

DATED

30 June

2017

PARTIES

ELECTRICITY ASHBURTON LIMITED

BARRHILL CHERTSEY IRRIGATION LIMITED

AGREEMENT FOR SALE AND PURCHASE OF JOINT VENTURE INTEREST



CML-2001004-500-42-V1-e

THIS AGREEMENT made the

30th

day of

June

2017

PARTIES

- (1) **ELECTRICITY ASHBURTON LIMITED** (the *Vendor*)
- (2) **BARRHILL CHERTSEY IRRIGATION LIMITED** (the *Purchaser*)

BACKGROUND

- A The Vendor and Purchaser each have a 50% Participating Interest in the Joint Venture, and each own 50% of the Shares.
- B The Vendor has agreed to sell to the Purchaser, and the Purchaser has agreed to purchase from the Vendor, all of the Vendor's Participating Interest and Shares in the Joint Venture such that the interest in the assets and rights pertaining to the Joint Venture vest in the Purchaser absolutely and following the vesting of assets and rights in the Purchaser the Joint Venture will be formally dissolved.

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions apply in this Agreement, unless inconsistent with the context or otherwise specified:

Agreement means this *Agreement for Sale and Purchase of Joint Venture Interest* document, including the Schedules;

Completion means the performance by the parties of the obligations assumed by them under clause 4;

Completion Date means 29 September 2017.

Encumbrance means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, or other encumbrance or security interest of any kind;

Joint Venture has the meaning given to that term in the JVA;

JVA means the joint venture agreement between the Vendor and the Purchaser, dated 23 December 2009;

Liabilities means all amounts owing by the Joint Venture on the Completion Date excluding income payable to the Vendor;

Participating Interest has the meaning given to that term in the JVA;

PDS is the product disclosure statement to be issued by the Purchaser offering shares to the shareholders of the Purchaser to raise a minimum of \$17.4 million to enable the Purchaser to settle the purchase from the Vendor as set out in this agreement;

Preferred Income Right Agreement means the agreement entitled "Agreement relating to termination of preferred income right" between the Vendor and the Purchaser and dated on or about the date of this Agreement;

Purchase Price has the meaning given to that term in clause 3.1;

Shares means:

- (a) 50 shares in Water Utilities Ashburton Limited;
- (b) 4,000 shares in Irrigo Centre Limited.

Share Transfer Forms means the share transfer forms to be signed by the Vendor and Purchaser, in duly registerable form, transferring the Vendor's Shares to the Purchaser.

Term Loan Agreement means a term loan agreement between the Vendor and the Purchaser which includes the terms and conditions set out in Schedule 2;

Vendor's Interest means the Vendor's 50% Participating Interest in the Joint Venture and the Shares.

1.2 In the construction and interpretation of this Agreement unless inconsistent with the context or otherwise specified:

- (a) references to Background, clauses and Schedules are references to Background, clauses and Schedules of this Agreement;
- (b) references to statutes or statutory provisions include those statutes or statutory provisions as amended, extended, consolidated, re-enacted or replaced from time to time and any orders, regulations, instruments or other subordinated legislation made under them (except to the extent that any amendment enacted after the date of this Agreement would increase or extend the liability of any party);
- (c) words importing the singular number include the plural and vice versa, references to any gender include every gender and references to persons include corporations and unincorporated bodies of persons;
- (d) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (e) references to "dollars" and "\$" are references to New Zealand dollars;
- (f) references to "written" and "in writing" include any means of permanent visible representation; and
- (g) references to any document include all modifications and replacement documents from time to time.

2 SALE AND PURCHASE OF VENDOR'S INTEREST

2.1 The Vendor agrees to sell the Vendor's Interest and the Purchaser agrees to purchase the Vendor's Interest on the terms and conditions of this Agreement, including on the basis that:

- (a) The Vendor's Interest is purchased for the amount determined under clause 3;
- (b) the Purchaser will assume liability for all Liabilities of the Joint Venture as at and from the Completion Date.

- (c) the amount of any income due and payable to the Vendor by the Joint Venture for the period from 1 July 2017 to the Completion Date is paid on the Completion Date as provided for in clause 4.2(c).

