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TRUSTPOWER LIMITED
BARRHILL CHERTSEY IRRIGATION LIMITED
ELECTRICITY ASHBURTON LIMITED

PUMPING DEED

RUSSELL McVEAGH

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DEED dated

3 December

2009

PARTIES

TRUSTPOWER LIMITED a duly incorporated company having its registered office at Truman Lane, Rd 5, Tauranga 3175 ("**TrustPower**")

BARRHILL CHERTSEY IRRIGATION LIMITED a duly incorporated company having its registered office at Croys Ltd, Level 2, 161 Burnett Street, Ashburton ("**BCIL**")

ELECTRICITY ASHBURTON LIMITED a duly incorporated company having its registered office at 18 Kermode Street, Ashburton ("**EAL**")

INTRODUCTION

- A. BCIL and EAL have entered into, or agreed to enter into, an unincorporated joint venture to construct and operate water distribution systems under the JV Scheme.
- B. The JV is seeking to supply water to members of the JV Scheme during the Irrigation Season.
- C. TrustPower is the owner and operator of the Highbank Power Scheme, including the Penstock.
- D. The parties have entered into this Deed to set out the terms and conditions upon which, during the Irrigation Season, TrustPower will make water available to the JV Parties including by:
 - (a) pumping water taken from the Rakaia River up the Penstock into the Rangitata Diversion Race; and/or
 - (b) foregoing its rights to the Shoulder Water in favour of the JV Parties,to allow the JV Parties to supply water to members of the JV Scheme.

AGREEMENT

1. INTERPRETATION

1.1 Definitions: In this Deed, unless the context otherwise requires:

"**Access to Infrastructure Deed**" means the deed between the JV Parties and RDRML relating to the use of the Rangitata Diversion Race by the JV Parties for the purposes of delivering water to the JV Scheme, dated on or about the date of this Deed.

"**Annual Fixed Charge**" has the meaning given to it in clause 6.1(a).

"**Authority**" means any minister, department of state, government authority, regional council, territorial authority or other statutory authority having jurisdiction or authority to perform or exercise functions or powers under or pursuant to any statute; and the system operator or any other person with authority under the Electricity Governance Rules 2003 or the Electricity Governance Regulations 2003.

"**BCIL Consents**" means the Consents required to permit the JV Parties and TrustPower to take water and contaminants from the Rakaia River and to:

- (a) discharge such water and contaminants into the Rangitata Diversion Race;
- (b) store such water and contaminants in the Rangitata Diversion Race;
- (c) use such water for the purposes of generating electricity;
- (d) use such water for irrigation and stockwater purposes; and
- (e) discharge such water and contaminants into the Rakaia River,

including those Consents held as at the date of this Deed and those acquired or varied as referred to in clause 2.1(a).

"**BCIL Offer**" means the offer of D shares and I shares in the capital of BCIL to the public by BCIL contained in a prospectus dated on or about the date of this Deed.

"**Business Day**" means a day on which registered banks are open for business in Tauranga and Christchurch, excluding Saturdays, Sundays and public holidays.

"**Charges**" means the charges payable by the JV Parties to TrustPower under this Deed (including the Annual Fixed Charge, the EA Fixed Charge and the Variable Charge).

"**Commencement Date**" means the date on which all of the conditions in clause 2.1 have been satisfied (or waived in accordance with clause 2.2).

"**Consent**" means, in relation to any activity, any designation, plan change or variation, rule, approval, Resource Consent or other consent, licence, permit or other authorisation that the party undertaking, or proposing to undertake, the activity determines to obtain from any Authority in relation to that activity.

"**Contaminant**" means a contaminant as defined in the RMA and includes any hazardous substance or biological organism (including any persistent organic pollutant as defined in the Hazardous Substances and New Organisms Act 1996) and "**Contamination**" shall have a corresponding meaning.

"**Council**" means the Ashburton District Council.

"**CPI**" means the Consumer Price Index (All Groups) for New Zealand as calculated by Statistics New Zealand and published quarterly or such replacement index as is reasonably nominated by TrustPower if the Consumer Price Index (All Groups) ceases to exist or is varied from that applicable as at the date of this Deed.

"**Day**" means a period of 24 hours commencing at midnight of the previous day.

"**Deed**" means this deed including the schedules to this deed.

"**Default Rate**" means the aggregate of 5% plus the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10:45am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter at intervals of 90 days from that Business Day.

"**Dispute**" has the meaning given in clause 14.1.

"**EA Fixed Charge**" has the meaning given to it in clause 6.1(b).

"**Expert**" has the meaning given in clause 14.2(c).

"Force Majeure Event" means any event or circumstance, or combination of events and circumstances:

- (a) that causes or results in preventing or delaying a party from performing any of its obligations in this Deed; and
- (b) which is beyond the reasonable control of that party and could not, or the effects of that event or circumstance, or that combination of events or circumstances; could not have been prevented or delayed, overcome or remedied by the exercise by the party of a standard of care and diligence consistent with Good Industry Practice,

which occurs after the date of this Deed including:

- (c) an act of god;
- (d) strike or lockout, act of public enemy, war (whether declared or undeclared), blockade, revolution, riot, insurrection, malicious damage, civil commotion;
- (e) lightning, landslide, cyclone, storm, flood, fire, earthquake, explosion, tidal wave, epidemic;
- (f) action, inaction, demand, restraint, restriction, requirement, prevention, frustration or hindrance by any governmental agency or other competent authority;
- (g) order of the Court;
- (h) embargo, unavailability or shortage of essential equipment, or other materials, goods, labour, water, electricity, or services, lack of transportation or communication;
- (i) any breakage or failure of any equipment, machinery, lines or pipes including any part of the Pumping Station;
- (j) restraint on access to property; or
- (k) lack of water able to be taken under the BCIL Consents.

"Full Week" means a period of seven days commencing on the beginning of a Sunday and expiring at the end of the following Saturday.

"GST" means goods and services tax or similar value added tax levied or imposed under the Goods and Services Tax Act 1985.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence, foresight and economic management which would reasonably and ordinarily be expected from a skilled and experienced asset owner engaged in:

- (a) in the case of TrustPower: the provision of services the same as or similar to those provided by TrustPower to the JV Parties pursuant to this Deed under the same or similar circumstances as apply in New Zealand at the time; and
- (b) in the case of the JV Parties: the distribution of water for irrigation and stock water purposes.

"Highbank Power Scheme" means the hydro generation power scheme known by that name and owned and operated by TrustPower on the Rangitata Diversion Race and

includes (without limitation) the Penstock, all works and structures related to the scheme and all Scheme Rights.

"Input Metering Equipment" means metering equipment installed at an Input Point of Supply to measure and record the water Supplied by TrustPower into the RDR at that Input Point of Supply.

"Input Point of Supply" means the gate or other structure on the RDR where water is Supplied by TrustPower into the RDR.

"Irrigation Season" means the period of time starting at 00.00.01 on 10 September in any year and ending on 11:59:59 on 9 May of the following year.

"JV" means the unincorporated joint venture between BCIL and EAL under which BCIL and EAL have agreed to enter into this Deed and be jointly and severally liable for all obligations under this Deed to TrustPower.

"JV Parties" means EAL and BCIL.

"JV Scheme" means the scheme that is proposed to be constructed and operated by the JV Parties to take water from the Rakaia River and supply that water for use for irrigation and stockwater purposes in the JV Scheme Area and all improvements and works proposed to be used, or used, for or in association with that scheme.

"JV Scheme Area" means the area shown as the Areas 5, 7 and 8 in Schedule 1.

"Laws" includes all applicable Consents, statutes, regulations, local authority requirements, district plans and district rules.

"Loss" means all costs, losses, liabilities (including legal and other professional expenses on a full indemnity basis and GST and similar taxes), claims, demands, damages, fines and penalties including any consequential or indirect losses, economic losses or loss of profits and **"Losses"** shall have a corresponding meaning, and where TrustPower is to be indemnified for such Loss or Losses by the JV Parties under this Deed, shall include all lost generation from the Highbank Power Scheme and the amount of the compensation for such Loss or Losses will be determined by TrustPower and will include sums in respect of:

- (a) the amount it would have received in respect of electricity it was not able to produce at the Highbank Power Scheme due to the unavailability of the Penstock; and
- (b) the amount it would have received from the local electricity distribution network owner or operator in respect of the operation of the Highbank Power Scheme (embedded generation benefits).

"Loss Factor" means the number, determined by RDRML from time to time and advised to TrustPower and the JV Parties, to be applied to meter readings taken from Off-take Metering Equipment to determine the amount the water taken by the JV Parties needs to be increased to take account of losses of water (for example, by evaporation or seepage).

"Metering Equipment" means the Input Metering Equipment or the Off-take Metering Equipment (as the case may be).

"Off-take Metering Equipment" means metering equipment installed at an Off-take Point of Supply to measure and record the water taken by (or on behalf of) the JV Parties from the RDR at that Off-take Point of Supply.

"Off-take Point of Supply" means the gate or other structure on the RDR where water is taken from the RDR by or on behalf of the JV Parties.

"Operational Constraints of the Highbank Power Scheme" means:

- (a) any direction or request from an Authority requiring or otherwise seeking TrustPower to generate electricity; or
- (b) any failure of any of the components of the Highbank Power Scheme which form part of the Pumping Station used to deliver water to the JV Parties or into the RDR, (other than where the failure is due to TrustPower's breach of clause 10).

"Penstock" means the Highbank Power Scheme penstock.

