



## **WATER SUPPLY AGREEMENT**

between

Lower Waitaki Irrigation Company Limited ("the Company")

And ("the Shareholder")

Farm:

## Table of Contents

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1.	Definitions and Interpretation .....	3
2.	Term .....	5
3.	Supply of Water .....	5
4.	Water Charges .....	7
5.	Shareholder Obligations.....	8
6.	Health and Safety .....	9
7.	Surplus Fill and Filling In of Scheme Supply Race .....	9
8.	Company's Obligations .....	9
9.	Environmental Provisions.....	10
10.	Resource Consents and Approvals .....	11
11.	Metering .....	12
12.	Sale, Subdivision or Lease.....	12
13.	Transfer of Shares .....	13
14.	Company's Rights and Powers .....	13
15.	Caveat .....	16
16.	Default .....	16
17.	Remedies .....	17
18.	Contract Review .....	17
19.	Limitation of Liability .....	18
20.	Power of Attorney.....	18
21.	Delegation .....	19
22.	Exclusion of Partnership and Agency .....	19
23.	Disputes .....	19
24.	Conflict .....	20
25.	Governing Law .....	20
26.	No waiver .....	20
27.	Assignment.....	20
28.	Notices .....	20
29.	Consumer Guarantees Act 1993.....	21
30.	Further Assurances .....	21
31.	Entire Agreement .....	21
32.	Financiers.....	21
33.	Independent Advice .....	22
34.	Counterparts.....	22
35.	Limitation of Liability of Independent Trustee .....	22
36.	Severance .....	22

# Water Supply Agreement

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Date: 2021

## Parties

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1. **Lower Waitaki Irrigation Company Ltd** at Papakaio North Otago ("the Company").
2. \_\_\_\_\_ of \_\_\_\_\_ ("the Shareholder").

## Background

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- A The Shareholder is the registered proprietor of the Land, serviced by the Scheme owned and controlled by the Company.
- B The Shareholder wishes to be supplied water by the Company and the Company has agreed to supply the Shareholder 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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### Definitions and Interpretation

#### 1.1 Definitions

**"Agreement"** means this agreement.

**"Backflow Prevention Device"** means the infrastructure installed to prevent water flowing back into the delivery pipes through which the Company supplies water to the Shareholder.

**"Consent" or "Consents"** means the resource consent/consents held by the Company to take and use water and includes all other such consents deemed necessary by the Company from time to time and any associated or auxiliary consents and amendments or variations thereto.

**"control device"** means the device that controls the flow of water from the Scheme Supply Race for the supply of border dyke irrigation.

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

**"Easement"** means any easement registered in favour of the Company over the Land or any separate easement agreement entered into by the parties.

**"Easement Land"** means the easement area on the land as defined in the Easement.

**"Encumbrance"** has the meaning and application set out in clause 5.3.

**"Environmental Management Strategy"** means the Company's environmental management strategy plan prepared by Irricon or any other organisation instructed by the Company to prepare the Company's environmental management strategy plan and available on the Company's website.

**"Farm Turn-out"** means the specific location where the on-farm irrigation races or spray intakes connect with a Scheme Supply Race or Water Pipe and where the

Shareholder takes water from the Company as notified by the Company to the Shareholder.

**"FEP"** means any Farm Environmental Plan, the Farm Management Plan or the Farm Environmental Management Plan prepared by the Shareholder and approved by the Company.

**"Financiers"** means any bank, financial institution or other third party providing financing to the Company from time to time and includes any security trustee acting on behalf of any such person or persons.

**"HSWA"** means the Health and Safety at Work Act 2015.

**"Irrigable Area"** means that part of the Land that is irrigated or capable of irrigation for which the Shareholder holds Shares.

**"Irrigation Season"** shall be the period from the 1<sup>st</sup> day of September in one year to the 31<sup>st</sup> day of May in the following year or such other period as the Company may from time to time determine.

**"Land"** means the Shareholder's Land detailed in Schedule One.

**"Land Use Consented Area"** means the command area designated in the Company's land use Consent.

**"Point of Take"** means the position determined by the Company for the spray irrigation take from the Scheme Supply Race.

**"Return Interval"** means the number of days between one supply of water and the next supply.

**"RMA"** means the Resource Management Act 1991.

**"Rules of Operation"** means the Company's operational rules which are updated annually (and at such other times as the Company determines in its sole discretion), circulated to all shareholders and available on the Company's website.

**"Run Off"** means excess irrigation water containing animal effluent, waste products, fertiliser and other farm chemicals running off the Land back into the Scheme Supply Race or any other waterway.

**"Scheme"** means the Company's scheme which provides water for irrigation purposes to the Shareholders and for approved industrial users and includes all Scheme Infrastructure.

**"Scheme Supply Race"** means a race that delivers water to a Farm Turn-out.

**"Scheme Infrastructure"** means all infrastructure owned or operated by the Company from time to time, including without limitation the Scheme Supply Race, Water Pipes, Farm Turn-outs, headraces, siphons, dams, galleries, buffer ponds, storage ponds, balancing ponds, control gates, monitoring equipment, measuring devices or other infrastructure necessary to take and convey water through the Scheme, supply water to Shareholder's and manage the Scheme.