2.2 The Vendor shall sell the Vendor's Interest free of any Encumbrances.

3 CONSIDERATION

3.1 The total consideration for the Vendor's Interest is the sum of:

- (a) \$33,240,440, being the aggregate of:
 - (i) assuming liability for the Vendor's proportionate share of Liabilities estimated to be \$24,829,428 which the Purchaser assumes under this Agreement;
 - (ii) \$8,411,012; and
- (b) the value of any further capital contributions made by the Vendor between 20 March 2017 and Completion,

the *Purchase Price*.

3.2 That portion of the Purchase Price set out in clause 3.1(a) shall be allocated among the assets and undertakings of the Joint Venture that represent the Vendor's Interest in the manner set out in Schedule 1, and such allocation shall be subject to adjustment as set out in this clause 3.2. The parties agree that:

- (a) the reference in Schedule 1 to "Fixed and Intangible Assets" includes the assets that will be comprised as at the Completion Date within the description of the following item descriptions from the Joint Venture's 31 March 2017 financial statements:
 - (i) Intangible Assets;
 - (ii) Property, Plant and Equipment;
- (b) the amount allocated to "Fixed and Intangible Assets" in Schedule 1 is an estimate (adjusted to recognise the Vendor's 50% Participating Interest) of their tax book value as at the Completion Date, including depreciation for the period from 1 April to the Completion Date to be taken as a loss on disposal. The actual tax book value of Fixed and Intangible Assets (adjusted to recognise the Vendor's 50% Participating Interest) as at the Completion Date, including current year depreciation to be taken as a loss on disposal, shall be confirmed following Completion and the allocation for this item adjusted if required to represent the actual tax book value if different to the estimate in Schedule 1;
- (c) the reference in Schedule 1 to "Net Residual Assets" includes:
 - (i) the assets and liabilities that will be comprised as at the Completion Date within the description of the following item descriptions from the Joint Venture's 31 March 2017 financial statements:
 - (A) RDR access right;
 - (B) Valetta Access Licence;
 - (C) Irrigo Centre Limited;

- (D) Fair value of swaps;
 - (E) Employee entitlements; and
- (ii) Net working capital.
- (d) the amount allocated to "Net Residual Assets" in Schedule 1 is an estimate only of the value as at the Completion Date (adjusted to recognise the Vendor's 50% Participating Interest). The final value for net residual assets will be based on the financial statements as at the Completion Date and the allocation adjusted if required to represent the actual value in the financial statements as at the Completion Date if different to the estimate in Schedule 1 provided that the amount allocated to net working capital shall be the difference between that portion of the Purchase Price set out in clause 3.1(a) and the aggregate of the actual amounts allocated to Fixed and Intangible Assets and Net Residual Assets (other than net working capital).
- 3.3 As soon as practicable following the Completion Date the Vendor and the Purchaser will determine, or will procure the determination, of the tax book value of the "Fixed and Intangible Assets" and the value of the "Net Residual Assets" in accordance with clause 3.2. If there is any dispute relating to any aspect of determining the actual value of those items and / or any adjustment, then the matter in dispute shall be determined by an independent person to be appointed by the President for the time being of the New Zealand Law Society, and any such determination shall be binding on the Vendor and the Purchaser. The costs of an independent person acting under this clause shall be borne equally by the Vendor and the Purchaser.
- 3.4 For the purposes of the financial arrangement rules in the Income Tax Act 2007, the parties agree that:
 - (a) the consideration is the lowest price they would have agreed on for the sale and purchase of the Vendor's Interest on the date this Agreement was entered into, if payment would have been required in full at the time the first right in the contracted property (being the Vendor's Interest) was transferred; and
 - (b) the consideration is the value of the Vendor's Interest.

