

# WATER SUPPLY AGREEMENT

between

Amuri Irrigation Company Limited

and

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## Water Supply Agreement

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Date: 2016

### Parties

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1. **Amuri Irrigation Company Limited**, at Christchurch, ("the Company").
2. **[Full Name]** of **[Address]** ("the Farmer").

### Background

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- A The Farmer is the registered proprietor of the Land, serviced by the Scheme owned and controlled by the Company.
- B The Farmer wishes to be supplied water by the Company and the Company has agreed to supply the Farmer with water on the terms and conditions set out below and subject always to the Consents and availability of water.

### It Is Agreed

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#### 1. Definitions and Interpretation

##### 1.1 Definitions

"**Agreement**" means this agreement.

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

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

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

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

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

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

"**Farm Turn-out**" is the specific location where the on-farm irrigation races or spray intakes connect with a Scheme Supply Race or Water Pipe and where the Farmer takes water from the Company as notified by the Company to the Farmer.

"**FEP**" means any Farm Environmental Plan, the Farm Management Plan or the Farm Environmental Management Plan prepared by the Farmer.

"**HSWA**" means the Health and Safety at Work Act 2016.

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

**"Irrigation Scheme Management Plan"** means the Company's Irrigation Scheme Management Plan dated 15 July 2015 (a copy of which is available on the Company's website) and includes any amendments or variations thereto made from time to time.

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

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

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

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

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

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

**"Scheme"** means the properties serviced by the Scheme Infrastructure including properties within the Waiau Plains irrigation scheme, Balmoral irrigation scheme and the Waiareka Downs irrigation scheme and such new properties or schemes as the Company may determine from time to time, subject always to the terms of the Consents and any territorial boundaries or command areas within those Consents.

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

**"Scheme Infrastructure"** means all infrastructure owned or operated by the Company, including without limitation the Scheme Supply Race, Water Pipes, Farm Turn-outs, headraces, bridges, siphons, dams, galleries, buffer/pressure break ponds, pumps, water meters, control valves, control gates and cabinets, hydropower plants, generators, turbines, gravel pits, pen stocks, power/transmission lines, monitoring equipment, measuring devices or other infrastructure necessary to take and convey water through the Scheme, supply water to farmers and manage the Scheme.

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

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

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

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

## 1.2 Interpretation

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

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes a corporation, trust, association, partnership, government authority or other legal entity and, where necessary, includes a successor body;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (f) reference to law includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, directive, by-law and the rules of any stock exchange, treaty or other legislative measure;
- (g) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (h) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

## 2. Term

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

## 3. Supply of Water

- 3.1 Subject to the terms of this Agreement, the Company will supply water to the Farmer in each Irrigation Season in consideration of the payment of the Water Charges.
- 3.2 The Farmer shall be entitled to take an allocation of water and to irrigate (whether border dyke or spray) on the basis of one hectare per Share held at the rate/volume set out in Schedule One from the Farm Turn-out in accordance with the Company's operational protocols (as determined by the Company and advised to the Farmer from time to time).
- 3.3 A Farmer may (with the Company's prior written approval and in the Company's sole discretion) be entitled to irrigate more than one hectare per Share on its land by irrigating at a lower application rate. By way of example, if a Farmer with 100 shares is entitled to irrigate 100 hectares at 0.6 litres of water per second it may instead irrigate 120 hectares at 0.5 litres of water per second.
- 3.4 The Farmer's entitlement to water (i.e. quantity and Return Interval) shall be determined by the Company, in its sole discretion, at the commencement of the

Irrigation Season taking into account the quantity of Shares held by the Farmer at the time, and the quantity of water available.