**"Share(s)"** means a share in the Company.

**"Water Charges"** means the charges charged by the Company to the Shareholder pursuant to clause 4.

**"Water Pipes"** means irrigation pipes owned by the Company conveying water to Shareholders now or in the future.

**"Working Day"** means a day on which registered banks are open for business in Oamaru excluding Saturdays, Sundays and Otago Anniversary Day. A business day shall be deemed to commence at 9:00 am and to terminate at 5:00 pm New Zealand time (standard time or summer time, as appropriate).

## 1.2 Interpretation

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, email, 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) reference to law includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, directive, by-law and the rules of any stock exchange, treaty or other legislative measure;
- (g) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (h) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

## Term

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

## Supply of Water

- 3.1 Subject to the terms of this Agreement, the Company will supply water to the Shareholder in each Irrigation Season in consideration of the payment of the Water Charges.
- 3.2 Subject to clauses 3.4 and 9.4, the Shareholder shall be entitled to take an allocation of water and to irrigate (whether border dyke or spray) on the basis of one hectare per Share held at the rate/volume set out in Schedule One from the Farm Turn-out in

accordance with the Company's operational protocols (as determined by the Company and advised to the Shareholder from time to time).

- 3.3 A Shareholder may (with the Company's prior written approval and in the Company's sole discretion) be entitled to irrigate more than one hectare per Share on its land by irrigating at a lower application rate
- 3.4 The Shareholder's entitlement to water (i.e. quantity and Return Interval) shall be determined by the Company, in its sole discretion, at the commencement of the Irrigation Season taking into account the quantity of Shares held by the Shareholder at the time and the quantity of water available.
- 3.5 The Shareholder shall only take water for the purposes of efficient irrigation and shall not be entitled to take water for any other purposes (e.g. storage, stock water or alternate uses) without the prior written consent of the Company.
- 3.6 The water available to the Company is supplied to Shareholders or other entities for irrigation and other purposes subject to the Shareholder holding a required number of shares in the Company. The Company does not guarantee supply of potable water pursuant to this Agreement.
- 3.7 The Company shall not be liable to any Shareholder for the failure to deliver water at any time during the Irrigation season provided the Company shall use all reasonable endeavours to ensure Water will be made available.
- 3.8 If at any time the Company holds surplus water relative to its supply obligations the Shareholder may contract on a day to day, temporary or more permanent basis with the Company for an additional supply of water in such quantities and for such hours as the Company may determine in its sole discretion. Additional water charges will apply to extra water as set out in the prevailing water rate charges as are applicable and set out in the Rules of Operation.
- 3.9 The Company shall supply water for:
  - (a) Borderdyke irrigation through a Farm Turnout to be maintained by the Company. The Shareholder shall not alter or interfere with the Farm Turnout; and
  - (b) Spray irrigation to a Point of Take in such position as the Company determines (in its sole discretion). The Shareholder is solely responsible for supplying, installing and maintaining the pumping infrastructure, intake pipe and intake screens.
- 3.10 Shareholders wishing to convert from border dyke to spray irrigation or upgrade an existing spray irrigation system must make an application in writing to the Company which may or may not be approved in the sole discretion of the Company. Where any such approval includes the Company's approval to increase the use of continuous spray irrigation by the Shareholder and a consequent reduction in border dyke days, then Schedule One of this Agreement shall be deemed to have been amended to record such varied terms.

## Water Charges

- 4.1 The Shareholder shall pay to the Company Water Charges on a per Share basis at an amount to be determined in the Company's sole discretion to recover all capital, operating and specific Shareholder expenses.
- 4.2 The Water Charges shall be payable at such time and in such manner as the Company may from time to time determine.
- 4.3 Water charges may include recovery of all capital and operating costs of the Company including, without limitation:
- (a) construction and Consent costs in respect of the Scheme Infrastructure; and
  - (b) interest and capital payments on any bank loan, other loan or financing taken out by the Company to fund capital projects (i.e. Scheme Infrastructure).
  - (c) maintenance and repairs of the Scheme Infrastructure;
  - (d) upgrade, renewal, expansion, reconstruction, relocation and installation of Scheme Infrastructure;
  - (e) electricity and other utility costs;
  - (f) any royalty or tax introduced and levied on water to be taken as part of the Scheme;
  - (g) costs of running and administering the Company;
  - (h) monitoring and compliance costs;
  - (i) costs incurred by directors and directors' fees;
  - (j) costs payable to professionals and service providers to the Company;
  - (k) any rental, premises costs (including utilities), if applicable; and
  - (l) administrative costs in relation to administering the Company's obligations under the Consents.
- 4.4 Water charges may also include costs incurred by the Company which are particular to a specific Shareholder in respect of the access to water including, without limitation costs incurred as a result of the Shareholder breaching this Agreement and/or the Consent Conditions in relation to its water take and use including enforcement costs, and/or maintenance and repairs which are specific to a Shareholder and/or electricity and utility costs which are specific to a Shareholder.
- 4.5 The Water Charges as determined by this clause 0 shall be payable by the Shareholder to the Company irrespective of water use and notwithstanding that the supply of water may be reduced, cut off or stopped for any reason whatsoever.
- 4.6 In the event of non-payment of any Water Charges due under this Agreement, then without prejudice to the Company's other rights and remedies, penalty interest at a rate of 6% pa above the commercial overdraft rate of the Company's bank (from time to time) shall accrue from the date of non-payment to the date the payment is actually

made. The Shareholder shall also be responsible for the Company's recovery costs, including without limitation, legal costs on a client/solicitor basis.

