
  - (b) posted, three (3) Working Days after the date of posting;

- (c) sent by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient designated for the purposes of this Agreement; and
- (d) sent by email, when acknowledged by the recipient designated for the purpose of this Agreement by return email or otherwise in writing,

provided that any notice deemed received after 5pm or on a non-Working Day will be deemed to have been received on the next Working Day.

## 25 Independent Advice

- 25.1 Each party acknowledges that the Company's solicitors act for the Company only and that they have either obtained independent legal advice or have declined to do so having been advised to obtain independent advice.

## Execution

Signed by Kurow-Duntroon Irrigation  
Company Limited as Company:

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

Remove this Note prior to finalising: Attestation if Farmer is a Company with one Director

Signed by [ ] as Farmer in the  
presence of:

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's signature

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

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

Remove this note before finalising: Attestation  
if Farmer is a Company with two or more  
Directors

Signed by [ ] as Farmer  
in the presence of:

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's signature

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

\_\_\_\_\_  
Director's full name

Remove this note before finalising: Attestation if Farmer is an individual, Trust or Partnership

Signed by [ ] as Farmer in  
the presence of:

\_\_\_\_\_  
[insert Farmer's name]

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

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

Signed by [ ] as Farmer  
in the presence of:

\_\_\_\_\_  
[insert Farmer's name]

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

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SCHEDULE 1**

**The Farmer:** [       ]

**Number of Shares:** [     ]

**Type of Irrigation** [       ]

**The Property:**

Area	Description	Title Reference

**Off Take:** [       ]

**Annual Volume for Property:** [       ]

## SCHEDULE 2 EASEMENT AGREEMENT

(Burdened Land is all of the Grantor's Land within the Scheme)

1. In this Easement Instrument unless the context indicates otherwise:  
**"Burdened Land"** In relation to any Easement means the land which is subject to the relevant Easement and is identified in Annexure Schedule A;  
**"Easement Area(s)"** in relation to any Easement means those parts of the Servient Land which are subject to the relevant Easement(s) and identified in Schedule A and the Plan;  
**"Easement Rights"** means the rights and powers (including terms, covenants and conditions) recorded in this Easement Instrument;  
**"Force Majeure Event"** means any significant weather conditions, strikes, lock-outs, accidents, acts of god, war, unavailability of materials, fire, earthquake, or other force majeure circumstances beyond the control of the party required to take steps.  
**"Plan"** means Deposited Plan Numbered \_\_\_\_\_ Otago Registry containing Easement Areas \_\_\_\_\_;  
**"Pumping Infrastructure"** includes but is not limited to valves, meters, control equipment and gates, measuring devices, and monitoring equipment;  
and  
**"Scheme"** means the Grantee's scheme which provides water and includes all existing and future infrastructure constructed for or in relation to the take, storage and conveyance of water for the scheme including without limitation pumps, pump sheds, pumping stations, storage tanks, purifying equipment, electrical works, electronic systems, pipes, valves, the water races, water meters, head races, control equipment and gates, measuring devices, monitoring equipment, off takes and associated structures;

### RIGHT IN GROSS TO CONVEY WATER

2. The Grantor grants to the Grantee the right for the Grantee, the Grantee's tenants, agents, workmen, licensees and invitees:
  - (a) to take, convey, store, discharge and lead water at all times in any quantity, in a free and unimpeded flow along the lines of pipes described in clauses 2(b) or 2(c) (as the case may be) for the purposes of the Grantee's supply of water under its Scheme;
  - (b) to use any line of pipes already laid in and under the soil of the Easement Area for the purpose described in clause 2(a);
  - (c) to lay and maintain pipes, including any pipes referred to in clause 2(b) in and under the soil of the Easement Areas, provided that lines of pipes are situated at a uniform depth of no less than 700 millimetres (other than as necessary for Pumping Infrastructure); and
  - (d) to install and maintain any Pumping Infrastructure ancillary to pipelines referred to in clause 2(b) and 2(c) to enable their function and use for the Grantee's Scheme;
 together with appurtenant rights to enter on to the Burdened Land (at any times, on any notice and by such route as arranged between the Grantor and the Grantee, which is reasonable in the circumstances, taking into account the Grantor's farming operations and the Grantee's operational requirements) with any tools, equipment, machinery and vehicles which are necessary and to remain on the relevant Easement Area for any reasonable time for the purpose of laying, installing, inspecting, cleaning, repairing, maintaining and renewing the pipes or Pumping Infrastructure and to dig up the soil of the Burdened Land to the extent necessary and reasonable, but in doing so the Grantee must:
  - (e) cause as little disturbance as reasonably possible to the surface of the Burdened Land;
  - (f) restore the surface of the Burdened Land as nearly as possible to its original condition; and
  - (g) restore any other consequential damage
 to a similar standard as the surrounding land with such restoration work to be commenced and to be completed promptly and within a time which is reasonable in the circumstances PROVIDED THAT the Grantee shall not be liable for any delay or delays due to a Force Majeure Event.