4 COMPLETION

- 4.1 Settlement shall take place on the Completion Date, or at such other time as the Vendor and the Purchaser may agree.
- 4.2 On the Completion Date the Purchaser shall:
 - (a) assume liability for the Vendor's proportionate share of the Liabilities;
 - (b) pay to the Vendor in cleared funds available for immediate disbursement an agreed portion (being not less than \$911,012) of the balance of the Purchase Price (being the sum of the amounts clauses 3.1(a)(ii) and 3.1(b)) with the outstanding balance being recorded as a Vendor loan repayable in accordance with the Term Loan Agreement as contemplated by clause 5.1(c)(ii);
 - (c) procure that the Vendor is paid in cash an amount equal to all accrued income and other receivables owing to the Vendor under the JVA as at the Completion Date, comprised of \$585,921.51 plus GST on account of the Vendor's 12% return on capital contribution under the JVA for the period from 1 July 2017 to the Completion Date, together with the same return on any additional capital contributed after the date of this Agreement (and on the assumption that the 12% return on capital contribution for the period to 30 June 2017 has been paid prior to the Completion Date);

- (d) deliver to the Vendor:
 - (i) a copy of the Share Transfer Form duly executed by the Purchaser.
 - (ii) a copy of the Term Loan Agreement duly executed by the Purchaser; and
 - (iii) evidence of releases of all guarantees given by the Vendor in respect of liabilities owing to the Bank of New Zealand for the Joint Venture.

4.3 On the Completion Date the Vendor shall deliver to the Purchaser:

- (a) a copy of the Share Transfer Forms duly executed by the Vendor.
- (b) releases of all Encumbrances (if any) over the Vendor's Interest.
- (c) resignations from the directors it appointed as directors of Water Utilities Ashburton Limited, including acknowledgements in writing by them that no money is owing to them whether by way of fees, reimbursement for expenditure, compensation, or otherwise and that they have no claims of any nature against that company;
- (d) all of the right, title and interest of the Vendor in the Joint Venture.

4.4 The parties agree and acknowledge that on or about Completion of the sale and purchase all assets and rights pertaining to the Joint Venture vest in the Purchaser absolutely and following the vesting of the assets and rights in the Purchaser the Joint Venture is formally dissolved.

4.5 The parties agree and acknowledge that Completion under this Agreement is subject to completion first occurring under the Preferred Income Right Agreement. If Completion does not occur under the Preferred Income Right Agreement then Completion shall not occur under this Agreement and neither party shall have any obligations to the other under this Agreement.

5 CONDITIONS

5.1 This Agreement is conditional on the following matters.

- (a) For the benefit of the Purchaser, the Purchaser obtaining funding on terms satisfactory to Purchaser in its sole discretion.
- (b) For the benefit of the Vendor:
 - (i) the Vendor being satisfied that it has received releases of, or will on or before the Completion Date be released from (in whatever form that may take), its contractual obligations to third parties, including TrustPower Limited and Rangitata Diversion Race Management Limited; and
 - (ii) the Vendor being satisfied in its sole discretion with any residual contingent liabilities relating to the Joint Venture to which it must continue to be subject following Completion.
- (c) For the benefit of both parties:
 - (i) the parties each obtaining all necessary board and shareholder approvals in respect of the sale and purchase of the Vendor's Interest pursuant to this Agreement;
 - (ii) the parties agreeing the terms of the Term Loan Agreement; and

- (iii) the Bank of New Zealand (BNZ) approving the sale and purchase of the Vendor's Interest on terms acceptable to both the Vendor and the Purchaser (including the Vendor being released from all existing obligations to BNZ in respect of the Joint Venture including existing facility arrangements and the Vendor's existing guarantee).

- 5.2 The conditions in clause 5.1 must be satisfied by no later than the Completion Date.
- 5.3 Where a condition is stated to be for the benefit of just one party, then that condition may be waived by that party.

6 WARRANTIES AND INDEMNITY

- 6.1 The Vendor warrants to the Purchaser that:
 - (a) the Vendor has full power and authority to enter into and perform this Agreement;
 - (b) the Vendor has good title to the Vendor's Interest;
 - (c) apart from this Agreement there is no Encumbrance on, over or affecting the Vendor's Interest, and there is no agreement to give or create any such Encumbrance; and
 - (d) the Vendor's Interest is sold free of all Encumbrances (if any),
(the *Warranties*).
- 6.2 The Vendor shall be deemed to have given the Warranties as at the date of this Agreement and shall be deemed, immediately prior to the time of Completion, to warrant to the Purchaser in those terms.
- 6.3 The Purchaser acknowledges and agrees that the above Warranties are the only Warranties provided by the Vendor.