- 3.5 The Farmer shall only take water for the purposes of efficient irrigation and shall not be entitled to take water for any other purposes (e.g. storage) without the prior written consent of the Company.
- 3.6 The Farmer acknowledges that in accordance with the Consent Conditions the Company has a nitrogen entitlement which covers nitrogen discharge within the Land Use Consented Area. The Farmer acknowledges that any nitrogen losses outside the Land Use Consented Area will not be covered by the Consents and the Farmer will need to obtain and manage compliance with their own consent.
- 3.7 If at any time the Company holds surplus water to its supply obligations the Farmer may contract on a day to day, temporary or more permanent basis with the Company for an additional supply of water in such quantities and for such hours as the Company may determine in its sole discretion.
- 3.8 The Company shall supply water whether for borderdyke or spray through a Farm Turn-out in such position as the Company determines and through a control device to be maintained by the Company. The Farmer shall not alter or interfere with the control device or allow any person to do so. The Farmer shall not take or attempt to take or allow any person under its control to take or attempt to take any water from the Scheme otherwise than through a control device, except where the pipe through which the water is conveyed is a garden irrigation pipe installed with the approval of the Company. In respect of spray irrigation taken from the Scheme Supply Race (as opposed to piped) the intake structure (including intake pipe and screen), shall be supplied and maintained by the Farmer.
- 3.9 Save in respect of conversion under clause 3.11 below Farmers wishing to convert from border dyke to spray irrigation must make an application in writing to the Company which may or may not be approved in the sole discretion of the Company. Any approved increase in the use of continuous spray irrigation by the Farmer and consequent reduction in border dyke days shall form part of this Agreement and Schedule One shall be deemed to have been amended accordingly.
- 3.10 The Farmer acknowledges that they will only be supplied pressurised water on the completion and commissioning of the "proposed piping scheme". The Farmer further acknowledges that once commissioned the pressure of the water supplied by the Company could be variable across the Scheme and booster pumping may be required.
- 3.11 In the event that the Company decides to upgrade the Scheme Infrastructure supplying water to the Farmer from an open race scheme to a piped scheme, then:
  - (a) the Company shall give the Farmer no less than 10 months' notice of the commencement of the operation of the piped scheme;
  - (b) unless the Company consents in accordance with clause 3.11(c) below, the Farmer (if a border dyke irrigator) shall on receipt of such notice convert from border dyke to spray irrigation;
  - (c) the Company may consent in its sole discretion to the Farmer continuing with border dyke irrigation subject to conditions including, without limitation, the

Farmer arranging and paying for any diffusor, buffer storage and any other infrastructure required to provide for border dyke irrigation from a pressurised system and appropriate irrigation practice guidelines or rules in accordance with clause 9.1.

3.12 In the event of conflict between the terms of this Agreement and the terms of any Shares issued by the Company, the terms of the Share issue shall prevail.

#### 4. **Water Charges**

4.1 The Farmer shall pay to the Company Water Charges on a per Share basis at an amount to be determined in the Company's sole discretion to recover all capital, operating and specific farmer expenses. The Company may determine a different rate between shareholders, taking into account such factors as it deems appropriate, including volume of water, efficiency, reliability, pressure, cost of delivery and location.

4.2 The Water Charges shall be payable at such time and in such manner as the Company may from time to time determine.

4.3 Capital expenses incurred by the Company include, without limitation:

- (a) construction and Consent costs in respect of the Scheme Infrastructure; and
- (b) interest and capital payments on any bank loan, other loan or financing taken out by the Company to fund capital projects (i.e. Scheme Infrastructure).

4.4 Operating expenses incurred by the Company include, without limitation, all costs in relation to:

- (a) maintenance and repairs of the Scheme Infrastructure;
- (b) electricity and other utility costs;
- (c) any royalty or tax introduced and levied on water to be taken as part of the Scheme;
- (d) costs of running and administering the Company;
- (e) monitoring and compliance costs;
- (f) costs incurred by directors and directors' fees;
- (g) costs payable to professionals and service providers to the Company; and
- (h) any rental, premises costs (including utilities), if applicable.

4.5 Specific expenses incurred by the Company which are particular to a specific Farmer in respect of the supply of water including, without limitation, all costs (which are not appropriate for the Company to pay) in relation to:

- (a) specific construction and Consent costs in respect of the Scheme Infrastructure required to ensure and maintain access to water by the Farmer;
- (b) maintenance and repairs of Scheme Infrastructure;
- (c) delivery or operating costs (e.g. electricity); and



- (d) costs incurred as a result of the Farmer breaching this Agreement and/or the Consent Conditions in relation to its water take and use including enforcement costs.
- 4.6 The Water Charges as determined by this clause 4 shall be payable by the Farmer to the Company whether or not the Farmer takes the water during the Irrigation Season and notwithstanding that the supply of water to the Land may be cut off or suspended pursuant to the provisions of this Agreement.
- 4.7 In the event of non-payment of any Water Charges due under this Agreement, then without prejudice to the Company's other rights and remedies, penalty interest at a rate of 5% above the commercial overdraft rate of the Company's bank (from time to time) shall accrue from the date of non-payment to the date the payment is actually made. The Farmer shall also be responsible for the Company's recovery costs, including without limitation, legal costs on a client/solicitor basis.