### **Shareholder Obligations**

- 5.1 The Shareholder shall comply with all of the Rules of Operation as notified by the Company to the Shareholder at the beginning of each Irrigation Season.
- 5.2 The Shareholder shall:
- (a) subject to clause 3.3, hold one (1) Share in the Company for each one (1) hectare or part thereof of Irrigable Area held by the Shareholder;
  - (b) observe and comply with the Company's constitution, Consents and all relevant statutes and bylaws and farming and irrigation practices, procedures and operational protocols as determined from time to time by the Company;
  - (c) comply with all environmental provisions of this Agreement as set out in clause 9;
  - (d) reimburse the Company for any repairs and maintenance required to be undertaken to Scheme Infrastructure as a result of the act or omission of the Shareholder.
- 5.3 The Shareholder will register an encumbrance over the Land in favour of the Company as a first registered charge and on the basis of at least one hectare encumbered for every Share held in the Company in the form required by the Company ("the Encumbrance"). The Encumbrance shall secure payment of any and all amounts owing to the Company by the Shareholder, including but not limited to Water Charges and any amounts unpaid on the Shareholder's Shares and compliance with the terms and conditions of this Water Supply Agreement and the Rules of Operation. The Company shall by virtue of the Encumbrance be entitled to all the powers and remedies given to an encumbrancee/mortgagee by the Land Transfer Act 2017 and the Property Law Act 2007 and any amendment or re-enactment of those Acts.
- 5.4 The terms of the Encumbrance shall bind the Shareholders, its successors and/or assigns and:
- (a) all lessees of the Land;
  - (b) all occupiers of the Land; and
  - (c) any other person with an interest in the Land;
- and their respective successors and assigns.
- 5.5 The Shareholder shall at the Company's request allow the Company or the Company's contractors or employees to attend to any repairs and maintenance required to the Scheme Infrastructure.
- 5.6 The Shareholder will grant an Easement in registerable form in accordance with the Company's then applicable standard easement instrument over all land owned by the Shareholder upon which Scheme Infrastructure is located and will meet all costs associated with preparation and registration of the same.



## **Health and Safety**

### **6.1 The Shareholder agrees:**

- (a) to consult, cooperate and coordinate activities with the Company so far as is reasonably practicable;
- (b) to ensure its directors, contractors, servants, employees, agents and invitees comply with all reasonable health and safety directions given by the Company;
- (c) to comply with all obligations imposed on the Shareholder and its workers (as defined in the HSWA) under the HSWA and all regulations made under the HSWA and at law as owner of the Land in relation to the health and safety of persons on or in the vicinity of the Land;
- (d) to produce a health and safety management plan for the Land when required by the Company;
- (e) to provide a register of all known hazards in respect of the Land when required by the Company and immediately advise the Company should they become aware of any new hazards having arisen;
- (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 person(s) to the Easement Land.

## **Surplus Fill and Filling In of Scheme Supply Race**

- 7.1 In the event the Company has installed Water Pipes and the Scheme Supply Race is no longer necessary to allow the Company to supply water to the Shareholder the Company may give notice to the Shareholder that that part of the Scheme Supply Race no longer required may be filled in by the Shareholder, should the Shareholder wish to do so.
- 7.2 Any surplus fill created by the installation of Water Pipes will be stockpiled on the Land at a location reasonably selected by the Shareholder. The Shareholder may use such surplus fill for filling in any part of the Scheme Supply Race no longer required as a consequence of the installation of the Water Pipes. Even if the Shareholder does not want to use the surplus fill the Company may dispose of the surplus fill within a reasonable proximity to the site of excavation of the Water Pipes, at a location reasonably selected by the Shareholder. In the event that the Shareholder acting unreasonably or unreasonably delaying the provision of instructions for the disposal of the surplus fill, then the Company may determine in its sole discretion the location of where the surplus fill is to be disposed of on the Land.

## **Company's Obligations**

### **8.1 The Company shall:**

- (a) take all reasonable steps to maintain the Consents;
- (b) comply with the provisions of the Companies Act 1993, the Financial Reporting Act 2013 and any regional plan and, without limiting the generality of the foregoing, provide the Shareholder with annual reports and annual accounts detailing income received in the form of Water Charges and expenses incurred;

- (c) operate the Scheme in a professional manner and to the appropriate industry standards which will be updated from time to time;
- (d) comply with its obligations and ensure that the Company's workers (as defined in the HSWA) comply with their obligations under the HSWA and all regulations made under that Act and take reasonable steps to mitigate damage and cause as little interruption as possible to the Land and the carrying on by the Shareholder of its farming operations;
- (e) attend to such reasonable maintenance and repairs as required to maintain the Scheme Infrastructure as further described in clause 14.1 below;
- (f) when necessary, and at its own expense, remove silt and other deleterious material from any Scheme Supply Race; and
- (g) promptly pay and discharge all amounts due by it or obligations imposed on it by the Canterbury and/or Otago Regional Council in respect of the Consents held in relation to the taking and using of the water or the operation of the Scheme.