And the Grantee will maintain and pay the costs of keeping and maintaining those pipes and Pumping Infrastructure in good order and condition and to prevent the Easement Area from becoming a danger or nuisance at all times during the continuance of the Easement Rights.

### RIGHT IN GROSS TO CONVEY ELECTRICITY AND TELECOMMUNICATIONS

3. The Grantor grants to the Grantee the right for the Grantee, the Grantee's tenants, agents, workmen, licensees and invitees:
  - (a) to convey electricity and telecommunications at all times in any quantity in a free and unimpeded flow along the conduits, cables or wires described in clauses 3(b) or 3(c) (as the case may be and including

- provision and operation of any necessary electricity transformers) for the purposes of the right in Gross to Convey Water;
- (b) to use any conduits, cables or wires already laid in and under the soil or erected on the surface of the Easement Areas for the purpose described in clause 3(a);
  - (c) where no conduits, cables or wires already exist, to lay or erect and maintain conduits, cables or wires in and under the soil of the Easement Areas for the purpose described in clause 3(a); and together with appurtenant rights to enter on to the Burdened Land (at any times, on any notice and by such route as agreed between the Grantor and the Grantee, which is reasonable in the circumstances, taking into account the Grantor's farming operations and the Grantee's operational requirements) with any tools, equipment, machinery and vehicles which are necessary and to remain on the relevant Easement Area for any reasonable time for the purpose of laying, inspecting, cleaning, repairing, maintaining and renewing the conduits, cables, or wires or ancillary equipment and to dig up the soil of the Burdened Land to the extent necessary and reasonable, but in doing so the Grantee must:
    - (d) cause as little disturbance as reasonably possible to the surface of the Burdened Land;
    - (e) restore the surface of the Burdened Land as nearly as possible to its original condition; and
    - (f) restore any other consequential damage
 to a similar standard as the surrounding land with such restoration work to be commenced and to be completed promptly and within a time which is reasonable in the circumstances PROVIDED THAT the Grantee shall not be liable for any delay or delays due to a Force Majeure Event.

And the Grantee will maintain and pay the costs of keeping and maintaining such conduits, cables, wires, other media conducting materials and ancillary works in good order and condition at all times during the continuance of the Easement Rights.

## GENERAL COVENANTS

- 4. The grant of the Easement Rights will be forever for the benefit of the Grantee.
- 4.1 No power is implied for the Grantor to terminate the Easement Rights for breach of any provision in this Easement Instrument by the Grantee or for any other cause, it being the parties' intention that the Easement Rights will continue forever unless surrendered provided that nothing in this clause shall prohibit an application under Section 317 of the Property Law Act 2007 or any replacement section.
- 4.2 The Grantor will not do anything which interferes with or restricts:
  - (a) the free and unimpeded passage of water through the pipework or Pumping Infrastructure, or conduits cabling or wires or the operation of the Easement Rights; or
  - (b) the free and unimpeded flow of electric power along the conduits, cables and wires; or
  - (c) the free and unimpeded flow of telecommunication along the conduits, cables and wires or other media conducting materials; or
  - (d) the free and or the full use and enjoyment of the rights of the Grantee or other authorised persons in relation to any of the Easement Rights.
- 4.3 The Grantor will exercise all reasonable care in undertaking normal farming operations on the Burdened Land and the Easement Areas to ensure that it or its tenants, agents and workman do not do any wilful or negligent action whereby the pipework, or Pumping Infrastructure, conduits, cables and wires or other media conducting materials are damaged or destroyed and shall indemnify the Grantee against all losses, claims, damages and expenses resulting from the wilful or negligent actions of the Grantor in breach of the above circumstances. If it is established that any such damage was caused by the negligent or wilful act of the Grantor or its tenants, agents or workman in breach of the above circumstances then the Grantor shall be responsible for the repairs required but such work shall be carried out by the Grantee.  
The Grantee will ensure that the Grantee's works and installations are carried out or provided in a manner that does not prevent or unreasonably limit normal farming operations and the Grantor will ensure that the Grantor's normal farming operations are carried out in a manner that does not prevent or limit the Easement Rights, acknowledging the nature of the easements granted.
- 4.4 The Grantee will have as Easements in Gross the Easements identified in Schedule A as they may each be granted and permitted by this Easement Instrument.
- 4.5 The rights and powers set out in Schedule 5 of the Land Transfer Regulations 2018 apply to the Easement Rights except where contrary to the rights and obligations set out in this Easement Instrument in which event the provisions of this Easement Instrument shall prevail.
- 4.6 The Grantor will allow vehicular and machinery access to the Grantee and the Grantee's workmen and contractors over the land adjoining the Easement Areas as may reasonably be required for obtaining access to the Easement Area, for pipeline construction and ancillary works and their inspection, cleaning, repair, maintenance and renewal by such route as is as arranged between the Grantor and the Grantee, as being reasonable in the circumstances taking into account the Grantor's farming operations.