## 5. **Farmer Obligations**

- 5.1 The Farmer shall:
- (a) not permit any stock that are grazed on the Easement Land to enter any Scheme Supply Race;
  - (b) be responsible for any costs incurred by the Company for the repair of any damage to the Scheme Infrastructure to the extent that such damage was caused by the Farmer (or its directors, employees, contractors, servants, agents or invitees) through any act or omission, including, without limitation, damage caused by stock, machinery, vehicles, posts or otherwise;
  - (c) control or eliminate any noxious weeds growing alongside the Scheme Supply Race or over the top of the Scheme Infrastructure running through the Land;
  - (d) not plant or allow trees on the Easement Land (or such additional set back where required for pumps, valve and other Scheme Infrastructure) without the prior written approval of the Company and then only upon and subject to the terms and conditions stipulated by the Company;
  - (e) promptly remove (at its own expense) all trees presently growing beside or on top of the Scheme Infrastructure or Scheme Supply Race (on the Easement Land) which may be identified by the Company as limiting or having the potential to limit the efficient maintenance, flow and operation of the Scheme Supply Race or Scheme Infrastructure;
  - (f) trim and promptly remove all trimmings from all other trees presently growing on any Easement Land containing a Scheme Supply Race;
  - (g) not obstruct, interfere with the Company's operations or the Scheme Infrastructure or attempt to alter any Scheme Infrastructure without the prior written consent of the Company and then only upon and subject to the terms and conditions stipulated by the Company;
  - (h) not permit any improvement or structure to be erected or altered on the Easement Land without the prior written approval of the Company and then only upon and subject to the terms and conditions stipulated by the Company;

- (i) not light any fires or burn off vegetation on or within ten metres of any Easement Land containing a Scheme Supply Race;
- (j) repair and maintain any flood channels and open water courses both on the Easement Land and any other part of the Land and all fences along the same to the satisfaction of the Company;
- (k) maintain any drainage works on the Land carrying surplus irrigation or flood water to such a standard as will permit the proper functioning of the Scheme Infrastructure;
- (l) not permit the discharge of Run Off, chemicals, effluent, debris, dead stock or other toxic matter in or around any Scheme Infrastructure, into any Scheme Supply Race, or any river, contributory, waterway or flood channel;
- (m) where the Easement Land contains a Scheme Supply Race not cultivate the Easement Land;
- (n) not excavate the Easement Land without the written consent of the Company;
- (o) remove all debris from any Easement Land containing a Scheme Supply Race;
- (p) not undertake any act or omission which may in the reasonable opinion of the Company have a negative effect on the Scheme, the Scheme Infrastructure or its use;
- (q) ensure that electric fences erected across the Easement Land have insulated break couplings suitably located to facilitate vehicle access;
- (r) allow the Company ready access at all times to the Easement Land and Scheme Infrastructure for operation, inspection, repair and maintenance;
- (s) provide the Company its copies of keys to any locks fitted to any gates on the Land required by the Company to exercise its rights in accordance with this Agreement;
- (t) subscribe for one Share in the Company for each one (1) hectare or part thereof of Irrigable Area held by the Farmer, subject to clause 3.3;
- (u) allow the Company to remove silt and other material from the Scheme Supply Races or Water Pipes and spread such silt and other material out on the Easement Land (or such other areas of the Land as agreed between the parties) to dry, grade and ultimately re-grass;
- (v) ensure that its irrigators only irrigate on the Irrigable Area and (for the avoidance of doubt) do not at any time spray water onto a public road or other public way;
- (w) ensure that any Lessee, other occupier, contractor or invitee on the Land complies in all respects with the terms of this Agreement;
- (x) observe and comply with the Company's constitution, Consents and all relevant statutes and bylaws and farming and irrigation practices, procedures and operational protocols as determined from time to time by the Company;

- (y) comply with the Irrigation Scheme Management Plan (which includes, without limitation, the requirement for the Farmer to prepare, maintain and comply with an FEP in accordance with the template and policies approved by the Company);
- (z) ensure that its on-farm infrastructure is protected from over pressure through the installation and maintenance of appropriate equipment that complies with the requirements notified by the Company from time to time; and
- (aa) use its best endeavours to make its surplus on-farm infrastructure, including without limitation its pumps, pumping sheds, power connection and transformers available to the Company to allow the Company to utilise such infrastructure for booster pumping on terms to be agreed between the parties (and if necessary valued by a suitably qualified person, such person to be determined by the Company in its sole discretion).

5.2 The Farmer shall at the Company's request allow the Company or the Company's contractors or employees to attend to any of the repairs and/or work set out in clause 5.1 above with the cost of such work being recovered from the Farmer through the Water Charges set out in clause 4.

## 6. **Health and Safety**

6.1 The Farmer agrees:

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

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

7.1 In the event the Company has installed Water Pipes and the Scheme Supply Race is no longer necessary to allow the Company to supply water to the Farmer, the Company may give the Farmer notice to provide that the relevant part of the Scheme Supply Race on the Land may be filled in by the Farmer should the Farmer wish to do so.