### **Environmental Provisions**

- 9.1 The Shareholder acknowledges that the Company must comply with the RMA, the relevant District and Regional Plans, the Irrigation Scheme, any environmental management strategy it may have in force and its Consents. To ensure compliance with the same, the Shareholder acknowledges that the Company shall from time to time prescribe certain farming and irrigation practices, policies, protocols and rules in writing to the Shareholder and the Shareholder agrees to comply with and be bound by such farming and irrigation practices, which will if necessary be incorporated into an FEP that will be maintained at all times by the Shareholder.
- 9.2 Notwithstanding anything to the contrary contained or implied in this Agreement, the Shareholder 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 and the requirements of the relevant consent authorities. The Shareholder expressly acknowledges that the Company may cease to supply, alter or restrict water to the Shareholder, if required under the Consents to do so.
- 9.3 The Shareholder shall comply with the terms, conditions, restrictions and limitations placed on the Company by the Consent Conditions. The Shareholder acknowledges that it will further support any application for and comply with any amendment, variation or renewal of the Consent or Consent Conditions that may occur from time to time.
- 9.4 The Shareholder specifically acknowledges that if required by the Consent or Consent Conditions or if necessitated because of a reduction of water allocation to the Company, the Company shall be entitled to compulsorily require the Shareholder to convert from border-dyke irrigation to spray irrigation as a condition of continued supply of water to the Shareholder under this Agreement.
- 9.5 The Shareholder acknowledges that the Company may from time to time impose restrictions on the Shareholder to comply with the restrictions, rules or directions imposed on the Company by the Canterbury and/or Otago Regional Council or such other statutory body and agrees and undertakes to comply with such restrictions,

rules or directions and to reduce its water take and use immediately following notification.

- 9.6 If required by the Company and/or under the Consent conditions, the Shareholder will prepare an FEP and have the FEP approved by the Company. The Shareholder must at their own cost comply with the approved FEP at all times.
- 9.7 If at any time the Company or a regulatory authority elects to audit a FEP, the Shareholder must allow the auditors access to the Shareholder's Land, must provide all information and records required by the auditor and must comply with any requirements of the auditor.
- 9.8 The Shareholder shall at its own cost comply with the conditions set out in the Consents from time to time including but not limited to:
- (a) all practices and procedures set out in the the Rules of Operation and/or as may be set out in the Company policies;
  - (b) all practices and procedures as to submitting and preparing an FEP and as to nitrate modelling in respect of the Land;
  - (c) all requirements as to fencing and riparian planting in respect of the Land;
  - (d) all requirements as to fertiliser application in respect of the Land; and
  - (e) any requirements as to the design and accreditation of any irrigation infrastructure.

### **Resource Consents and Approvals**

- 10.1 After consultation, the Shareholder will not, either directly or indirectly:
- (a) object to the application for or the granting of any resource consent or building consent sought by the Company for any of the Company's operations;
  - (b) object to, advocate against, oppose or impede any action taken by the Company under the RMA to give effect to any of the matters referred to in this Agreement or for the purposes of undertaking any of the Company's operations;
  - (c) fund, facilitate, assist or promote any other person to take any action that would be in breach of this Agreement if done by the Shareholder.
- 10.2 If requested by the Company the Shareholder will promptly give, sign and deliver all written approvals or consents (including in relation to any building consent or any consent to a resource consent application under section 94 of the RMA or otherwise for any activity to be undertaken by the company pursuant to this Agreement or the Easement) to the Company or directly to Canterbury, and/or the Otago Regional Council and Waitaki District Council. For the avoidance of doubt the Shareholder acknowledges that the Company has an irrevocable power of attorney to execute such approval or consent on the Shareholder's behalf if necessary, in accordance with clause 0.
- 10.3 If the Company is required by any resource consent to undertake particular mitigation measures on the Land, including any planting or earthworks, the Shareholder will allow the Company to undertake such mitigation measures.

## **Metering**

- 11.1 Shareholders must at their cost install water flow meters at their Point of Take as set out in the Company Policies. Monitoring of Farm Turn-Outs for borderdyk irrigation will be undertaken by the Company.
- 11.2 The Shareholder shall under no circumstance tamper or interfere with any water monitoring device and shall take reasonable steps at the direction of the Company to prevent interference and tampering by outsiders, trespassers or any other third party.
- 11.3 The Company shall have the right at any time and from time to time, without being deemed to commit a trespass, to enter onto the Land to install, operate, inspect, maintain or repair any water metering device on the Land.