"Period of Inaccuracy" means the period, determined by TrustPower, acting reasonably, during which the Metering Equipment did not measure or did not measure accurately.

"PPI" means the Producers Price Index (Inputs - Electricity, Gas and Water) as calculated by Statistics New Zealand and published quarterly or such replacement index as is reasonably nominated by TrustPower if the Producers Price Index (Inputs - Electricity, Gas and Water) ceases to exist or is varied from that applicable as at the date of this Deed.

"Pumping Station" means the pumping station to be constructed and owned by TrustPower for the purposes of pumping water up the Penstock as contemplated by paragraph D of the Introduction including:

- (a) all investigative and preliminary works;
- (b) all construction and commissioning works;
- (c) the construction of an intake structure to take water from the Rakaia River and the infrastructure connecting:
 - (i) the intake structure to the Penstock;
 - (ii) the pumping equipment to the Penstock;
- (d) the intake structure and infrastructure referred to in sub-clause (c) once constructed; and
- (e) all pumping equipment at the pumping station and all infrastructure and ancillary equipment (including such infrastructure and ancillary equipment which forms part of the Highbank Power Scheme but which is used for the purposes of the pumping station including electrical infrastructure and control systems).

"Rangitata Diversion Race" or "RDR" means the water conveyance system owned and operated by RDRML extending from the Rangitata River to the intake of the Highbank Power Scheme.

"RDRML" means Rangitata Diversion Race Management Limited.

"Required Flow Rate" means the flow rate of water which the JV Parties have advised TrustPower pursuant to clause 2.1(e), being the maximum water flow rate which TrustPower is to Supply, with such flow rate not to exceed five (5) cubic metres per

second, and thereafter such water flow rate as may be agreed between the JV Parties and TrustPower pursuant to clause 4.4.

"Resource Consent" means a resource consent under the RMA.

"RMA" means the Resource Management Act 1991.

"Rule" means the Electricity Governance Rules 2003 made pursuant to the Electricity Governance Regulations 2003.

"Scheme Rights" means the rights (including Resource Consents) held by TrustPower at any time in relation to:

- (a) the water used in the operation of the Highbank Power Scheme; and
- (b) the construction, maintenance and / or operation of the Highbank Power Scheme,

as varied, added to, renewed and replaced from time to time.

"Shoulder Water" means the water available to TrustPower from the Rangitata Diversion Race during an Irrigation Season under the terms of any agreement made between TrustPower and RDRML from time to time.

"Supply" has the meaning given to that term in clause 4.1 and **"Supplied"** has a corresponding meaning.

"Technical Dispute" has the meaning given in clause 14.2.

"TrustPower Access and Use of RDR Deed" means the deed dated on or about the date of this Deed between RDRML and TrustPower which provides for, amongst other things, TrustPower pumping water into the Rangitata Diversion Race and utilising Shoulder Water for the benefit of the JV Parties.

"Variable Charge" has the meaning given to it in clause 6.1(c).

"Water Conservation Order" means the National Water Conservation (Rakaia River) Order 1988 (SR 1988/241).

1.2 Interpretation: Unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (b) References to a person include an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, estate, state or government or any agency thereof, municipal or local authority, and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality) and that person's successors, permitted assigns, executors and administrators (as applicable).
- (c) The singular includes the plural and vice versa and words denoting individuals include other persons and vice versa.
- (d) A reference to any document includes reference to that document as modified, novated, supplemented, varied or replaced from time to time.
- (e) The expression "at any time" also means from time to time.

- (f) A reference to a section, clause, sub-clause, Schedule or a party is a reference to that section, clause, sub-clause, Schedule or party to this Deed unless stated otherwise.
- (g) Referring to anything after the word "including" does not limit what else might be included and any such reference is without limitation to what else might be included.
- (h) A reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision.
- (i) A reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done.
- (j) The rule of construction known as the contra proferentem rule does not apply to this Deed.
- (k) Any covenant or agreement on the part of two or more persons binds those persons jointly and severally.

1.3 **First Irrigation Season:** Pursuant to clause 4.2, TrustPower has agreed that it will be ready to commence Supply within 12 months after the Commencement Date. If the first Supply commences part way through an Irrigation Season that Irrigation Season will be the first Irrigation Season (notwithstanding anything to the contrary in this Deed including the reference to 10 September 2011 in clause 4.1). The immediately following Irrigation Season will accordingly be the second Irrigation Season.

2. CONDITIONS

2.1 **Conditions precedent:** This Deed is conditional on:

- (a) the JV Parties obtaining all necessary Consents and / or rights to Consents (including varying any existing Consents which the JV Parties may require) to permit the JV Parties and TrustPower to take water and contaminants from the Rakaia River and to:
 - (i) discharge such water and contaminants into the Rangitata Diversion Race;
 - (ii) store such water and contaminants in the Rangitata Diversion Race;
 - (iii) use such water for the purposes of generating electricity;
 - (iv) use such water for irrigation and stockwater purposes; and
 - (v) discharge such water and contaminants into the Rakaia River,
 so as to give effect to this Deed, in each case, on terms and conditions acceptable to TrustPower;
- (b) the JV Parties and TrustPower reaching agreement on TrustPower's obligations to comply with the conditions to the Consents referred to in clause 2.1(a) (such agreement to be recorded in writing and annexed as a schedule to this Deed);

- (c) the JV Parties entering into the Access to Infrastructure Deed and all of the conditions to the Access to Infrastructure Deed being satisfied or waived in accordance with its terms;
 - (d) BCIL receiving irrevocable commitments from investors to subscribe for securities pursuant to the BCIL Offer for an aggregate subscription amount of at least \$4,000,000;
 - (e) the JV Parties notifying TrustPower of the Required Flow Rate, with such Required Flow Rate being for not less than two (2) cubic metres per second for the first Irrigation Season and not less than three (3) cubic metres per second for subsequent Irrigation Seasons;
 - (f) TrustPower obtaining all necessary Consents to permit TrustPower to perform its obligations under this Deed, on terms and conditions acceptable to TrustPower;
 - (g) TrustPower and RDRML entering into the TrustPower Access and Use of RDR Deed;
 - (h) the JV Parties obtaining funding from a third party lender on terms satisfactory to the JV Parties for a sum of not less than \$11,000,000, to be used to assist in the funding of the JV Scheme; and
 - (i) EAL's board approving the terms of this Deed and all other arrangements and matters relating to the JV Scheme in its sole and absolute discretion (and without having to give any reason or justification in the event this condition is not satisfied).
- 2.2 **Waiver:** The JV Parties and TrustPower acknowledge that the conditions contained in clause 2.1 have been inserted for the benefit and protection of all parties and that these conditions may only be waived with the written agreement of all parties.
- 2.3 **Termination:** If the conditions in clause 2.1 are not fulfilled (or waived in accordance with clause 2.2) by 5.00 pm on 23 December 2009, any party may terminate this Deed by giving written notice to the others.
- 2.4 **Condition subsequent:** If following the date upon which this Deed becomes unconditional in respect of the conditions in clause 2.1, the allotment of any of the securities offered by BCIL pursuant to the BCIL Offer is invalid or becomes voidable, or BCIL is required to return the subscription monies received in respect of any such securities, under the Securities Act 1978, TrustPower may terminate this Deed by giving written notice to the JV Parties.
- 2.5 **Fulfilment of conditions:** In order to fulfil the conditions in clauses 2.1(a) and 2.1(f);
- (a) the JV Parties will apply for the Consents referred to in clause 2.1(a), diligently pursue those applications, and do all things reasonably within their power to obtain those Consents;
 - (b) TrustPower will apply for the Consents required to in clause 2.1(f), diligently pursue those applications, and do all things reasonably within its power to obtain those Consents;
 - (c) each party shall use reasonable endeavours, and cooperate with the other party, to cause those conditions to be satisfied; and

- (d) each party shall at the request of the other party, provide to the other party such information as the other party may require in respect of satisfaction of those conditions, including copies of applications for Consents.

This clause does not require a party to pay any money (other than normal fees, costs and charges) (including charges of professional advisers) or incur any material liability, in order to satisfy these conditions.

- 2.6 **Interdependent conditions:** The condition in clause 2.1(c) that all of the conditions to the Access to Infrastructure Deed being satisfied or waived (the "Access Interdependent Condition") will be satisfied if the Access to Infrastructure Deed has been duly entered into by each party to it and all the conditions in the Access to Infrastructure Deed are satisfied or waived except any condition which requires the Access Interdependent Condition to be satisfied.

3. TERM

- 3.1 **Term:** This Deed will continue until the earlier of:

- (a) 11:59.59 pm on the 25th anniversary of the Commencement Date, unless terminated earlier in accordance with its terms; and
- (b) the date on which the Access to Infrastructure Deed or the TrustPower Access and Use of RDR Deed expires or is terminated in accordance with its terms.