- 7.2 For the avoidance of doubt, once notice has been given by the Company to the Farmer in accordance with clause 7.1 and the Scheme Supply Race has been filled in by the Farmer, the Farmer will no longer be required to comply with the obligations in clause 5 in respect of the Scheme Supply Race.
- 7.3 The Company will, within 12 months of the completion of the installation of Water Pipes as set out in clause 7.1 above, arrange for the necessary surrender documents to be prepared and delivered to the Farmer to surrender the Company's registered Easement in respect of the Scheme Supply Race over the Land.
- 7.4 Any surplus fill created by such installation of Water Pipes will be stockpiled on the Land at a location selected at the reasonable request of the Farmer. In the event the Farmer does not want to use the surplus fill it will be disposed of within a reasonable proximity to the site of excavation at a location selected at the Farmer's reasonable request, but otherwise at the Company's sole discretion.

## 8. **Company's Obligations**

- 8.1 The Company shall:
- (a) take all reasonable steps to maintain the Consents;
  - (b) comply with the provisions of the Companies Act 1993, the Financial Reporting Act 2013 and any regional plan and, without limiting the generality of the foregoing, provide the Farmer with annual reports and annual accounts detailing income received in the form of Water Charges and expenses incurred;
  - (c) operate the Scheme in a professional manner and to the appropriate industry standards which will be updated from time to time;
  - (d) comply with its obligations and ensure that the Company's workers (as defined in the HSWA) comply with their obligations under the HSWA and all regulations made under that Act and take reasonable steps to mitigate damage and cause as little interruption as possible to the Land and the carrying on by the Farmer of its farming operations;
  - (e) attend to such reasonable maintenance and repairs as required to maintain the Scheme Infrastructure as further described in clause 14.1 below;
  - (f) when necessary, and at its own expense, remove silt and other deleterious material from any Scheme Supply Race; and
  - (g) promptly pay and discharge all amounts due by it or obligations imposed on it by the Canterbury Regional Council in respect of the Consents held in relation to the taking and using of the water or the operation of the Scheme.

## 9. **Environmental Provisions**

- 9.1 The Farmer acknowledges that the Company must comply with the RMA, the relevant District and Regional Plans, the Irrigation Scheme Management Plan and its Consent and, to ensure compliance with the same, the Company shall from time to time prescribe certain farming and irrigation practices, policies, protocols and rules in writing to the Farmers and the Farmer agrees to comply with and be bound by such farming and irrigation practices, which will if necessary be incorporated into an FEP that will be maintained at all times by the Farmer.

- 9.2 Notwithstanding anything to the contrary contained or implied in this Agreement, the Farmer acknowledges that the supply of water under this Agreement is expressly subject to and conditional upon the restrictions and limitations placed on the Company by its Consents and the requirements of the relevant consent authorities.
- 9.3 The Farmer shall comply with the terms, conditions, restrictions and limitations placed on the Company by the Consent Conditions. The Farmer acknowledges that it will further support any application for and comply with any amendment, variation or renewal of the Consent or Consent Conditions that may occur from time to time.
- 9.4 The Farmer acknowledges that the Company may from time to time impose restrictions on the Farmer to comply with the restrictions, rules or directions imposed on the Company by the Canterbury Regional Council or such other statutory body and agrees and undertakes to comply with such restrictions, rules or directions and to reduce its water take and use immediately following notification.

## 10. **Resource Consents and Approvals**

- 10.1 The Farmer will not, either directly or indirectly:
- (a) object to the application for or the granting of any resource consent or building consent sought by the Company for any of the Company's operations as set out in clause 14;
  - (b) object to, advocate against, oppose or impede any action taken by the Company under the RMA to give effect to any of the matters referred to in this Agreement or for the purposes of undertaking any of the Company's operations as set out in clause 14;
  - (c) fund, facilitate, assist or promote any other person to take any action that would be in breach of this Agreement if done by the Farmer.
- 10.2 If requested by the Company the Farmer will promptly give, sign and deliver all written approvals or consents (including in relation to any building consent or any consent to a resource consent application under section 94 of the RMA or otherwise for any activity to be undertaken by the company pursuant to this Agreement or the Easement) to the Company or directly to the Canterbury Regional Council and/or the Hurunui District Council. For the avoidance of doubt the Farmer acknowledges that the Company has an irrevocable power of attorney to execute such approval or consent on the Farmer's behalf if necessary in accordance with clause 20.
- 10.3 If the Company is required by any resource consent to undertake particular mitigation measures on the Land, including any planting or earthworks, the Farmer will allow the Company to undertake such mitigation measures.

