

## ACCESS AGREEMENT – GENERAL TERMS

### BACKGROUND

1. The Owner is the registered proprietor of land which may be required for construction of an underground irrigation pipeline as part of the Irrigation Scheme.
2. The Owner wishes to be supplied with water from the Irrigation Scheme and as part of its application to acquire shares in CPWL (in accordance with the terms of the Application Form) has irrevocably offered to:
  - a. grant CPWL access to use that part of the Owner's land in the Stage 2 Area reasonably required by CPWL for the purposes of construction of an underground irrigation pipeline on the terms and conditions as set out in Schedule 1;
  - b. grant CPWL, following construction of the underground irrigation pipeline, an Easement on the terms and conditions set out in Schedule 2; and
  - c. comply with all other provisions of these General Terms and all schedules to these General Terms.
3. CPWL will only be bound by these General Terms upon issuing Construction Shares to the Shareholder.

### SCHEDULE ONE

#### 1. GRANT OF ACCESS FOR INVESTIGATION, CONSTRUCTION AND OPERATIONS

- 1.1 Prior to exercising any rights under clause 1.2, CPWL will agree with the Owner:
  - (a) the area of the Owner's Land required for construction of the underground irrigation pipeline as part of the Irrigation Scheme;
  - (b) the Access Route including any specific Access Requirements;
  - (c) any specific Site Restoration requirements; and
  - (d) the preferred timetable for construction of the irrigation pipeline on the Owner's Land.

This agreement will be recorded in the Plans. The Owner agrees that it will not unreasonably withhold or delay its agreement or provide unreasonable conditions under this clause.

- 1.2 The Owner grants to CPWL the right during the Term of the Agreement to:
  - (a) enter and remain on the Land to undertake any of the activities specified in clause 1.2(b) to 1.2(e);
  - (b) inspect the Land;
  - (c) conduct geo-technical investigations, surveys and exploration (but not mining) on the Land;

- (d) undertake all or any of the Operations on the Land including, without limitation, parking and maintaining plant and machinery, erect temporary buildings, stockpile material and associated activities; lay the pipeline as part of the Works; associated electricity supply and pumps; and
  - (e) have access across the Land for the purposes of having access to any nearby land (including land not owned by the Owner).
- 1.3 The Owner will allow CPWL reasonable access to the Land for the purposes of investigations and construction and the other Operations.
- 1.4 CPWL agrees that prior to commencing construction CPWL will provide the Owner at least 7 Working Days' notice prior to entering the Land on the first occasion. The entry notice will include an access plan that is consistent with the Agreement.

## **2. ENTRY ONTO LAND**

- 2.1 To enable CPWL to undertake all or any of the Operations or activities permitted by clause 1.2 or the Easement, CPWL may:
- (a) bring on to the Works Area materials, equipment, vehicles and personnel (including employees, agents, consultants and contractors);
  - (b) install and maintain testing and monitoring equipment;
  - (c) remain on the Works Area;
  - (d) temporarily occupy the Works Area;
  - (e) construct the Works; and
  - (f) undertake any of the activities set out in the Easement.
- 2.2 When exercising its rights under the Agreement, CPWL will use its reasonable efforts (taking into account the Access Requirements) to cause as little interference as practicable to the Owner, and any crops, livestock and the farming operations of the Owner and/or any lessee or tenant of the Owner on the Land, but without limiting CPWL's rights under the Agreement.

## **3. GRANT OF EASEMENT**

- 3.1 The Owner agrees to grant CPWL the Easement in gross on, under and over the Easement Area.
- 3.2 Until the Easement has been registered, CPWL and the Owner shall be bound by the terms, covenants and provisions contained in the Easement as if the Easement had been registered at the date of entering into the Agreement.