- 3.2 **Access Deeds:** The parties confirm to and agree with each other as follows:

- (a) in respect of the Access to Infrastructure Deed, the JV Parties confirm and agree that:
 - (i) it has a term expiring after the 25th anniversary of the Commencement Date;
 - (ii) they will not terminate or agree to the termination of the Access to Infrastructure Deed terminating, expiring or otherwise ceasing prior to the 25th anniversary of the Commencement Date;
 - (iii) they will comply with all their obligations under the Access to Infrastructure Deed as is necessary to ensure that it is not terminated due to the default of the JV Parties (or either of them); and
 - (iv) they will not agree to any variation or amendment of the Access to Infrastructure Deed which will result in them not being able to perform their obligations under this Deed; and
- (b) in respect of the TrustPower Access and Use of RDR Deed, TrustPower confirms and agrees that:
 - (i) it has a term expiring after the 25th anniversary of the Commencement Date;
 - (ii) it will not terminate or agree to the termination of the TrustPower Access and Use of RDR Deed terminating, expiring or otherwise ceasing prior to the 25th anniversary of the Commencement Date;
 - (iii) it will comply with all its obligations under the TrustPower Access and Use of RDR Deed as is necessary to ensure that it is not terminated due to the default of TrustPower; and

- (iv) it will not agree to any variation or amendment of the TrustPower Access and Use of RDR Deed which will result in TrustPower not being able to perform its obligations under this Deed.

3.3 Notification of default:

- (a) If:
 - (i) the JV Parties (or either of them) receive any notification or other advice by or on behalf of RDRML of termination, or which threatens termination, of the Access to Infrastructure Deed (including by the lapse of time after the notification or if the JV Parties do not rectify any matter or otherwise do or refrain from doing any matter), the JV Parties will provide a copy of the notification or other advice to TrustPower;
 - (ii) TrustPower receives any notification or other advice by or on behalf of RDRML of termination, or which threatens termination, of the TrustPower Access and Use of RDR Deed (including by the lapse of time after the notification or if TrustPower does not rectify any matter or otherwise do or refrain from doing any matter), TrustPower will provide a copy of that notification or other advice to the JV Parties.
- (b) If a party provides to the other any notification or other advice as referred to in clause 3.3(a), the provider of the notice will, if requested by the recipient, meet with the recipient to discuss how the provider will avoid the termination or threatened termination.
- (c) Notwithstanding clauses 3.3(a) or (b), it is not a breach of this Deed if a party fails to comply with clause 3.3(a) due to inadvertence and not as a result of a conscious decision not to provide the notification or other advice to the other party.

4. SUPPLY OF WATER

- 4.1 **Agreement to supply:** Subject to clauses 4.7 and 4.8 and the maximum rate at which water is permitted to be taken in accordance with the Consents, TrustPower agrees that in respect of each Irrigation Season during the term of this Deed, commencing with the Irrigation Season from 10 September 2011, it will be able to make available in the Rangitata Diversion Race at the Northern end of that race for the benefit of the JV Parties, water in accordance with the forecasts provided to it under clause 4.3, up to the Required Flow Rate ("**Supply**"). While this Deed requires TrustPower to have infrastructure to make the Supply, TrustPower offers no assurance as to any particular level of Supply where water is not available to be taken in accordance with the BCIL Consents.
- 4.2 **Commencement of Supply:** TrustPower agrees that it will be ready to commence the Supply, in accordance with the terms and conditions of this Deed, within 12 months after the Commencement Date.
- 4.3 **JV water supply requirements:** In relation to each Irrigation Season:
 - (a) the JV Parties will provide TrustPower with:
 - (i) a monthly forecast ("**Monthly Forecast**") setting out the water the JV Parties expect will be required to be Supplied on a weekly basis. The first Monthly Forecast will be provided one month prior to the commencement of the applicable Irrigation Season or, if the first

Supply may occur during an Irrigation Season, then one month prior to the date the first Supply is expected to occur. Monthly Forecasts will then be provided on a monthly basis with the last to be provided one month prior to the termination of the Irrigation Season.

- (ii) a weekly forecast ("**Weekly Forecast**") setting out the water the JV Parties require to be Supplied for each Day during that week. The Weekly Forecast will be provided by no later than 12 (noon) on each Friday during each week of the Irrigation Season and will apply for the seven Day period commencing on the immediately following Sunday. Notwithstanding the following:
 - (aa) the first Weekly Forecast will be provided no less than two days prior to the commencement of the Irrigation Season and will be in respect of the period until the expiry of the first Full Week of the Irrigation Season; and
 - (bb) the last Weekly Forecast will be in respect of the last Full Week of the Irrigation Season and the remaining Days (if any) in that Irrigation Season;
 - (iii) an update to the Weekly Forecast where the quantity of water the JV Parties require to be Supplied changes after the Weekly Forecast has been provided to TrustPower in accordance with clause 4.3(a)(ii). Any updated Weekly Forecast that requires additional water to be Supplied for any Day will be provided at least two days prior to the first Day that increased quantity of water is required, and any updated Weekly Forecast that only requires a reduction in the quantity of water will be provided at least one day prior to the first Day that the reduced quantity of water is required.
- (b) the JV Parties will:
- (aa) use their reasonable endeavours to ensure that each Monthly Forecast and Weekly Forecast is accurate; and
 - (bb) ensure that neither a Monthly Forecast nor a Weekly Forecast requires a flow rate of water in excess of the applicable Required Flow Rate;
- (c) within one day of receipt of each Weekly Forecast, TrustPower will advise the JV Parties if TrustPower is aware of any reason why it believes that any request for the Supply of water set out in the Weekly Forecast cannot be met. If any such notification is given, TrustPower will include in that notice the following information (to the extent available to TrustPower at that time):
- (i) the reason why a request for Supply cannot be met and its expected duration; and
 - (ii) the volume of water which can be Supplied during the period when the requested volume of water cannot be Supplied;
- (d) if at any time TrustPower becomes aware that it cannot Supply the volume of water requested in a Weekly Forecast, which it has not advised the JV Parties pursuant to clause 4.3(c), it will advise this to the JV Parties (whether before or after the Day such Supply was to be made) and will include in such notice the following information (to the extent available to TrustPower at that time):

- (i) the reason why the request for Supply cannot be, or has not been, met and its expected duration; and
- (ii) the volume of water which can be, or has been, Supplied during the period when the requested volume of water cannot, or has not been, Supplied; and
- (iii) in respect of an on-going event preventing Supply in accordance with a Weekly Forecast, subject to water being available for Supply and subject to the terms and conditions of this Deed, when TrustPower expects that it will be able to make Supplies in accordance with each Weekly Forecast.

4.4 Required Flow Rate:

- (a) TrustPower will ensure that it installs a Pumping Station of sufficient capacity so that it can undertake Supply at (and below) the Required Flow Rate advised to it pursuant to clause 2.1(e). TrustPower will advise the maximum capacity of the Pumping Station to the JV Parties when this is known to TrustPower.
- (b) No later than 12 months prior to the commencement of an Irrigation Season, the JV Parties may give a written notice ("Notice") requesting an increase to the Required Flow Rate for that following Irrigation Season and all subsequent Irrigation Seasons thereafter.
- (c) Upon receipt of the Notice by TrustPower the parties will negotiate the terms upon which TrustPower will provide such an increased Required Flow Rate. The JV Parties acknowledge that such negotiations may include matters such as:
 - (i) any alterations to the Pumping Station including whether additional equipment is required and if so, its availability and cost;
 - (ii) whether the intake gallery on the Rakaia River needs variation and, if so, the timing of this and any Consents required;
 - (iii) whether any Consents are required and, if so, who is to seek to obtain them, with the intent that Consents are obtained before expenditure is incurred in respect of the items in (i) and (ii);
 - (iv) the charges which will apply. The parties agree that the Charges applicable to the Supply up to the initial Required Flow Rate will not be varied.
- (d) If the Notice is received by TrustPower within five (5) years after the Commencement Date, then, if the parties are not able to agree any matter (other than the applicable charges) within three (3) months of TrustPower receiving the Notice, the matter in dispute can be referred by either party to dispute resolution under clause 14.2. If the Notice is received by TrustPower after five (5) years after the Commencement Date then neither party may refer any matter under this clause which is in dispute to dispute resolution under clause 14. Any dispute over charges will not be a matter which can be referred to dispute resolution under clause 14.

4.5 Second and subsequent Irrigation Seasons: Notwithstanding clause 4.4, the Required Flow Rate specified by the JV Parties pursuant to clause 2.1(e) can be shown as the Required Flow Rate for the first Irrigation Season and a higher Required Flow Rate for the second and subsequent Irrigation Seasons. In that event:

- (a) TrustPower will ensure that the Pumping Station can, in respect of the first Irrigation Season, meet the Required Flow Rate for that first Irrigation Season and, in respect of the second and subsequent Irrigation Seasons, meet the Required Flow Rate for that second Irrigation Season;
- (b) the Annual Fixed Charge and the EA Fixed Charge for the first Irrigation Season will be \$545 and \$89 per litre per second for each litre per second of the Required Flow Rate respectively, and in the second Irrigation Season will be:
 - (i) \$545 and \$89 per litre per second (subject to adjustment pursuant to clauses 6.2 and 6.3) for each litre per second of the Required Flow Rate specified for the first Irrigation Season; and
 - (ii) \$590 and \$89 per litre per second (subject to adjustment pursuant to clauses 6.2 and 6.3) for each litre per second of the Required Flow Rate specified for the second and subsequent Irrigation Seasons which is in excess of the Required Flow Rate specified for the first Irrigation Season.

4.6 **Source and method of delivery of water:** The source of the water to be Supplied by TrustPower under this Deed, and the method of delivery of such water, shall be at the sole discretion of TrustPower provided however that for so long as it is necessary so as to meet the conditions contained in the BCIL Consents, TrustPower shall take water up to the lesser of:

- (a) the maximum Required Flow Rate; and
- (b) as is required to satisfy the relevant forecasts provided pursuant to clause 4.3,

for each Irrigation Season from the Rakaia River, so as to assist the JV Parties to meet those conditions contained in the BCIL Consents.