## 11. **Metering**

- 11.1 The Company may install water meters at Farm Turn-outs from the Water Pipes or Scheme Supply Race to meter the water take and use to ensure compliance by the Company with the Consent Conditions and compliance by the Farmer with the terms of this Agreement.

11.2 The Farmer shall under no circumstance tamper or interfere with any water metering device and shall take reasonable steps at the direction of the Company to prevent interference and tampering by outsiders, trespassers or any other third party.

11.3 The Company shall have the right at any time and from time to time, without being deemed to commit a trespass, to enter onto the Land to install, operate, inspect, maintain or repair any water metering device on the Land.

## 12. **Sale, Subdivision or Lease**

12.1 If the Farmer wishes to sell or subdivide the Irrigable Area then:

- (a) the Company shall be under no obligation to pay for any costs relating to on-farm or other works required to be made to ensure the continuity of water supply via construction of Scheme Infrastructure following a change in the ownership of the Irrigable Area or any part thereof;
- (b) the rights and obligations under this Agreement shall be fairly apportioned by the Company so that each owner of the Irrigable Area shall have the benefit and bear the obligations of this Agreement;
- (c) appropriate provisions shall be made for the granting of all requisite water easements (if any) and other rights;
- (d) the Farmer shall ensure that if its Shares (or the appropriate parcel(s) of Shares in the event of a subdivision) are to be transferred to the purchaser of the Land (or the relevant part of the Land in the event of a subdivision):
  - (i) the Company is given ten working days' notice ("Notice") (unless otherwise agreed in writing between the parties) prior to the settlement date of such transfer of Shares, providing the following details:
    - (1) the number of Shares to be transferred;
    - (2) the purchaser(s) name and contact details;
    - (3) details sufficient to identify the relevant Land in the event of a subdivision;
    - (4) the settlement date of the sale of the Land (or part thereof) and transfer of Shares.
  - (ii) the intending purchaser(s) enters into the Company's then current water supply agreement and completes any audit requirements as required by the current Consent Conditions or the Canterbury Regional Council on or before the settlement date of such transfer of Shares (unless otherwise agreed in writing by the Company);
  - (iii) a share transfer is executed by the purchaser(s) in the proper form for registration by the Company;
  - (iv) the intending purchaser(s) pays and discharges all the Company's costs and charges related to the granting of the Company's consent to the transfer of the Shares and all legal costs and disbursements relating to

the purchaser(s) entering into the Company's then current water supply agreement; and

- (v) the intending purchaser(s) (unless paid by the Farmer) pays all of the costs of completing any audit requirements as required by the current Consent Conditions or the Canterbury Regional Council on or before the settlement date of such transfer of Shares.
  - (e) for the avoidance of doubt, the intending purchaser's entry into a new water supply agreement and compliance with any audit requirements as required by the current Consent Conditions or the Canterbury Regional Council as at the time of the transfer of the Shares shall be a condition precedent to the supply of water and to the approval of the transfer of Shares to the intending purchaser(s) by the Company.
- 12.2 If the Farmer shall lease or part with possession of the Irrigable Area or any part thereof other than by sale then the Farmer shall ensure that the lessee or occupier of the Irrigable Area or any part thereof shall comply in all respects with the terms of this Agreement and to the extent permissible by law shall indemnify and hold the Company harmless from any breach of this Agreement by the lessee or occupier.

### 13. **Transfer of Shares**

- 13.1 The Farmer acknowledges that in the event it wishes to transfer any Shares separately from the Land to which the Shares relate such transfer is subject always to the terms of the Company's constitution, which includes, without limitation, that any such transfer of Shares:
- (a) shall only be to existing shareholders or to persons who are not currently shareholders in the Company but who own land sufficiently close to the Scheme to irrigate from it and wish to become part of the Scheme as shareholders in the Company;
  - (b) shall be subject to the consent of the Company in its sole discretion and that in giving its consent the Company may require that:
    - (i) the entitlement to water be varied taking into account the availability of water in the relevant area or part of the Scheme; and/or
    - (ii) specific arrangements are entered into and agreed between the Company and the transferee in relation to the Farm Turn-out of the water and access to the Scheme Infrastructure.