## **Sale, Subdivision or Lease**

- 12.1 If the Shareholder wishes to sell or subdivide the Land and/or Irrigable Area, 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 via the Scheme Infrastructure following a change in the ownership of the Irrigable Area or any part thereof;
  - (b) the rights and obligations under this Agreement shall be fairly apportioned by the Company so that each owner of the Irrigable Area shall have the benefit and bear the obligations of this Agreement;
  - (c) appropriate provisions shall be made for the granting of all requisite Easement(s) (if any) and other rights;
  - (d) the Shareholder shall ensure that if its Shares (or appropriate parcel of Shares in the event of a subdivision) are to be transferred to the purchaser of the Land (or the relevant part of the Land, in the case of a subdivision):
    - (i) the Company is given not less than ten working days' notice ("Notice") (unless otherwise agreed in writing between the parties) prior to the settlement date of such transfer of Shares, providing the following details:
      - (1) the number of Shares to be transferred;
      - (2) the purchaser(s) name and contact details;
      - (3) details sufficient to identify the relevant Land in the event of a subdivision;
      - (4) the settlement date of the sale of the Land (or part thereof) and transfer of Shares.
    - (ii) the intending purchaser(s) enters into the Company's then current water supply agreement and completes any audit requirements as required by the current Consent Conditions or the Otago and/or Canterbury Regional Councils on or before the settlement date of such transfer of Shares (unless otherwise agreed in writing by the Company);
    - (iii) a share transfer is executed by the Shareholder and purchaser by the means of a proper share transfer form for registration by the Company;

- (iv) the intending purchaser(s) pays and discharges all the Company's costs and charges related to the granting of the Company's consent to the transfer of the Shares and all legal costs and disbursements relating to the purchaser(s) entering into the Company's then current water supply agreement;
  - (v) appropriate provision is made for the granting of all required Easement(s) and the registration of the existing Encumbrance remains registered on the Record of Title for the Land or where and if required by the Company the registration of a new Encumbrance in accordance with clause 5.3;
  - (vi) the intending purchaser(s) (unless paid by the Shareholder) pays all of the costs of completing any audit requirements as required by the current Consent Conditions or the Otago and/or Canterbury Regional Council on or before the settlement date of such transfer of Shares; and
  - (vii) The Shareholder and intending purchaser(s) comply with any other requirement of the Company and provide such information as may be required by the Company in approving (or otherwise) the proposed transfer of Shares in the Company as approval of all transfers of Shares is at the sole discretion of the Company.
- (e) for the avoidance of doubt, the intending purchaser's entry into a new water supply agreement and compliance with any audit requirements as required by the current Consent Conditions or the Canterbury Regional Council and/or the Otago Regional Council as at the time of the transfer of the Shares shall be a condition precedent to the supply of water and to the approval of the transfer of Shares to the intending purchaser(s) by the Company.

- 12.2 If the Shareholder shall lease or part with possession of the Irrigable Area or any part thereof other than by sale then the Shareholder shall ensure that the lessee or occupier of the Irrigable Area or any part thereof shall comply in all respects with the terms of this Agreement and to the extent permissible by law shall indemnify and hold the Company harmless from any breach of this Agreement by the lessee or occupier.

### **Transfer of Shares**

- 13.1 If the Shareholder wishes to transfer Shares separately from the Land to which the Shares relate, the Farmer shall apply to the Company which shall consider the request in accordance with the Company's Constitution and the Shareholder acknowledges that the Company may refuse any such application to transfer Shares at its absolute discretion without providing reasons to the Shareholder.

### **Company's Rights and Powers**

- 14.1 The parties acknowledge that in the event the Company requires access to the Land and surrounding areas to the Land to undertake installation, excavation, works, operation, inspection, investigation, maintenance or repair of Scheme Infrastructure, the Company shall have the following rights, powers and easements at any time and from time to time without being deemed to commit a trespass (and on reasonable notice in accordance with clause 14.3) to enter upon, along and through the Land (for

all reasonable purposes including, without limitation the passage of persons, vehicles, plant, machinery, equipment, fuel, works, topsoil and material) to:

- (a) survey, excavate and undertake such works to install new Scheme Infrastructure and other works (including, without limitation, investigations for bores/test pits) which the Company deems necessary for the supply of water to the Land and other properties which are part of or are in the process of joining the Scheme;
- (b) remove any trees (including shelter belts) or other vegetation which are or are likely in the opinion of the Company:
  - (i) necessary to undertake the installation of the new Scheme Infrastructure and other works;
  - (ii) interfering with the operation of the Scheme Infrastructure; or
  - (iii) a danger or a hazard to the safety or operation of the Scheme;
- (c) upgrade, modify, maintain, inspect, operate, clean, repair, renew, replace or reconstruct the Scheme Infrastructure and all other works which the Company deems necessary for the supply of water to the Land and other properties within the Scheme;
- (d) gauge, inspect, investigate or otherwise determine the quantity of water used by the Shareholder or other occupier and to view the condition of such Scheme Infrastructure and works on the Land;
- (e) convey water and all rights incidental and ancillary to the rights in this clause 14.1 as shall be necessary for the purposes of operating and maintaining the Scheme Infrastructure;
- (f) carry out any maintenance, testing or other work required in order to comply with the Company's duties under the HSWA (including but not limited to erecting and maintaining signs and notices on the Land);
- (g) take such measures as the Company reasonably thinks necessary for the safety of persons and property;
- (h) have access to the Land for the purposes of having access to any nearby land (including land not owned by the Shareholder); and
- (i) all other rights and powers which the Company has determined are reasonably necessary for the proper and efficient operation and management of the Scheme Infrastructure and other works.