## DEFAULT

- 5. Clause 13 of Schedule 5 of the Land Transfer Regulations 2018 is deleted and substituted by the following:  
**"13** If either party fails ("defaulting party") to perform or join with the other party ("other party") in performing any obligation under this Easement Instrument, the following provisions will apply:

- (a) the other party may serve a written notice on the defaulting party ("default notice") specifying the default and requiring the defaulting party to perform or to join in performing the obligation and stating that, after the expiry of 14 days from service of the default notice, the other party may perform the obligation;
- (b) if after the expiry of 14 days from service of the default notice, the defaulting party has not performed or joined in performing the obligation, the other party may:
  - (i) perform the obligation; and
  - (ii) for that purpose enter on to the Burdened Land;
  - (iii) the defaulting party must pay to the other party the costs of:
    - (aa) the default notice; and
    - (ab) the other party in performing the obligation of the defaulting party; within 14 days of receiving written notice of the other party's costs; and
  - (iv) the other party may recover any money payable under clause 5(b)(iii) from the defaulting party as a liquidated debt."

## DISPUTES

- 6. Clause 14 of Schedule 5 of the Land Transfer Regulations 2018 is deleted and substituted by the following:
  - "14
  - (a) If any dispute arises between the Grantor and Grantee concerning the rights created by this Easement Instrument, the parties must enter into negotiations in good faith to resolve their dispute. If the dispute is not resolved within one (1) month of the date on which the parties begin their negotiations, then either party may at any time within the next 14 days invite the chairperson for the time being of the NZ Chapter of Lawyers Engaged in Alternative Dispute Resolution ("LEADR") to appoint a mediator for the purposes of enabling the Chairperson or other nominated representative of each party to mediate and thereby settle the dispute and mediation shall take place accordingly. All discussions in the mediation shall be without prejudice and shall not be referred to in any later proceedings and each party shall endeavour in good faith to resolve the dispute expeditiously pursuant to the mediation. The parties shall bear their own costs in the mediation and shall share equally the costs of the mediator. The mediation shall occur within five (5) Working Days of the appointment of the mediator or such later date as the mediator shall nominate.
  - (b) if the dispute is not resolved at mediation the parties must submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on an independent arbitrator within fourteen (14) days, the parties will submit to the arbitration of an independent arbitrator appointed by the President for the time being of the New Zealand Law Society. That arbitration will be determined in accordance with the Arbitration Act 1996 and its amendments or any enactment passed in substitution. The parties' execution of this Easement Instrument will be deemed a submission to arbitration."

## REPAIR, MAINTENANCE, AND COSTS

- 7. Clause 11 of Schedule 5 of the Land Transfer Regulations 2018 is modified as follows:-
  - "11(5) Any maintenance repair or replacement of the easement facility that is necessary because of the act or omission of any party (which includes any agents, employees contractors, subcontractors or invitees of the party) to the Burdened Land, must be carried out promptly by that party at the sole cost of that party except as may otherwise be provided by the Easement Instrument."

## INDEMNITY BY GRANTEE

- 8. The Grantee shall indemnify and keep indemnified the Grantor from any damage to the Burdened Land and/or the Easement Areas caused by the Grantee and/or its agents, employees, workmen, contractors, subcontractors or invitees. The Grantee shall further indemnify and keep indemnified the Grantor for all losses, claims, damages and expenses resulting from the actions or omissions of the Grantee and/or its agents, employees, workmen, contractors, subcontractors or invitees and the Grantee and/or its agents, employees, workmen, contractors, subcontractors or invitees shall not do anything wilful or negligent. If it is established that any such damage was caused by the negligent or wilful act or omission of the Grantee and/or its agents, employees, workmen, contractors, subcontractors or invitees then the Grantee shall be responsible for repair of any damage but such work required to repair the damage may with the consent of the Grantee be carried out by the Grantor otherwise it shall be carried out by the Grantee.