4.7 **Constraints on supply:** Notwithstanding any other provision in this Deed, the JV Parties will not be entitled to require TrustPower to Supply water in any Day of the Irrigation Season in excess of the maximum volume of water TrustPower is able to supply because of:

- (a) Operational Constraints of the Highbank Power Scheme; or
- (b) limitations imposed on TrustPower by any Laws or Consent conditions.

For the avoidance of doubt, if for whatever reason TrustPower is only able to Supply water taken from the Rakaia River to fulfil some but not all of the required volume in a Day that is set out in a Weekly Forecast (as may be updated in accordance with clause 4.3(a)(iii)), TrustPower shall be obliged to provide the JV Parties with that Rakaia River water which it is able to supply in priority to any other commitment TrustPower may have to supply such water to a third party. TrustPower will not be obliged to provide any water which it may have stored in the Rangitata Diversion Race, but may elect to do so.

4.8 **Interruptions to Supply:** TrustPower may interrupt or suspend the Supply of water under this Deed:

- (a) where TrustPower has given a notice of termination of this Deed due to the default of the JV Parties;

- (b) when the Scheme Rights are, or are in TrustPower's reasonable opinion likely to be, varied in any manner as a result of this Deed or any matter or document contemplated by this Deed;
- (c) when, in TrustPower's reasonable opinion, anything in this Deed would have the effect of requiring TrustPower to seek any additional Resource Consent (other than those referred to in clause 2.1(f)) or any variation to a Resource Consent or may have the effect of the Scheme Rights being reviewed;
- (d) to enable TrustPower to inspect or effect alterations, maintenance, repairs or additions to the Pumping Station or other method by which TrustPower makes the Supply;
- (e) to avoid danger to persons or property, including, without limitation, to avoid damage to the Pumping Station or other method by which TrustPower makes the Supply or the RDR;
- (f) upon instructions from any Authority;
- (g) due to any Force Majeure;
- (h) to comply with Law, including to avoid a breach or likely breach of a Consent;
- (i) where the JV Parties' rights to use the Rangitata Diversion Race have been suspended or terminated pursuant to the Access to Infrastructure Deed;
- (j) where RDRML has directed that TrustPower interrupt, suspend or cease the Supply under the TrustPower Access and Use of RDR Deed; or
- (k) where RDRML has interrupted, suspended or terminated TrustPower's access and / or use of the RDR or ability to make the Supply.

- 4.9 **Notices of planned interruptions:** TrustPower will give the JV Parties as much prior notice as practicable, (but this need not exceed five Business Days) of any planned interruption to the Supply.
- 4.10 **TrustPower Consent applications:** The JV Parties agree to support all Consent applications made by TrustPower to give effect to the arrangements set out in this Deed for delivery of water by TrustPower into the RDR for supply to the JV Parties.
- 4.11 **Consents:** The JV Parties will ensure that all Consents relating to or affecting the JV Scheme will not be amended, varied or replaced without the prior written consent of TrustPower.
- 4.12 **BCIL Consents:** The JV Parties acknowledge and agree that if during an Irrigation Season there is a volume of water available to be taken by the JV Parties under the Consents held by or licensed to the JV Parties, and that water is not otherwise committed to a shareholder of BCIL or to a third party, then the JV Parties will make such excess water ("**Excess Water**") available to TrustPower at no cost. The JV Parties will advise TrustPower of the volume of the Excess Water one month prior to the beginning of each Irrigation Season and may not vary that notice during that Irrigation Season (unless the notice from the JV Parties was incorrect, by setting out less Excess Water than there is, when the notice will be varied to the actual volume of the Excess Water).
- 4.13 **Losses:** When determining the volume of water taken by the JV Parties from the RDR, readings from the Off-take Metering Equipment will be increased by the Loss Factor. The JV Parties acknowledge that the Loss Factor is determined by RDRML. If the JV

Parties wish to dispute the Loss Factor this is a matter which the JV Parties must take up with RDRML directly but must, if TrustPower so requests, permit TrustPower to participate in such dispute if TrustPower believes that determination of such dispute could affect TrustPower. Accordingly, the JV Parties agree to advise TrustPower of any dispute between the JV Parties and RDRML in respect of Loss Factors so TrustPower can elect whether or not it wishes to participate in such dispute.

5. WATER CONSERVATION ORDER

- 5.1 **JV Parties to vary BCIL Consents:** If TrustPower is successful in obtaining a variation to the Water Conservation Order that enables the BCIL Consents to be varied so that the right to take water is transferred to be a right to take and transport the water via Lake Coleridge and a canal system to the Rangitata Diversion Race, the JV Parties will use all reasonable endeavours to vary the BCIL Consents to allow the maximum amount of water to be extracted under the BCIL Consents to be transferred via Lake Coleridge provided that:
- (a) the variation is not prejudicial to the JV Parties, in particular:
 - (i) the amount of water able to be taken by the JV Parties under the BCIL Consents;
 - (ii) the term of any of the BCIL Consents; and
 - (iii) the reliability of water able to be Supplied,
 is not reduced; and
 - (b) any costs incurred by the JV Parties arising directly from the variation are met by TrustPower, after deducting any cost savings to the JV Parties arising from the variation. TrustPower agrees to discuss with the JV Parties any potential to share any economic benefits arising from the variation (although the JV Parties acknowledge that the Annual Fixed Charge and the EA Fixed Charge will not alter and there is no expectation of any agreement with TrustPower).
- 5.2 **Supply to fulfil BCIL Consent conditions:** If TrustPower commences Supplying water under this Deed by the right to take and transport the water via Lake Coleridge and a canal system to the Rangitata Diversion Race and at that time the JV Parties are obliged under the BCIL Consents to make water available to third parties at points down stream of the Highbank Power Scheme, then TrustPower will ensure that it puts into the Rakaia River at the Highbank Power Scheme (and / or, does not take from the Rakaia River) sufficient water to enable the JV Parties to meet such obligation, up to the difference between the volume of water the JV Parties may take under the BCIL Consents and the volume of water TrustPower supplies to the JV Parties (including Shoulder Water).
- 5.3 **Termination of this clause 5:** This clause 5 will cease to apply five (5) years after the Commencement Date if the Water Conservation Order has not been varied as referred to in clause 5.1 by that date unless TrustPower evidences to the JV Parties that TrustPower is at that time still pursuing such a variation. In particular, TrustPower must have lodged its application for variation of the Water Conservation Order and such application must not have been rejected or, if rejected, all rights of appeal or judicial review or other action available to TrustPower must not have been unsuccessful or the time period for all such matters must not have expired.

6. CHARGES

6.1 **Charges:** In consideration of TrustPower entering into this Deed and agreeing to supply water to the JV Parties in the manner contemplated by this Deed, the JV Parties agree to pay to TrustPower the following charges:

- (a) an annual fixed charge ("**Annual Fixed Charge**") calculated as follows:
 - (i) \$545 per litre per second for each litre per second of the Required Flow Rate equal to the Required Flow Rate which the JV Parties notify TrustPower pursuant to clause 2.1(e) in respect of the first Irrigation Season. The amount of \$545 will be escalated in accordance with clause 6.2 in respect of each Irrigation Season after the first Irrigation Season; plus
 - (ii) in respect of the second and subsequent Irrigation Seasons \$590 per litre per second for each litre per second of the Required Flow Rate for the second (and subsequent) Irrigation Seasons which the JV Parties notify TrustPower pursuant to clause 2.1(e) which is in excess of the Required Flow Rate which the JV Parties notify TrustPower pursuant to clause 2.1(e) in respect of the first Irrigation Season. The amount of \$590 will be escalated in accordance with clause 6.2 in respect of each Irrigation Season after the first Irrigation Season;
- (b) an annual fixed charge ("**EA Fixed Charge**") calculated as follows:
 - (i) \$89 per litre per second for each litre per second of the Required Flow Rate equal to the Required Flow Rate for the first Irrigation Season which the JV Parties notify TrustPower pursuant to clause 2.1(e) in respect of the first Irrigation Season. The amount of \$89 will be escalated in accordance with clause 6.3 in respect of each Irrigation Season including in respect of the first Irrigation Season; plus
 - (ii) in respect of the second and subsequent Irrigation Seasons \$89 per litre per second for each litre per second of the Required Flow Rate for the second and subsequent Irrigation Seasons which the JV Parties notify TrustPower pursuant to clause 2.1(e) which is in excess of the Required Flow Rate which the JV Parties notify TrustPower pursuant to clause 2.1(e) in respect of the first Irrigation Season. The amount of \$89 will be escalated in accordance with clause 6.3 in respect of each Irrigation Season including the in respect of the second Irrigation Season;
- (c) **Variable Charge:** A variable charge ("**Variable Charge**") of \$0.037 per litre of water Supplied by TrustPower at the request of the JV Parties during an Irrigation Season (with the volume being determined from the Off-take Metering Equipment adjusted by the Loss Factor as referred to in clause 4.13). The amount of \$0.037 will be escalated in accordance with clause 6.6.