14.2 In exercising its rights under this clause 0 the Shareholder acknowledges that the Company may:

- (a) temporarily occupy a designated works area and restrict (including, without limitation, by way of temporary fencing) the Shareholder's access to such work area in the event the Shareholder's entry to such work area is not safe or would impede the operation of the works. In addition, while the Company is undertaking the works, the Shareholder must only access the work area under the supervision of the Company and strictly in accordance with all directions given by

the Company for the purposes of health and safety, to minimise disruptions or to otherwise ensure compliance with the Consents or any applicable law;

- 14.3 The Company shall at all times when entering the Land in accordance with this clause 0 give due consideration to the Shareholder's farming operation with a view to minimising disruption to that operation and shall further comply with its obligations (and ensure that the Company's workers (as defined in the HSWA) comply with their obligations) under the HSWA.
- 14.4 When maintenance or repairs are required during an Irrigation Season, the Company reserves the right to suspend the supply of water to carry out such activities. The Company will use reasonable endeavours to:
- (a) promptly notify the Shareholder of any suspension prior to such suspension taking effect; and
  - (b) limit the period of suspension to as short a period as possible;
  - (c) for the avoidance of doubt, (any suspension pursuant to this clause 14.4 shall in no way limit the Shareholder's obligations under this Agreement).
- 14.5 The Shareholder shall grant a formal registered Easement in respect of new Scheme Infrastructure (and existing Scheme Infrastructure if not already granted) which shall:
- (a) be an easement in gross including a "right to convey water", a "right to convey electricity and telecommunications", a "right to locate, site and store a pumping station" and a "right to generate electricity" as required;
  - (b) include all such incidental and ancillary rights as prudently ought to be incorporated therein including those set out in clause 14.1 above and other easements granted in favour of the Company over other properties to be served by the Company within the Scheme;
  - ~~(c)~~ be prepared by the Company and delivered to the Shareholder or the Shareholder's solicitors for execution;
  - (d) be surveyed by the Company as soon as practicable following installation of the Scheme Infrastructure.
- 14.6 Until the Easement has been registered, the Shareholder will be bound by the terms, covenants and provisions contained in this Agreement as if the Easement had been registered at the date of this Agreement.
- 14.7 The Shareholder agrees to execute all documents and do all things required to procure registration of the Easement (including, without limitation, signing an authority and instruction form authorising its solicitor to sign and certify the Easement within the Land Online System) within ten working days' (unless otherwise agreed in writing between the parties) of receiving the Company's documents.
- 14.8 In addition and where required, the Shareholder will notify its insurers and obtain the written consent of any third party (e.g. any mortgagee) whose interest in the Land is registered against the Record of Title to the Land and whose consent is required for the registration of the Easement.

- 14.9 The Company shall have the further right to make such changes as required as a result of changes to Scheme Infrastructure or modifications as may be necessary from time to time and to correct any historical errors to the formal registered Easement as required by Clause 14.5 or any other easement registered in the Company's favour.
- 14.10 On completion of any new works carried out under this clause 0, the Company shall undertake to repair and level (to a reasonable contour, as determined in the Company's sole discretion) the Land. The Company may (to be determined in its sole discretion) provide a contribution to the Shareholder for the cost of re-sowing the Land.

### **Caveat**

- 15.1 The parties acknowledge and agree that this Agreement is not separately registerable and as such the Company is entitled to lodge a caveat against any Record of Title for the Land to protect its interest under clauses 14 and 5.6 of this Agreement. The Company will withdraw any caveat upon registration of the Easement. The Company will not unreasonably withhold or delay its consent to any dealing with the Land where such dealing does not adversely affect the Company's rights under this Agreement.

### **Default**

- 16.1 The Shareholder will be in default of this Agreement if one or more of the following events occur:
- (a) the Shareholder breaches, or does or omits to do anything which causes the Company to breach, any of the Consents or the Consent Conditions;
  - (b) the Shareholder commits any other breach of this Agreement (including, without limitation, failing to make any payment due to the Company under this Agreement) and fails to remedy that breach within five working days (or other period as may be reasonable in the circumstances) after receipt of notice requiring the breach to be remedied;
  - (c) the Shareholder fails to contest within ten working days of service any petition for bankruptcy or winding up;
  - (d) any execution, levy or distress is levied against the Shareholder or the assets of the Shareholder's business;
  - (e) any receiver, manager or other custodian (either temporary or permanent) is appointed with respect to the Shareholder or in respect of all or any part of the Shareholder's business;
  - (f) the Shareholder purports to assign or charge its rights or interest under this Agreement without complying with the provisions of this Agreement;
  - (g) the Shareholder makes any composition with or enters into any arrangement with its creditors;
  - (h) the Shareholder is in default under any Easement, Encumbrance or the constitution of the Company.