7 INDEMNITY FOR OBLIGATIONS AND GUARANTEES PROVIDED BY VENDOR

The Purchaser agrees to indemnify and hold the Vendor harmless from any claims that may be made against, or costs, losses or other liability suffered or incurred by, the Vendor in connection with any obligations (including guarantees) that have been given by the Vendor in respect of the Joint Venture's obligations and liabilities.

8 GST

- 8.1 The Vendor and the Purchaser agree that the transaction recorded in this Agreement is not subject to GST.
- 8.2 **Payment of GST:** If the Inland Revenue Department rules that this transaction is subject to GST (other than by virtue of section 5(23) of the GST Act) then in addition to the consideration payable or to be provided for that supply but for the application of this clause 8.2, the Purchaser must pay to the Vendor an amount ("**GST Amount**") equal to the GST chargeable on the supply plus any applicable interest and penalties.
- 8.3 To the extent that the agreement involves a supply that wholly or partly consists of land, the parties agree the transaction will be zero rated under section 11(1)(mb) and the purchaser warrants they are GST registered, and will use any such land for the making of taxable supplies, and will not use any such land as a principal place of residence.

- 8.4 **Tax Invoice:** The Purchaser will not be required to pay any GST to the Vendor in respect of a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

- 8.5 **Definitions:** In this clause 8 words and phrases not expressly defined in this agreement have the meanings given to them by the GST Act.

9 COSTS

Each party shall pay the costs and expenses incurred by that party in relation to the negotiation, preparation and implementation of this Agreement.

10 PENALTY INTEREST

In the event of late payment of any sum due under this Agreement, the defaulting party shall pay interest to the non-defaulting party at the rate of 14% per annum calculated from the due date for payment down to the actual date of payment on a daily basis. The defaulting party shall also meet all costs of and incidental of enforcement of this Agreement including costs payable on a solicitor / client basis. This clause is without prejudice to any other rights of the non-defaulting party.

11 GENERAL

- 11.1 None of the rights or obligations of either party under this Agreement may be assigned or transferred without the prior written consent of the other party.
- 11.2 This Agreement is binding on and shall apply for the benefit of the parties' personal representatives, successors in title and permitted assigns.
- 11.3 This Agreement and the documents referred to in it constitute the entire agreement between the parties relating to the sale and purchase of the Vendor's Interest, and supersede all previous agreements between the parties relating to such sale and purchase.
- 11.4 Any variation or waiver of any terms of this Agreement shall not be binding unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.
- 11.5 If any provision of this Agreement, or any part of a provision of this Agreement, is found to be illegal, invalid or unenforceable the remaining provisions, or the remainder of the provision concerned, shall continue in effect.
- 11.6 A failure or delay in enforcing compliance with any term of this Agreement shall not be a waiver of that or any other term of this Agreement.
- 11.7 All obligations of the parties shall continue in full force and effect after Completion, except for any obligations then already fully performed.
- 11.8 This Agreement may be executed in any number of counterparts and all the counterparts when taken together will constitute one agreement. Each party may enter into this Agreement by executing a counterpart. The parties acknowledge that this Agreement may be executed by an exchange of facsimile and/or scanned and emailed PDF copies and execution of this Agreement by that means is valid and sufficient execution.
- 11.9 Each party shall execute such further documents and perform and do such further acts and things following Completion as the other party may reasonably request in writing in order to carry the provisions of this Agreement into full effect.