6.2 **Escalation of the Annual Fixed Charge:** Prior to the commencement of each Irrigation Season after the first Irrigation Season, the amount of \$545 and \$590 specified in clause 6.1(a) will be escalated as follows:

$$N1 = N \times \left[\frac{A}{B} \right]$$

where:

- N = \$545 or \$590 (as applicable);
- N1= the Annual Fixed Charge for the Relevant Irrigation Season;
- A = the CPI for the quarter ending on 30 June in the year in which the Relevant Irrigation Season commences; and
- B = the CPI for the quarter ending on 30 June 2009,

provided that if N1 for the Relevant Irrigation Season is less than N1 for the immediately preceding Irrigation Season ("N0"), N1 will equal N0.

- 6.3 **Escalation of the EA Fixed Charge:** Prior to the commencement of each Irrigation Season the amount of \$89 specified in clause 6.1(b) will be escalated as follow:

$$N1 = N \times \left[\frac{A}{B} \right]$$

where:

- N = \$89;
- N1= the EA Fixed Charge for the Relevant Irrigation Season;
- A = the current rate in \$/kVA for EAL line charges to the Highbank Power Scheme charged by EAL; and
- B = \$31.28,

If EAL alters its charging and TrustPower reasonably believes that the above escalation formula is accordingly inappropriate, TrustPower may amend or replace the above formula with an escalation provision which, in TrustPower's reasonable opinion, is a fair substitute so as to continue to give effect to the intent of this clause.

- 6.4 **Commencement of first Irrigation Season part way through an Irrigation Season:** If the first Irrigation Season commences part way through an Irrigation Season then the Annual Fixed Charge and the EA Fixed Charge applicable to that Irrigation Season shall be adjusted pro-rata in accordance with the following formula:

$$N2 = N1 \times \left[\frac{A}{B} \right] \text{ where:}$$

- N2 = the Annual Fixed Charge or the EA Fixed Charge for that Irrigation Season (as applicable);
- N1= the Annual Fixed Charge determined in accordance with clause 6.1(a)(i) or the EA Fixed Charge determined in accordance with clause 6.1(b)(i) (as applicable);
- A = the aggregate number of days in the period starting on the date on which the Supply commenced and ending on the date which that Irrigation Season ends; and
- B = 242 (being the number of days in an Irrigation Season).

6.5 **Timing of the Annual Fixed Charge and the EA Fixed Charge:** The Annual Fixed Charge and the EA Fixed Charge for each Irrigation Season shall be calculated as at the last day of August immediately prior to, and will take effect from, the commencement of the next following Irrigation Season.

6.6 **Adjustment to Variable Charge:** The Variable Charge for each Irrigation Season shall be escalated as at the last Business Day immediately prior to 1 January of the year in which the relevant Irrigation Season ("Relevant Irrigation Season") commences ("Base Year") and will take effect from the commencement of the Relevant Irrigation Season in accordance with the following formula:

$$N1 = N \times \left[\frac{A}{B} \right] \text{ where:}$$

N = \$0.037 per litre per second of water supplied;

N1 = the Variable Charge for the Relevant Irrigation Season;

A = the average PPI over the two year period ending on 30 September in the year immediately preceding the Base Year; and

B = the average PPI over the two year period ending on 30 September 2010,

provided that if:

- (a) N1 for the Relevant Irrigation Season is less than N1 for the immediately preceding Irrigation Season ("N0"), N1 will equal N0; and
- (b) the first adjustment to the Variable Charge shall be as at the Business Day immediately before 1 January 2012, and the Variable Charge as adjusted, shall take effect on 1 September 2012. Until 1 September 2012, the Variable Charge will be \$0.037 per litre per second.

6.7 **Acknowledgement:** The JV Parties acknowledge and agree that:

- (a) there is no provision in the Annual Fixed Charge or the EA Fixed Charge for equipment redundancy;
- (b) the JV Parties shall remain liable to pay the Annual Fixed Charge and the EA Fixed Charge pursuant to clauses 6.1(a) and 6.1(b) respectively notwithstanding that the JV Parties may not take delivery of water pursuant to this Deed; and
- (c) TrustPower will be the party undertaking the calculations pursuant to this clause 6 and if any variable required for any calculation pursuant to this clause 6 is not available at the time TrustPower undertakes any of the calculations, TrustPower may, acting reasonably, estimate such variable and upon such variable becoming available, TrustPower will undertake a revised calculation and the parties will make payment to each other to reflect either an over charge or an under charge arising due to the use of the estimated variable rather than the actual variable.

6.8 **Acknowledgement by TrustPower:** TrustPower acknowledges that the JV Parties will only be liable to pay the Variable Charge for the volume of water taken by the JV Parties (as determined from the Off-take Metering Equipment as referred to in clause 8 and adjusted by the Loss Factor as referred to in clause 4.13).

- 6.9 **Acknowledgement by the JV Parties:** The JV Parties agree that the JV Parties will not take more water from the RDR than is equal to the volume of water Supplied by TrustPower (adjusted for Losses) which has not already been taken by the JV Parties and, in respect of any Day, which is in excess of the lesser of the volume specified in the Weekly Forecast applicable to that Day and the volume TrustPower has advised the JV Parties pursuant to clause 4.3(b) or (c) that it was able to Supply in respect of that Day. If the JV Parties take more water in any Day because the notice from TrustPower given pursuant to clause 4.3(d) was given during or after that Day ("**Unauthorised Supply**"), then the JV Parties must immediately cease taking any further water until a volume of water equal to the volume of the Unauthorised Supply ("**Make up Water**") has been put into the Rangitata Diversion Race by TrustPower, with the Make up Water not being available to be taken by the JV Parties. The JV Parties will be liable for all Charges in respect of the Unauthorised Supply but will not be liable for the Charges in respect of Makeup Water.

7. INVOICING AND GST

- 7.1 **Invoicing for Fixed Charges:** TrustPower will invoice the JV Parties for the Charges monthly in arrears on the fifth Business Day of each month. The invoice will be payable on the 20th day of the month of invoice (provided that if TrustPower does not send its invoice on or by the fifth Business Day of a month, the time for payment by the JV Parties will be extended by each day of the delay by TrustPower in sending its invoice).
- 7.2 **GST and other taxes:** All Charges (and all other sums payable under this Deed) are stated exclusive of GST. TrustPower shall add to the Charges (and where applicable, such other sums) GST and all other taxes, charges and levies, payable to any Authority or Government or regulatory body or payable at Law, as may from time to time be applicable to the Charges or such other sums payable under this Deed or the provision of water pursuant to this Deed, and the same shall be payable contemporaneously with the payment of the Charges and such other sums payable under this Deed.
- 7.3 **Interest:** If the JV Parties fail to pay any amount payable to TrustPower under this Deed on the due date, the JV Parties will pay to TrustPower interest on that amount at the Default Rate, calculated as at the due date for payment and recalculated in intervals of 90 days thereafter for the period from the due date until the date of payment, provided that nothing in this clause shall affect any rights TrustPower may have, including to suspend its obligations under this Deed, for non-payment of any such amount.
- 7.4 **Invoice on Termination:** Notwithstanding any provision to the contrary, upon termination or expiry of this Deed, TrustPower will render an invoice to the JV Parties for the Supply of water by TrustPower prior to such termination or expiry. The JV Parties will pay the amount invoiced within 14 days of receipt of the invoice.
- 7.5 **No set off:** All amounts payable by the JV Parties to TrustPower under this Deed must be paid:
- (a) without deduction or set off; and
 - (b) by way of automatic payment to TrustPower's bank account, as advised by TrustPower to the JV Parties from time to time.

8. METERING

- 8.1 **Off-take Metering:** The JV Parties will:
- (a) install, or ensure that there is installed, Off-take Metering Equipment at each Off-take Point of Supply to determine the volume of water taken by the JV

Parties at that Off-take Point of Supply during each Day in an Irrigation Season;

- (b) ensure that:
 - (i) the Off-take Metering Equipment is operated, maintained and read in accordance with good industry practice;
 - (ii) TrustPower is provided with the data or reports in a form and containing the information reasonably required by TrustPower, from the Off-take Metering Equipment;
 - (iii) TrustPower is permitted to obtain data directly from the Off-take Metering Equipment and to install (and obtain data directly from) a check meter if requested by TrustPower provided that the check meter does not affect the Off-take Metering Equipment; and
 - (iv) the Off-take Metering Equipment is tested in accordance with good industry practice if requested by either party.
- (c) Neither party may require a test of the accuracy of the Off-take Metering Equipment more frequently than once annually. The cost of testing will be borne by the party requesting the test unless the Off-take Metering Equipment is found to be measuring inaccurately, when the cost of the tests will be borne by the JV Parties.

8.2 **Input Metering:** TrustPower will:

- (a) install, or ensure that there is installed, Input Metering Equipment at each Input Point of Supply to determine the volume of water Supplied at that Input Point of Supply during each Day in an Irrigation Season;
- (b) operate, maintain and read the Input Metering Equipment (or ensure that the Input Metering Equipment is operated, maintained and read) in accordance with good industry practice;
- (c) provide (or ensure that there is provided) to the JV Parties the data or reports in a form and containing the information reasonably required by the JV Parties from the Input Metering Equipment; and
- (d) test the Input Metering Equipment (or ensure that the Input Metering Equipment) is tested in accordance with good industry practice. The JV Parties may not require a test of the accuracy of the Input Metering Equipment more frequently than once annually. The cost of testing will be borne by the JV Parties unless the Input Metering Equipment is found to be measuring inaccurately, when the cost of the test will be borne by TrustPower.

8.3 **Accuracy of the Metering Equipment:** The Metering Equipment will be deemed to be accurate unless either party disputes its accuracy by written notice to the other party. If it is discovered that any of the Metering Equipment is not functioning or is inaccurate, then the quantity of water taken by the JV Parties or Supplied by TrustPower (as the case may be) during the Period of Inaccuracy will be determined by TrustPower acting reasonably.