## **Remedies**

- 17.1 If the Shareholder commits an event of default in accordance with clause 0 above then the Company may (without limitation to the Company's rights at law):
- (a) without payment of any compensation to the Shareholder or any other person immediately cut off the supply of water to the Land. The Shareholder gives the Company authority to enter on to the Land and disconnect the supply of water to the Land in such manner as the Company thinks fit, and to secure or lock off the Farm Turn-out, gate, screen, Water Pipe and/or control device (if applicable) and thereafter no person shall be entitled to be supplied with any further water to the Land from the Company until such time as the breach has been made good to the satisfaction of the Company;
  - (b) require the Shareholder to pay the costs of any action (on a solicitor/client basis) required by the Company as a result of the failure to fully implement any farming and/or irrigation practices prescribed by the Company;
  - (c) require the Shareholder to pay the costs of any FEP audit which is required in accordance with the Consent Conditions or by the Canterbury and/or Otago Regional Council as a result of the failure to fully implement the FEP or any other non-compliance with the Consent Conditions or District or Regional Plan;
  - (d) cancel the Agreement by giving ten working days' written notice to the Shareholder;
  - (e) take any steps necessary to enforce some or all of the Company's rights as encumbrancee under the Encumbrance, being the full rights of an encumbrancee/mortgagee under the Land Transfer Act 2017 and the Property Law Act 2007.
- 17.2 If the Shareholder 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 Land 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 Shareholder together with interest thereon at the rate normally charged by the Company's then current bank on commercial overdrafts. Where the Company, in its sole discretion considers urgent action is required, it shall not be obliged to give the Shareholder any notice before it carries out the required work or repairs.

## **Contract Review**

- 18.1 The Company may at any time review and amend the terms and conditions of this Agreement including:
- (a) to take into account changes in legislation;
  - (b) to take account of changes and ensure compliance with relevant laws, district or regional plans or the Consents;
  - (c) to take account of farming and irrigation practice (to be determined by the Company in its sole discretion);

- (d) to make such changes or fix any errors (for example, to correct the Land details as set out in Schedule 1) as may be necessary from time to time;
- (e) to take account of any requirements of the Financiers in connection with the financing of the Scheme.

18.2 The Shareholder shall become bound by an amendment under clause 18.1 on receiving written notice of the change or alternatively at the discretion of the Company shall be required to enter into a new Agreement and pay all the Company's costs in respect of that Agreement.

### **Limitation of Liability**

- 19.1 If the supply of water provided for under this Agreement is reduced, stopped or unable to be delivered for any reason whatsoever, including, without limiting the generality of the foregoing, water shortage, regulatory reasons or any other reason whatsoever, or due to a failure by the Shareholder or other Shareholders to comply with the Consent Conditions, then such reduction, stoppage or failure to supply shall in no way give the Shareholder any right to any claim, compensation or other remedy against the Company.
- 19.2 The Company shall be under no liability to the Shareholder (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 water under this Agreement.
- 19.3 If, notwithstanding clauses 19.1 and 19.2, the Company is found to be liable to the Shareholder in any circumstances then the maximum amount the Company will be liable for to the Shareholder under this Agreement or in any way whatsoever, is an amount equal to the lesser of:
- (a) last season's Water Charges; or
  - (b) the actual loss or damage suffered.
- 19.4 To the extent permissible by law, the Shareholder 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/production) which may be made against the Company and which the Company may sustain, pay or incur as a result of or in connection with a breach by the Shareholder (or the Shareholder's directors, employees, contractors, servants, agents or invitees) of its obligations under this Agreement.
- 19.5 For the purposes of this clause 19, references to the Company shall include the Company's directors, employees, contractors, servants or agents.

### **Power of Attorney**

- 20.1 The Shareholder hereby irrevocably appoints the directors for the time being of the Company severally to be the Attorney of the Shareholder to do and execute anything which the Shareholder covenants or agrees to do or execute under this Agreement and has failed to do or execute after ten working days' notice from the Company.

## **Delegation**

- 21.1 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 (employees, contractors, servants, agents or otherwise) 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.

## **Exclusion of Partnership and Agency**

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

## **Disputes**

- 23.1 Without limiting clause 0, if either party has any dispute with the other in connection with this Agreement:
- (a) that party will promptly give full written particulars of the dispute to the other party;
  - (b) the parties will promptly meet together and in good faith try and resolve the dispute.
- 23.2 If the dispute is not resolved within ten working days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 23.3 A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings. The mediation will be conducted by a LEADR New Zealand Incorporated panel mediator chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.
- 23.4 If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator. The single arbitrator will be chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee. The arbitration will be conducted in accordance with the Arbitration Act 1996.
- 23.5 The parties must always act in good faith and co-operate with each other to promptly resolve any dispute.
- 23.6 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.
- 23.7 The parties must continue to comply with their obligations under this Agreement during the dispute resolution process.
- 23.8 Nothing in this clause 0 shall preclude a party from taking immediate steps to seek equitable relief before a New Zealand Court.

- 23.9 For the avoidance of doubt this clause 0 does not limit the Company's rights under clause 0.