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

- 14.1 The parties acknowledge that in the event the Company requires access to the Land to undertake installation, excavation, works, operation, inspection, investigation, maintenance or repair of Scheme Infrastructure, the Company shall have the following rights, powers and easements at any time and from time to time without being deemed to commit a trespass (and on reasonable notice in accordance with clause 14.2) to enter upon, along and through the Land (for all reasonable purposes including, without limitation the passage of persons, vehicles, plant, machinery, equipment, fuel, works, topsoil and material) to:

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

14.2 In exercising its rights under this clause 14 the Farmer acknowledges that the Company may:

- (a) temporarily occupy a designated works area and restrict (including, without limitation, by way of temporary fencing) the Farmer's access to such a work area in the event the Farmer's entry to such work area is not safe or would impede the operation of the works. In addition, while the Company is undertaking the works, the Farmer must only access the work area under the supervision of the Company and strictly in accordance with all directions given by the Company for the purposes of health and safety, to minimise disruptions or to otherwise ensure compliance with the Consents or any applicable law;



- (b) upgrade, alter, relocate or remove any improvement to the Land (including, without limitation, any farm road, track, carpark, access way, culvert, ford, bridge, irrigation works, water race, fence, gate or conveyance owned by the Farmer on the Land);
  - (c) construct, upgrade, alter, relocate or remove any temporary structure, (including without limitation, any building or other structure, road, carpark, track, access way, culvert, ford, bridge, irrigation work, water race, fence, gate or conveyance owned or constructed by the Company on the Land);
  - (d) in consultation with the Farmer, move or reconstruct (either above ground or underground) any cable, line or pipe located in, on, over or under the Land and, where the Farmer is not the sole owner of the cable, line or pipe, the Farmer will, where it has the capacity and capability to do so (at the Company's cost), grant to the owner of the cable, line or pipe any easement reasonably required by that owner for the relocated or reconstructed cable line or pipe.
- 14.3 The parties acknowledge that the Company shall use reasonable endeavours where possible to consult with the Farmer in relation to the exercise of its rights under this clause 14 above, giving reasonable notice (being not less than five working days) of its intention to exercise its rights and the purpose for which the right will be exercised. In the event it is not possible or practical (determined in the Company's sole discretion) for the Company to give the Farmer reasonable notice of its intention to exercise its rights under clause 14 the Company may access the Land without any prior notice to the Farmer.
- 14.4 The Company shall at all times when entering the Land in accordance with this clause 14 give due consideration to the Farmer's farming operation with a view to minimising disruption to that operation and shall further comply with its obligations (and ensure that the Company's workers (as defined in the HSWA) comply with their obligations) under the HSWA.
- 14.5 When maintenance or repairs are required during an Irrigation Season, the Company reserves the right to suspend the supply of water to carry out such activities. The Company will use reasonable endeavours to:
- (a) promptly notify the Farmer of any suspension prior to such suspension taking effect; and
  - (b) limit the period of suspension to as short a period as possible;
  - (c) for the avoidance of doubt, (any suspension pursuant to this clause 14.5 shall in no way limit the Farmer's obligations under this Agreement).
- 14.6 In the event new Scheme Infrastructure is required on the Land the Company will provide the Farmer with written notice of its intention to locate and install the new Scheme Infrastructure on the Land prior to the Company exercising its rights under clause 14.1 and the Farmer granting the Company a formal registered Easement in accordance with clause 14.7 below.
- 14.7 The Farmer shall grant a formal registered Easement in respect of new Scheme Infrastructure (and existing Scheme Infrastructure if not already granted) which shall:

- (a) be an easement in gross including a "right to convey water", a "right to convey electricity, telecommunications and computer media", a "right to locate, site and store a pumping station" and a "right to generate electricity" as required;
  - (b) include all such incidental and ancillary rights as prudently ought to be incorporated therein including those set out in clause 14.1 above and other easements granted in favour of the Company over other properties to be served by the Company within the Scheme;
  - (c) be prepared by the Company and delivered to the Farmer or the Farmer's solicitors for execution, with both parties bearing their own costs;
  - (d) be surveyed by the Company as soon as practicable following installation of the Scheme Infrastructure.
- 14.8 Until the Easement has been registered, the Farmer will be bound by the terms, covenants and provisions contained in the Easement as if the Easement had been registered at the date of this Agreement (or in accordance with clause 36).
- 14.9 The Farmer agrees to execute all documents and do all things required to procure registration of the Easement (including, without limitation, signing an authority and instruction form authorising its solicitor to sign and certify the Easement within the LandOnline System) within ten working days' (unless otherwise agreed in writing between the parties) of receiving the Company's requirements.
- 14.10 In addition and where required, the Farmer will notify its insurers and obtain the written consent of any third party (e.g. any mortgagee) whose interest in the Land is registered against the Computer Register(s) to the Land and whose consent is required for the registration of the Easement.
- 14.11 The Company shall have the further right to make such changes as required as a result of changes to Scheme Infrastructure or modifications as may be necessary from time to time and to correct any historical errors to the formal registered Easement as set out in clauses 14.7 and 14.8 above or any other easement registered in the Company's favour.
- 14.12 On completion of any new works carried out under this clause 14, the Company shall undertake to repair and level (to a reasonable contour, as determined in the Company's sole discretion) the Land. The Company may (to be determined in its sole discretion) provide a contribution to the Farmer for the cost of re-sowing the Land.
15. **Caveat**
- 15.1 The parties acknowledge and agree that this Agreement is not separately registrable and as such the Company is entitled to lodge a caveat against any Computer Register(s) for the Land to protect its interest under this Agreement. The Company will withdraw any caveat upon registration of the Easement. The Company will not unreasonably withhold or delay its consent to any dealing with the Land where such dealing does not adversely affect the Company's rights under this Agreement.
16. **Default**
- 16.1 The Farmer will be in default of this Agreement if one or more of the following events occur:

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

## 17. Remedies

17.1 If the Farmer commits an event of default in accordance with clause 16 above then the Company may (without limitation to the Company's rights at law):

- (a) without payment of any compensation to the Farmer or any other person immediately cut off the supply of water to the Land. The Farmer gives the Company authority to enter on to the Land and disconnect the supply of water to the Land in such manner as the Company thinks fit, and to secure or lock off the Farm Turn-out, gate, screen, Water Pipe and/or control device (if applicable) and thereafter no person shall be entitled to be supplied with any further water to the Land from the Company until such time as the breach has been made good to the satisfaction of the Company;
- (b) require the Farmer to pay the costs of any action (on a solicitor/client basis) required by the Company as a result of the failure to fully implement any farming and/or irrigation practices prescribed by the Company;
- (c) require the Farmer to pay the costs of any FEP audit which is required in accordance with the Consent Conditions or by the Canterbury Regional Council as a result of the failure to fully implement the FEP or any other non-compliance with the Consent Conditions or District or Regional Plan;
- (d) cancel the Agreement by giving ten working days' written notice to the Farmer.

17.2 If the Farmer fails to carry out any work or make good any damage in accordance with any notice given by or on behalf of the Company within a reasonable time after receipt of such notice then the Company shall be entitled to enter upon the Land and

carry out all or any of the required work or repairs as the Company shall think fit and shall be entitled to recover the costs thereof from the Farmer together with interest thereon at the rate normally charged by the Company's then current bank on commercial overdrafts. Where the Company in its sole discretion considers urgent action is required, it shall not be obliged to give the Farmer any notice before it carries out the required work or repairs.

## 18. **Contract Review**

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

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

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

## 19. **Limitation of Liability**

19.1 If the supply of water provided for under this Agreement is reduced, stopped or unable to be delivered (at the target pressure of 40 metres or otherwise) for any reason whatsoever, including, without limiting the generality of the foregoing, water shortage, regulatory reasons or any other reason outside the control of the Company, or due to a failure by the Farmer or other farmers to comply with the Consent Conditions, then such reduction, stoppage or failure to supply shall in no way give the Farmer any right to any claim, compensation or other remedy against the Company.

19.2 The Company shall be under no liability to the Farmer (whether in contract, tort or otherwise) for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply the water under this Agreement.

19.3 If, notwithstanding clauses 19.1 and 19.2, the Company is found to be liable to the Farmer in any circumstances then the maximum amount the Company will be liable for to the Farmer under this Agreement or in any way whatsoever, is an amount equal to the lesser of:

- (a) last season's Water Charges; or
- (b) the actual loss or damage suffered.

19.4 To the extent permissible by law, the Farmer shall keep the Company indemnified against all costs, claims, demands, expenses, losses and liabilities of whatsoever

nature, including, without limiting the generality of the foregoing, claims for consequential loss (including loss of profits/production) which may be made against the Company and which the Company may sustain, pay or incur as a result of or in connection with a breach by the Farmer (or the Farmer's directors, employees, contractors, servants, agents or invitees) of its obligations under this Agreement.

## 20. **Power of Attorney**

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

## 21. **Delegation**

21.1 The Company may at any time and from time to time validly delegate any of its powers, rights and discretions hereunder to any person or persons (employees, contractors, servants, agents or otherwise) and the exercise of any such power, rights, or discretion by any such person or persons shall be deemed to be a valid exercise thereof by the Company.

## 22. **Exclusion of Partnership and Agency**

22.1 Nothing in this Agreement shall create, or constitute or be deemed to create or constitute a partnership between the parties or any of them and the Company nor to constitute or create or be deemed to create or constitute a party as an agent of any other party for any purpose whatsoever.