9. **CONSTRUCTION OF PUMPING STATION**

9.1 **Commencement of Construction:** The JV Parties agree that TrustPower shall not be obliged to commence any construction in respect of the Pumping Station, unless and

until TrustPower is satisfied that all relevant Consents for the construction of the Pumping Station has been obtained and all the conditions in clause 2.1 have been satisfied or waived.

- 9.2 **Standard of construction:** The Pumping Station and all equipment therein shall be constructed in accordance with Good Industry Practice and to a standard capable of meeting the requirements to Supply water under this Deed.

- 9.3 **Right to suspend construction:** Without limiting any other rights TrustPower may have, TrustPower shall have the right to immediately suspend construction of the Pumping Station if, and for so long as, any of the circumstances in clause 4.8 apply.

10. MAINTENANCE OF PUMPING STATION

- 10.1 **Maintenance in accordance with Good Industry Practice:** TrustPower shall maintain the Pumping Station in accordance with Good Industry Practice and, subject to the terms of this Deed, shall take all steps reasonably required to ensure that when water is available under the Consents that such water will be pumped up into the RDR in accordance with the forecasts received from the JV Parties pursuant to clause 4.3

- 10.2 **Replacement of plant and equipment:** TrustPower will carry out a regular maintenance programme in respect of the Pumping Station to ensure all pumping and other equipment is properly maintained.

- 10.3 **Regular maintenance:** TrustPower will at its cost and within the Fixed Charge meet all costs of regular maintenance of the Pumping Station including the costs of all consumable and items requiring regular replacement as part of the operations of the Pumping Station.

11. FORCE MAJEURE

- 11.1 **Notice of Force Majeure Event:** If either party is affected by a Force Majeure Event, then it must immediately after the occurrence of the Force Majeure Event notify the other party of the Force Majeure Event and provide details of:

- (a) the obligations affected;
- (b) the action that the affected party has taken and proposes to take to remedy the situation;
- (c) the affected party's estimate of the time during which it will be unable to carry out the affected obligations due to the Force Majeure Event; and
- (d) the affected party's estimate of the costs it will incur to remedy the situation.

- 11.2 **Suspension of Obligations:** Following a Force Majeure Event, the affected party's obligations under this Deed will be suspended but only to the extent and for so long as the period that such obligations are genuinely affected by the Force Majeure Event.

- 11.3 **Failure to Pay Money or Lack of Finance:**

- (a) A party may not rely upon a Force Majeure Event to excuse or suspend any obligation that it has or may have to pay money under this Deed.
- (b) A lack of finance can never be a Force Majeure Event.

- 11.4 **Affected Party's Obligations:** Despite clause 11.1, the party affected by the Force Majeure Event must:

- (a) without unreasonable delay use reasonable efforts (including the expenditure of reasonable sums of money) to mitigate the effect upon its performance of this Deed and to fulfil its obligations under this Deed (but without prejudice to any party's right to terminate this Deed) but nothing in this clause 11 obliges a party to settle a strike, lock out, boycott or other industrial dispute on terms it considers, acting reasonably, to be unacceptable;
- (b) keep the other party informed (not less than weekly) of the steps being taken to mitigate the effect upon their performance of this Deed, and an estimate of the continued duration of the delay;
- (c) when the period for which its obligations are affected by a Force Majeure Event ceases, recommence performance of all of its affected obligations under this Deed the subject of its original notice under this clause 11.

11.5 **No Default:** Where a party has validly issued a notice under clause 11.1, that party will not be in default of its obligations under this Deed to the extent that any failure or delay in the observance or performance of those obligations by that party is caused by the relevant Force Majeure Event specified in such a notice.

12. INDEMNITIES

12.1 **Indemnity from the JV Parties:** The JV Parties shall indemnify and keep indemnified TrustPower against any liability or other Loss TrustPower may sustain or incur due to any Contaminants occurring in the Rangitata Diversion Race which are alleged or established to have arisen due to TrustPower depositing water into the Rangitata Diversion Race pursuant to the provisions of this Deed except where this arises due to TrustPower's negligence (such as spilling chemicals into the water when undertaking maintenance of the Pumping Station or chemicals leaking from the Pumping Station because the Pumping Station has not been maintained in accordance with this Deed). In the event that RDRML claims, or advises TrustPower that it may claim, that TrustPower has deposited a Contaminant into the Rangitata Diversion Race and TrustPower believes that it may have a claim against the JV Parties under the indemnity in this clause, TrustPower will advise this to the JV Parties and, in the event that there is a dispute between TrustPower and RDRML over the matter, TrustPower shall update the JV Parties from time to time as to the status of the dispute, and advise the JV Parties of the result of any determination made in respect of the dispute.

13. LIMITATION OF LIABILITY

- 13.1 **Exclusion of Liability:** TrustPower shall not be liable to the JV Parties for any Loss which may be sustained by the JV Parties in connection with a restriction on, or suspension of, the Supply of water pursuant to clause 4.7 or 4.8.
- 13.2 **Exclusion of consequential loss:** Neither party nor any of their respective directors, officers, employees or agents shall in any circumstances whatsoever (whether or not the damage is reasonably foreseeable) be liable to the other party, in contract or tort, for:
- (a) any indirect loss, consequential loss, loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
 - (b) any loss resulting from the liability of the other party to any other person.

This clause 13.2 does not apply to:

- (i) subject to the monetary limitation set out in clause 13.3(d), the Charges, with the JV Parties being liable for all Charges, and any Loss which TrustPower may suffer can be determined by including

any Charges which have not been paid and which will not be payable due to the early termination of this Deed; or

- (ii) any amount payable pursuant to clause 15.4.

13.3 Limitation of Liability:

- (a) Any claims for Loss arising from breach of this Deed by TrustPower must be lodged with TrustPower within six months of the event's occurrence.
- (b) TrustPower's maximum aggregate liability to the JV Parties for all or any events or breaches of the terms and provisions of this Deed is \$4,000,000.
- (c) Where a breach arises from a failure by TrustPower to Supply water in breach of TrustPower's obligations in this Deed, the maximum liability of TrustPower shall be a sum determined in accordance with the following formula (but subject always to the maximum aggregate liability of \$4,000,000 set out in clause 13.3(b)):

$$A = B \times \frac{C}{D}$$

Where:

- A = means the amount payable by TrustPower;
- B = means the Annual Fixed Charges payable during the period of TrustPower's default;
- C = means the volume of water not Supplied by TrustPower during the period of the default which the JV Parties had requested TrustPower to Supply pursuant to clause 4.3 during that period;
- D = means the volume of water which the JV Parties had requested TrustPower to supply pursuant to clause 4.3 during the period of the default.
- (d) The collective maximum aggregate liability of the JV Parties to TrustPower for all or any events or breaches of the terms and provisions of this Deed (including unpaid Charges) and for any liability under clause 12.1 is \$15,000,000 provided that such amount (the "JV Parties Liability Cap") shall, on each anniversary of the Commencement Date reduce by \$1,000,000, until the fifth anniversary of the Commencement Date, from which date the JV Parties Liability Cap shall be \$10,000,000 which shall apply for the remainder of the term of this Deed.
- (e) The limitation of liability in clause 13.3(d) shall not apply to any amount payable by the JV Parties to TrustPower under clause 15.4.

13.4 Benefit: The benefit of this clause 13 shall extend to the directors, officers, employees and agents of TrustPower and the JV Parties respectively and may be enforced by those persons pursuant to the Contracts (Privity) Act 1982.

13.5 Contracts with customers: The JV Parties will ensure that every agreement between them and their customers contains a clear and unambiguous clause that excludes the liability of TrustPower to that customer including liability in tort. Such a clause must be

expressed to be for the benefit of, and enforceable by, TrustPower pursuant to the Contracts (Privity) Act 1982.

14. DISPUTE RESOLUTION

14.1 **Disputes generally:** Any dispute, controversy or claim arising out of or relating to this Deed or the breach, termination or claimed invalidity of this Deed (but expressly excluding any dispute the subject of clause 14.2 or any dispute where the parties have agreed that this clause will not apply) ("**Dispute**") must be dealt with in the following manner:

- (a) the party claiming the Dispute must:
 - (i) give a written notice of the Dispute to the other party; and
 - (ii) seek to convene a meeting of representatives of the parties to discuss the Dispute with the aim of resolving it;
- (b) if such meeting does not take place or fails to resolve the Dispute within 10 Business Days of the written notice of the Dispute having been received, the parties must attempt to resolve the Dispute by negotiation between the chief executive officers of each party, who shall seek to resolve the Dispute within 10 Business Days of the Dispute being referred to them;
- (c) if such negotiations between the chief executive officers do not take place or fail to resolve the Dispute within 20 Business Days of the written notice of the Dispute having been received, then:
 - (i) either party may refer the Dispute to arbitration by a single arbitrator;
 - (ii) the arbitration will be commenced by a party giving notice to the other party stating the subject matter and details of the Dispute and requiring the Dispute to be referred to arbitration;
 - (iii) the arbitrator will be appointed by the parties, or failing agreement within 10 Business Days after, and exclusive of, the date of giving the notice, will be appointed at the request of a party by the President for the time being of the New Zealand Law Society (or his or her nominee); and
 - (iv) the place of arbitration will be Auckland.