### **Conflict**

- 24.1 In the event of any conflict between this Agreement and an Easement, then this Agreement shall prevail.
- 24.2 In the event of any conflict between this Agreement and the Rules of Operation, then unless a contrary intention is published by the Company, then this Agreement shall prevail.
- 24.3 In the event of conflict between the terms of this Agreement and the terms of any Shares issued by the Company, the terms of the Share issue shall prevail.
- 24.4 In the event of conflict between an Encumbrance in favour of the Company and this Agreement, then the terms of this Agreement shall prevail.

### **Governing Law**

- 25.1 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 in respect of any proceedings arising out of or relating to this Agreement.

### **No waiver**

- 26.1 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.

### **Assignment**

- 27.1 The Shareholder shall not be at liberty to assign, transfer, mortgage or charge the Shareholder's interest in this Agreement without the consent of the Company.

### **Notices**

- 28.1 Each notice, demand, consent or other communication expressly contemplated under this Agreement (each a "notice") shall be in writing and may be given to, or served upon a party by:
- (a) in the case of the Shareholder, the address of the Shareholder recorded in the Company's share register or by email, to the email address notified to the Company by the Shareholder; or
  - (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.

28.2 The notified address and email address for the company is as follows:

C/- McKenzie Chartered Accountants Limited 16 Wear Street Oamaru 9400

[fraser@mckenzieca.co.nz](mailto:fraser@mckenzieca.co.nz)

28.3 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 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.

### **Consumer Guarantees Act 1993**

29.1 The Shareholder agrees that the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement.

### **Further Assurances**

30.1 The Shareholder shall do all things and sign all documents necessary to discharge its obligations under this Agreement.

### **Entire Agreement**

31.1 Except to the extent provided in any other duly executed agreement between the parties in relation to the Land or the terms of issue of any Shares, this Agreement sets out the entire agreement and understanding between the parties in relation to the matters contemplated by this Agreement and in particular supersedes any prior agreement, correspondence, or undertaking made between them.

31.2 Notwithstanding clause 31.1, if the Shareholder's existing Water Supply Agreement or any other written agreement with the Company contains specific additional provisions in relation to the Land, access, Scheme Infrastructure, the Consents and supply of water, then these provisions (unless otherwise agreed) shall survive.

### **Financiers**

32.1 The Shareholder acknowledges that:

- (a) the Company may assign by way of security all or any part of its rights or interests in this Agreement to the Financiers;
- (b) the Financiers may at any time assign the rights and interests of the Company, or transfer the rights, interests and obligations of the Company in this Agreement without the consent of the Shareholder.

32.2 The Shareholder agrees to do or execute anything reasonably required by the Financiers to effect any assignment, transfer, novation or other dealing under this clause 0.

- 32.3 For the purposes of the Contracts (Privity) Act 1982, each Financier is entitled to enforce against the Shareholder the provisions of this clause 0.
- 32.4 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 54 of the Contract and Commercial Law Act 2017.

### **Independent Advice**

- 33.1 The Shareholder acknowledges that the Company's solicitors act for the Company only and that the Shareholder has either obtained independent legal advice or has declined to do so having been advised to obtain independent advice.

### **Counterparts**

- 34.1 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.

### **Limitation of Liability of Independent Trustee**

- 35.1 The liability of an independent trustee under this Agreement is not personal, but shall be limited to the net assets from time to time of the relevant trust unless by reason of a breach of trust, that trustee is not entitled to be indemnified from the assets of the trust, in which case the limit on liability in this clause will not apply.

### **Severance**

- 36.1 If any provision or part of a provision of these terms and conditions shall not be enforceable, then that provision or part provision shall be deemed to be deleted and the rest of these terms and conditions shall remain in full force and effect.

### **Execution**

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Signed by **Lower Waitaki Irrigation Company Limited** as the Company:

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Director's signature

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Director's signature

---

Director's full name

---

Director's full name

Attestation to be used if Shareholder is a Company and there are 2 or more Directors

Signed by [insert name of Shareholder]

as the Shareholder:

---

Director's signature

---

Director's signature

---

Director's full name

---

Director's full name

Attestation to be used if Shareholder is a Company and there is only 1 Director or where the Shareholder is an individual, partnership or Trust – the signature must be witnessed by an independent witness

Signed by [insert name of Shareholder]  
as the Shareholder in the presence of:

---

Signature

Witness Signature: .....

Print Full Name: .....

Occupation: .....

Address: .....

Signed by [insert name of Shareholder]  
as the Shareholder in the presence of:

---

Signature

Witness Signature: .....

Print Full Name: .....

Occupation: .....

Address: .....

Signed by [insert name of Shareholder]  
as the Shareholder in the presence of:

---

Signature

Witness Signature: .....

Print Full Name: .....

Occupation: .....

Address: .....



## SCHEDULE ONE

**The Shareholder:**

**Number of Shares:**

**Irrigable Area:**

**The Land:**

Area	Description	Title Reference

**Water allocation/Rate:** Spray: 0. litres per second per hectare

Borderdyke; 1000m<sup>3</sup> per hectare (share) on a 16-day rotational roster.