EXECUTED as an Agreement

SIGNED by
ELECTRICITY ASHBURTON LIMITED
as Vendor

)
)
)




Director/Authorised Person




Director/Authorised Person

SIGNED by
BARRHILL CHERTSEY IRRIGATION LIMITED
as Purchaser

)
)
)



Director/Authorised Person



Director/Authorised Person

SCHEDULE 1**Allocation of the Purchase Price**

Agreed net purchase price	\$8,411,012
Assumed Debt (50%)	\$24,829,428
Total Consideration	\$33,240,440
Fixed and Intangible Assets	\$29,034,934
Net Residual Assets	\$4,205,506

SCHEDULE 2

Loan Arrangements

Loan arrangements

1. The principal amount shall be repaid in two equal instalments, with the first instalment due on the first anniversary of the Completion Date, and the second instalment due on the second anniversary of the Completion Date, to the intent that the principal amount would be fully repaid on or before the second anniversary of the Completion Date, provided that BCI may make additional repayments of the Loan at any time by minimum tranches of \$100,000 (the final Loan documentation will specify how such additional repayments are applied against the amount due and payable under the two annual repayments specified above).
2. Interest shall accrue on the outstanding principal amount at an initial rate of 7% per annum which represents EA's average cost of borrowing plus a margin. The interest rate shall increase if EA's average cost of borrowing increases so that the margin applying to the 7% rate as at the Completion Date is retained at all times. Interest shall be payable quarterly in arrears. EA confirms that it will continue to apply and implement a prudent hedging policy in relation to underlying interest rate risk and fully disclose this policy to BCI (from time to time) and the average cost of borrowings of EA shall not include any penalty interest or other increased margins or costs arising from an event of review or default taking place (but for the avoidance of doubt the average cost of borrowings will include increased margins arising in the normal course).
3. BCI agrees and confirms the following:
 - a. the minimum amount required to be raised under the PDS is \$17,692,500, with a minimum of \$10,192,500 being payable by subscribers on application and issue of the shares offered under the PDS;
 - b. if only the minimum amount \$10,192,500 is payable by subscribers on application and issue of the shares, then a minimum amount of \$7,500,000 will be applied towards payment of the consideration due under the Preferred Right Agreement, with the balance payable under the Preferred Right Agreement and the \$911,012 payable in cash on the Completion Date under this Agreement being funded by bank lending, so that the Vendor receives a minimum aggregate cash amount under the Preferred Income Right Agreement and this Agreement on the Completion Date of \$18,500,000;
 - c. in the event that more than \$10,192,500 is payable by subscribers under the PDS on application and issue of the shares, then all amounts payable in excess of \$10,192,500 shall be payable on the Completion Date in part payment of the Purchase Price;
 - d. the difference between the amount paid on account of the Purchase Price under this Agreement on the Completion Date and the balance of the Purchase Price shall be the initial principal lent under the Term Loan Agreement and shall be no greater than \$7,500,000.
 - e.
4. The Loan document would generally reflect an arms' length banking arrangement and would include the ability for EA to charge penalty interest if BCI is in default at any time. The covenants in the Loan document would:

- (a) include covenants restricting BCI from entering into transactions outside the ordinary course of business or undertaking capital projects, in each case without the prior written consent of EA (which shall not be unreasonably withheld);
- (b) not prevent BCI from operating and expanding the scheme in the ordinary course or business.

SCHEDULE 3

GST INFORMATION

1. The Vendor is registered under the GST Act or will be so registered at settlement.	Yes
2. The Vendor's registration number (if already registered):	
3. The Purchaser is registered under the GST Act or will be so registered at Completion:	Yes
4. The Purchaser's registration number (if already registered):	
5. The Purchaser's full name: BARRHILL CHERTSEY IRRIGATION LIMITED	
6. The Purchaser's address:	
7. The Purchaser intends at settlement to use goods supplied under this agreement for making taxable supplies.	Yes
8. The Purchaser intends at settlement to use the property as a principle place of residence by the Purchaser or a person associated with the Purchaser under section 2A(1)(c) of the GST Act.	No
9. The Purchaser intends to direct the Vendor to transfer the premises to another party ("nominee")	No
10. If the answer to question 9 is "Yes":	
(a) The nominee is registered under the GST Act or is expected by the purchaser to be so registered at settlement.	
(b) The nominee's registration number (if already registered):	
(c) The nominee's full name:	
(d) The nominee's address:	
(e) The Purchaser expects the nominee to intend at settlement to use the goods supplied under this agreement for making taxable supplies.	
(f) The Purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or a person associated with the nominee under section 2A(1)(c) of the GST Act.	