14.2 **Technical Disputes:** Any dispute or controversy as between the parties as referred to in clause 4.4(d) ("**Technical Dispute**") must be dealt with in the following manner:

- (a) the party claiming the Technical Dispute must:
 - (i) give a written notice of the Technical Dispute to the other party; and
 - (ii) seek to convene a meeting of representatives of the parties to discuss the Technical Dispute with the aim of resolving it;
- (b) if such meeting does not take place or fails to resolve the Technical Dispute within 10 Business Days of the written notice of the Technical Dispute having been received, the parties must attempt to resolve the Technical Dispute by negotiation between the chief executive officers of each party, who shall be authorised to resolve the Dispute; and

- (c) if such negotiations do not take place or fail to resolve the Technical Dispute within 20 Business Days of the written notice of the Technical Dispute having been received, either party may refer the Technical Dispute to the President for the time being of the New Zealand Law Society (or his or her nominee) who shall appoint a professional with expertise in matters similar to the Technical Dispute ("**Expert**") who shall act as an expert and shall following discussions with the parties (which they must make themselves available for at the reasonable request of the Expert) determine the matter within 20 Business Days of his or her appointment. The determination of the Expert (including as to costs) shall be final and binding upon the parties.

14.3 **Interlocutory or urgent relief:** This clause 14 does not prevent any party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

14.4 **Continuing obligations:** The parties agree that whilst any Dispute or Technical Dispute is continuing they will (but subject always in the case of TrustPower to clause 4.7 and 4.8), continue to perform their obligations under this Deed.

15. TERMINATION

15.1 **Termination for cause:** This Deed may be terminated immediately by written notice given by either party (referred to in this clause as the "**first party**") to the other (referred to in this clause as the "**second party**") if:

- (a) the second party has failed to comply with an earlier written notice given by the first party, specifying a material breach of this Deed by the second party and, in the case of a breach which is capable of remedy, requiring that the second party either:
 - (i) remedies that breach within 20 Business Days' after receipt of that earlier notice (where that breach is capable of being remedied within that period); or
 - (ii) (if that breach is capable of being remedied, but not within 20 Business Days after receipt of that earlier notice) takes all reasonable steps to remedy that breach as soon as possible and provides a written assurance to the first party that the second party will continue to take such steps until the breach is remedied,

provided that the first party may not at any time give such a notice terminating this Deed if, at that time, the first party is in default under this Deed;

- (b) the second party goes into liquidation (otherwise than for a solvent restructuring which has been previously approved in writing by the first party (which approval may not be unreasonably withheld)) or is removed from the New Zealand Companies Register (otherwise than pursuant to an amalgamation approved by the other party) or if a receiver or statutory manager or interim liquidator has been appointed in respect of the second party or any material part of its assets or if any event analogous in nature has occurred in respect of the second party under the laws of any relevant jurisdiction;
- (c) the second party makes any assignment to, or enters into an arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring); or

- (d) the second party has committed any material breach of this Deed, which breach is not capable of being remedied by the second party within 20 Business Days, provided that the first party may not at any time give such a notice terminating this Deed if, at that time, the first party is in default under this Deed.

15.2 Termination of any Consent: If:

- (a) a party ceases to hold or have the benefit of any Consent which is necessary for, in the case of TrustPower, its performance of this Deed and, in the case of the JV Parties, to take and distribute water; or
- (b) a party ceases to be entitled to use the RDR which is necessary for, in the case of TrustPower, its performance of this Deed and, in the case of the JV parties, to take and distribute water,

then, without prejudice to the rights and obligation of the parties in respect of such matter, unless the parties otherwise agree, this Deed will thereupon terminate provided that each party will use its respective best endeavours to ensure that in respect of it, the circumstances in clause 15.2 do not arise.

15.3 JV Parties entitlement to terminate prior to expiry of Term: The JV Parties may terminate this Deed at any time by:

- (a) giving TrustPower not less than 20 Business Days notice in writing ("Termination Notice"); and
- (b) complying with clause 15.4.

15.4 Termination Payment payable by the JV Parties for termination prior to expiry of Term: Upon the JV Parties giving TrustPower the Termination Notice, TrustPower shall be entitled to, and the JV Parties shall pay to TrustPower, not later than 10 Business Days after the receipt by TrustPower of the Termination Notice, the amount ("Termination Payment") determined by TrustPower as follows:

D = Net Present Value of A

where:

"D" = the amount payable to TrustPower as the Termination Payment;

"A" = the sum of the Annual Fixed Charges payable for each Irrigation Season following the date of the Termination Notice until the 25th anniversary of the Commencement Date and calculated on the following assumptions:

- (a) each component of the Annual Fixed Charge for each Irrigation Season occurring after the receipt by TrustPower of the Termination Notice shall be deemed to escalate (immediately prior to the commencement of the next relevant Irrigation Season) by 2.5% rather than by reference to CPI; and
- (b) the Required Flow Rate will be that which is applicable at the date of receipt by TrustPower of the Termination Notice; and
- (c) if the Termination Notice is given during an Irrigation Season, the Annual Fixed Charge payable in respect of that Irrigation Season shall be included in the Annual Fixed Charges for the purposes of "A";

"Net Present Value" shall be determined using a discount rate equal to the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10:45am on the date of receipt by TrustPower of the Termination Notice (or if such rate is not available, such other rate as reasonably determined by TrustPower).

- 15.5 **Acknowledgement:** The parties acknowledge and agree that the amount determined pursuant to clause 15.4 represents a termination payment and not a payment for a breach of this Deed. If, however, a Court construes the payment as a payment for a breach of this Deed, the parties acknowledge and agree that the amount determined pursuant to clause 15.4 represents a genuine pre-estimate of the Loss that TrustPower would suffer as a result of the JV Parties terminating this Deed prior to expiry of its term, and all amounts payable pursuant to clause 15.4, are a reflection of that Loss.

- 15.6 **Consequences of termination:** Upon termination of this Deed for whatever reason:

- (a) such termination will be without prejudice to the rights and remedies of either party in respect of any breach of this Deed by the other party, where such breach occurred prior to the termination of this Deed; and
- (b) the provisions of clauses 13, 17 and 22.1, together with those other provisions of this Deed which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.

16. REPRESENTATIONS AND WARRANTIES

- 16.1 **Mutual representations and warranties:** Each party represents and warrants to the other party as at the date of this Deed that it:

- (a) is of full legal capacity and is duly incorporated under the laws of New Zealand;
- (b) has obtained all necessary corporate resolutions and approvals required for it to enter into this Deed and perform its obligations under this Deed;
- (c) is able to perform its duties and discharge its responsibilities under this Deed; and
- (d) it is not aware of anything which will, or might reasonably be expected to, prevent or impair it from performing all of its obligations under this Deed, in the manner and at the times contemplated by this Deed.

- 16.2 **Consents:**

- (a) The JV parties represent and warrant to TrustPower that throughout the term of this Deed they shall use their respective best endeavours to fully comply with each BCIL Consent and they will not surrender or allow any BCIL Consent to be varied, lapse or otherwise terminate except in accordance with clause 5 or upon the expiry of its term;
- (b) TrustPower represents and warrants to the JV Parties that throughout the term of this Deed it will use its best endeavours to fully comply with each of the Consents obtained by TrustPower in accordance with clause 2.1(f) and it will not surrender or allow any such Consent to be varied, lapse or otherwise terminate except in accordance with clause 5 or upon the expiry of its term.
- (c) TrustPower represents and warrants to the JV Parties that it will comply with its obligations set out in the agreed schedule referred to in clause 2.1(b).

- 16.3 **Reliance:** The parties acknowledge to each other that the representations contained in this clause 16 are made in circumstances such that they are intended to be relied on by the persons to whom they are made.

17. CONFIDENTIALITY

- 17.1 **Confidentiality Obligation:** Subject to clause 17.2, each party shall keep confidential, and make no disclosure of:

- (a) the existence and contents of this Deed; and
- (b) all information obtained from the other party under this Deed or in the course of negotiations in respect of this Deed,

(together "Information").

- 17.2 **Exceptions:** Information may be disclosed by a party if:

- (a) disclosure is required by Law, or necessary to comply with the listing rules of any recognised stock exchange; or
- (b) disclosure is necessary to obtain the benefits of, and fulfil obligations under, this Deed; or
- (c) that information already is, or becomes, public knowledge other than as a result of a breach of clause 17.1 by that party; or
- (d) disclosure is made to a bona fide financier or potential financier of that party, or to a bona fide purchaser or potential purchaser of all or part of the business of, or the shares in, that party, so long as:
 - (i) that party has notified the other party of the proposed disclosure; and
 - (ii) the person to which disclosure is to be made has entered into a confidentiality agreement in a form reasonably acceptable to other party; or
- (e) disclosure is made to a lawyer or accountant for that party; or
- (f) disclosure is made to a shareholder of either party.

- 17.3 **Prior notification and consultation:** If either party is required by clause 17.1 to make a disclosure or announcement, it shall, before doing so:

- (a) give to the other party the maximum notice reasonably practicable in the circumstances, specifying the requirement under which it is required to disclose Information, and the precise Information which it is required to disclose;
- (b) consult in good faith with the other party with a view to agreeing upon the form and timing of the disclosure or announcement.

18. ASSIGNMENT

- 18.1 **Binding agreement:** This Deed is binding on, and is for the benefit of, the parties and their respective successors, permitted assigns and transferees.