22.2 Save as provided for in this Agreement, no party shall have any authority or power whatsoever to bind or commit, act, represent or hold itself out as having authority to act as an agent of, or in any way bind or commit the other.

## 23. **Disputes**

23.1 Without limiting clause 17, if either party has any dispute with the other in connection with this Agreement:

- (a) that party will promptly give full written particulars of the dispute to the other party;
- (b) the parties will promptly meet together and in good faith try and resolve the dispute.

23.2 If the dispute is not resolved within ten working days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.

23.3 A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings. The mediation will be conducted by a LEADR New Zealand Incorporated panel mediator chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.

23.4 If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator. The single arbitrator will be chosen by the parties or, if they cannot agree,

by the President of the New Zealand Law Society, or the President's nominee. The arbitration will be conducted in accordance with the Arbitration Act 1996.

- 23.5 The parties must always act in good faith and co-operate with each other to promptly resolve any dispute.
- 23.6 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.
- 23.7 The parties must continue to comply with their obligations under this Agreement during the dispute resolution process.
- 23.8 Nothing in this clause 23 shall preclude a party from taking immediate steps to seek equitable relief before a New Zealand Court.
- 23.9 For the avoidance of doubt this clause 23 does not limit the Company's rights under clause 17.

**24. Conflict**

- 24.1 In the event of any conflict between this Agreement and an Easement, then this Agreement shall prevail.

**25. Governing Law**

- 25.1 This Agreement shall be governed by and interpreted according to the laws of New Zealand. Each party irrevocably submits itself to the jurisdiction of the Courts of New Zealand in respect of any proceedings arising out of, or relating to this Agreement.

**26. No waiver**

- 26.1 No failure or delay on the part of any party in exercising any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power hereunder.

**27. Assignment**

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

**28. Notices**

- 28.1 All demands, consents and notices authorised or required to be made under this Agreement shall be in writing and may be given to, or served upon a party by:

- (a) being left at the party's address as stated below; or
- (b) by facsimile, to the recipient party's notified facsimile number stated below.

- 28.2 The notified addresses and facsimile numbers of the parties are as follows:

**Company:**

C/- Mackay Bailey

PO Box 13311

Christchurch 8141

**Farmer:**

**29. Consumer Guarantees Act 1993**

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

**30. Costs**

30.1 The Farmer shall pay the Company's costs in relation to the preparation and finalisation of this Agreement.

**31. Further Assurances**

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

**32. Entire Agreement**

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

32.2 Notwithstanding clause 32.1, if the Farmer's existing Water Supply Agreement or any other written agreement with the Company contains specific additional provisions in relation to the Land, access, Scheme Infrastructure, the Consents and supply of water, then these provisions (unless otherwise agreed) shall survive.

**33. Financiers**

33.1 The Farmer acknowledges that:

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

33.2 The Farmer agrees to do or execute anything reasonably required by the Financiers to effect any assignment, transfer, novation or other dealing under this clause 33.

33.3 For the purposes of the Contracts (Privity) Act 1982, each Financier is entitled to enforce against the Farmer the provisions of this clause 33.

33.4 The remedies of damages and cancellation as against any Financier under or in connection with the assignment by way of security of the Company's rights under this Agreement made pursuant to the security documents the Company has granted in favour of the Financiers are hereby expressly excluded for the purpose of section 11 of the Contractual Remedies Act 1979.

**34. Independent Advice**

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

**35. Counterparts**

35.1 This Agreement may be executed in any number of counterparts and all the counterparts when taken together will constitute one document and Agreement. Each party may execute and enter into the Agreement by executing a counterpart. The parties acknowledge that the agreements may be executed by an exchange of facsimile and/or scanned and emailed PDF copies and execution of this Agreement by these means is valid and sufficient execution.

**36. Share Application Forms**

36.1 The Farmer may also become bound by this Agreement (and if relevant the Easement) by signing a share application form for the subscription of Shares in the Company where such application form provides for the applicant's agreement to the terms of this Agreement (and if relevant the Easement) by signing the application form or otherwise.

**37. Limitation of Liability of Independent Trustee**

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

**38. Severance**

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

**Execution**

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Signed by **Amuri Irrigation Company Limited:**

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Director's signature

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Director's signature

---

Director's full name

---

Director's full name



Signed by [ \_\_\_\_\_ ] in the presence of:

\_\_\_\_\_ [ \_\_\_\_\_ ]

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

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

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SCHEDULE ONE****The Farmer:** \_\_\_\_\_**Number of Shares:** \_\_\_\_\_ shares**Irrigable Area:** \_\_\_\_\_ hectares**The Land:**

Area	Description	Title Reference

**Water allocation/Rate:** \_\_\_\_\_