- 18.2 **The JV Parties may not assign:** Except as provided by clause 18.3, the JV Parties may not assign or transfer any of their rights or obligations under this Deed without the prior

written consent of TrustPower which consent will not be unreasonably withheld. TrustPower will not be unreasonably withholding its consent where the JV Parties do not establish to TrustPower's satisfaction that the proposed assignee or transferee has the financial capability and technical expertise to perform any obligations to be assumed by that assignee or transferee pursuant to such assignment or transfer. There will be deemed to be an assignment of the JV Parties' interest in this Deed in breach of this clause if, without the prior approval of TrustPower, by transfer or allotment of shares or amendment of its company constitution or by some other act or deed, the effective control of either of the JV Parties changes or passes to any person not having effective control as at the date of this Deed.

- 18.3 **Custodian Company:** The JV Parties may hold their rights under this Deed through a custodian company and subject to the JV Parties guaranteeing all obligations of that custodian company (in a form satisfactory to TrustPower) under this Deed (and without releasing the JV Parties from performing their obligations under this Deed) TrustPower will consent to an assignment to that custodian company. Clause 18.2 will accordingly apply to the custodian company upon that assignment. In addition, if the custodian company holds as custodian for any person other than the JV Parties solely, this shall be a deemed assignment by the custodian company and a material breach of this Deed.
- 18.4 **TrustPower may assign:** TrustPower may assign or transfer this Deed to any person who may acquire the Highbank Power Scheme.

19. NO RELIANCE

- 19.1 **No reliance:** Each party:
- (a) acknowledges that it has made its own independent enquiry and investigations in relation to the subject matter of this Deed and has entered into this Deed solely in reliance on its own judgement, and is not relying on any statement or representation (written or oral) made by or on behalf of any party (other than as set out in clause 16.1), or any director, employee, representative or advisor of any party; and
 - (b) agrees that (to the extent permitted by law) all implied representations or warranties of all other party are excluded; and
 - (c) unconditionally waives any right to commence any proceeding against any party, or any director, employee, representative or advisor of any party, directly or indirectly arising from any statement or representation not expressly recorded in this Deed and made or given in connection with the transaction recorded by this Deed.

This clause is intended to be for the benefit of, and to be enforceable under the Contracts (Privity) Act 1982 by, any director, employee, representative or advisor of each party.

20. NOTICES

- 20.1 **Notice:** Every notice, consent, election or other communication ("Notice") for the purposes of this Deed shall:
- (a) be in writing; and
 - (b) be delivered in accordance with clause 20.2.
- 20.2 **Method of service:** A Notice may be given by:

- (a) delivery to the physical address of the relevant party; or
- (b) posting it by pre-paid post to the postal address of the relevant party; or
- (c) sending it by facsimile transmission to the facsimile number of the relevant party, so long as clause 20.4 is complied with; or
- (d) sending it by email to the email address of the relevant party, so long as clause 20.4 is complied with;

20.3 Time of receipt: A Notice given in the manner:

- (a) specified in clause 20.2(a) is deemed received at the time of delivery;
- (b) specified in clause 20.2(b) is deemed received three Business Days after (but exclusive of) the date of posting;
- (c) specified in clause 20.2(c) or clause 20.2(d) is deemed (subject to clause 20.4) received:
 - (i) if sent between the hours of 9am and 5pm on a Business Day, at the time of transmission; or
 - (ii) if subclause (i) does not apply, at 9am on the Business Day most immediately after the time of sending.

20.4 Facsimile and email notice: A Notice given:

- (a) by facsimile, is not deemed received unless (if receipt is disputed) the party giving Notice produces a facsimile transmission report of the device from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given Notice;
- (b) by email, is not deemed received unless (if receipt is disputed) the party giving Notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given Notice.

20.5 Addresses: For the purposes of this clause the address details of each party are:

- (a) the details set out below; or
- (b) such other details as any party may notify to the others by Notice given in accordance with this clause.

TrustPower:

Physical address: Truman Lane, Te Maunga, Mt Maunganui, Tauranga
 Postal address: Private Bag 12023, Tauranga Mail Centre, Tauranga
 Facsimile number: (07) 574 4803
 Email address: trustpower.co.nz
 For the attention of: Manager Generation Division

Handwritten signatures and initials, including a large signature on the left and several smaller ones on the right.

The JV Parties (or to either of the JV Parties):

Physical address: 360 Barkers Road, RD12, Rakaia

Postal address: 360 Barkers Road, RD12, Rakaia

Facsimile number: (03) 302 8411

Email address: john@wrightfarms.co.nz

For the attention of: John Wright

21. VARIATION OF DEED

21.1 **Variation:** Subject to clause 21.2, no alteration to or variation of this Deed shall take effect unless and until the same is in writing, and signed on behalf of each of the parties by a duly authorised representative.

21.2 **Changes in Law:** TrustPower shall be entitled to amend the terms of this Deed by notice to the JV Parties where it reasonably considers such amendment is required so as to comply with any Law or any changes in Law or the requirements of any Authority. Unless specified otherwise in such notice, such amendment shall take effect upon receipt by the JV Parties of the relevant notice.

22. GENERAL

22.1 **Costs:** Except where expressly provided otherwise, each party shall meet its own costs incurred in relation to this Deed including:

- (a) any application for Consent to give effect to the arrangements contemplated by this Deed (including its attendance at hearings in respect of any application for Consent); and
- (b) the negotiation, preparation and execution of any agreement or deed referred to in clause 2.1.

22.2 **Authority:** Nothing in this Deed shall create or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have authority to act for, or to incur any obligation on behalf of, the other party, except as expressly provided for in this Deed.

22.3 **Intellectual Property:** All intellectual property owned or developed by a party shall remain the property of that party.

22.4 **Counterparts:** This Deed is deemed to be signed by a party if that party has signed or attached that party's signature to any of the following formats of this Deed:

- (a) an original; or
- (b) a facsimile copy; or
- (c) a photocopy; or
- (d) a PDF or email image copy,

and if each party has signed or attached that party's signatures to any such format and delivered it in any such format to the other party, the executed formats shall together constitute a binding agreement between the parties.

- 22.5 **Third parties:** This Deed gives rights to the directors, officers, employees and agents of TrustPower and may be enforced by each of them under the Contracts (Privity) Act 1982 but otherwise shall not give any rights to any third party or impose on any party any obligations to any third party.
- 22.6 **No waiver:** Any failure of either party to enforce any of the provisions of this Deed shall not constitute a waiver of any rights to future enforcement.
- 22.7 **No merger:** The provisions of this Deed, and anything done under, or in connection with, this Deed shall not operate as a merger of any of the rights, powers or remedies of either party under, or in connection with, this Deed or at law, and those rights, powers and remedies shall survive and continue in full force and effect to the extent that they are unfulfilled.
- 22.8 **Partial invalidity:** If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, that illegality, invalidity or unenforceability shall not affect the enforceability of the provisions, or (as the case may be) the remaining provisions, of this Deed, nor shall the legality, validity or enforceability of any of those provisions under the law of any other jurisdiction be in any way affected or impaired thereby.
- 22.9 **Remedies cumulative:** The rights, powers and remedies provided in this Deed are in addition to, and not exclusive of, any rights, powers or remedies provided by the law.
- 22.10 **Further Acts:** The parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given, and the transactions contemplated by, this Deed.
- 22.11 **Entire agreement:** This Deed constitutes the entire agreement between the parties relating to the subject matter of this Deed and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.
- 22.12 **Delivery of Deed:** For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by each of the parties (each a "**Delivering Party**") immediately on the earlier of:
- (a) physical delivery of an original of this deed, executed by the relevant Delivering Party, into the custody of another party or another party's solicitors; or
 - (b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the relevant Delivering Party, to another party or another party's solicitors.
- 22.13 **Governing law:** This Deed shall be governed by, and construed in accordance with, the laws of New Zealand, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

SIGNED AS A DEED

TRUSTPOWER LIMITED

By:

Name of director

Signature of director

Name of director

Signature of director

BARRHILL CHERTSEY IRRIGATION
LIMITED

By:

John Alexander Wright

Name of director

Roger Anthony Bonifant

Name of director

Signature of director

Signature of director

ELECTRICITY ASHBURTON LIMITED

By:

John Bruce TAVENDALE

Name of director

Signature of director

GARY RICHARD LEECH

Name of director

Signature of director

SCHEDULE 1
PLAN SHOWING JV SCHEME AREA



1. The areas marked "1", "2" and "4" comprise the irrigation scheme areas which are supplied with water from the Rangitata Diversion Race.
2. The areas marked "5", "7" and "8" comprise the irrigation scheme areas which the JV Parties propose to supply water to.
3. The areas marked "3" and "6" are not relevant for the purposes of this Deed.

Handwritten signatures and initials.

CONFIDENTIAL

EXECUTION COPY

TRUSTPOWER LIMITED
BARRHILL CHERTSEY IRRIGATION LIMITED
ELECTRICITY ASHBURTON LIMITED

PUMPING DEED

RUSSELL McVEAGH

33

SIGNED AS A DEED

TRUSTPOWER LIMITED

By:

BRUCE JAMES HARKER

Name of director

B. J. Harker

Signature of director

MARCO BOGOIEVSKI

Name of director

[Signature]

Signature of director

BARRHILL CHERTSEY IRRIGATION LIMITED

By:

Name of director

Signature of director

Name of director

Signature of director

ELECTRICITY ASHBURTON LIMITED

By:

Name of director

Signature of director

Name of director

Signature of director