## **4. ACCESS AND WORKS ARRANGEMENTS**

- 4.1 At any time during the Term of the Agreement, CPWL:

- (a) may, after reaching agreement with the Owner, upgrade, alter, relocate or remove any Owner's Improvements located on the Works Area, provided that CPWL will consult with the Owner as far as practicable to take into account the views of the Owner as to any upgrade, alteration, relocation or removal;
  - (b) may upgrade, alter, relocate or remove any Owner's Improvement including farm roads or tracks on that part of the Land outside the Works Area, but only with the prior consent of the Owner, which must not be unreasonably or arbitrarily withheld or delayed and which may be given subject to reasonable conditions;
  - (c) may construct, upgrade, alter or relocate any CPWL's Improvements within the Works Area without consulting with the Owner;
  - (d) may construct, upgrade, alter or relocate any CPWL's Improvement on that part of the Land outside the Works Area, but only with the prior consent of the Owner which must not be unreasonably or arbitrarily withheld or delayed and which may be given subject to reasonable conditions;
  - (e) may install groundwater monitoring bores no larger than 50 mm in diameter for testing groundwater quality on a quarterly basis for the purposes of complying with Environment Canterbury Resource Consents on locations agreed with the Owner prior to installation; and
  - (f) may remove any of CPWL's Improvements constructed by CPWL on the Land but before doing so CPWL will consult with the Owner.
- 4.2 CPWL may, in consultation with the Owner, move or reconstruct (either above ground or underground) any cable, line or pipe located in, on, over or under the Land in order for CPWL to undertake the Operations. Where the Owner is not the sole owner of the cable, line or pipe, the Owner will, where it has the capacity and capability to do so, at CPWL'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. CPWL will, at its cost, prepare all necessary plans and documents required to register the easement.
- 4.3 During the Term of the Agreement, CPWL has a right of access over the Works Area (including the Access Routes) for all reasonable purposes including the passage of persons, vehicles, plant, machinery, equipment, fuel, works, topsoil and material, or to undertake any reasonable action provided for or contemplated in the Agreement or the Easement including for the purposes of undertaking Works and Operations on adjoining land. CPWL shall have the right to carry out such work during the hours of 0700 and 1900.
- 4.4 The Owner may enter any part of the Works Area (including the Access Routes) during the Term of the Agreement, unless CPWL (or CPWL's contractor) has advised the Owner that entry is not safe or will impede the Operations, in which case CPWL may temporarily restrict the Owner's access, including without limitation, by way of temporary fencing. While CPWL is undertaking the Operations, the Owner must only access the Works Area under the supervision of CPWL (or CPWL's contractor) and strictly in accordance with all directions given by CPWL (or CPWL's contractor) for the purposes of preserving

health and safety, to minimise disruption to the Operations or to otherwise ensure compliance with Resource Consents or any applicable law. CPWL and the Owner will consult with each other with a view to agreeing the purpose, times and duration of the Owner's access to the Works Area and the method by which the Owner will have access. For the avoidance of doubt the parties agree that the Owner shall have access in the case of an emergency.

- 4.5 The parties agree that the Access Routes shown on the Plans are the agreed access routes for the purposes of the Easement unless any of the Access Routes are clearly shown on the Plans as being temporary or to be removed on completion of construction of the Works. The Owner may request consent from CPWL (such consent not to be unreasonably withheld), to relocate the Access Routes at any time in the future should the need arise provided that:
  - (a) CPWL continues to have unrestricted access to the Works without bearing unreasonable expense; and
  - (b) the Owner pays for the cost of CPWL obtaining any amended or new easement and surrendering any part of the old easement.
- 4.6 CPWL and the Owner will each comply with their respective obligations as set out in the Plans and CPWL is fully entitled to undertake all of the Operations set out in the Agreement and the Plans.
- 4.7 CPWL will provide portable toilets on the Works Area for the use of workmen involved in the Operations whenever Operations are carried out and shall remove all personal rubbish from the Land associated with the Operations.
- 4.8 CPWL will take reasonable precautions to reduce the risk of the Operations causing the introduction of noxious weeds to the Land.
- 4.9 CPWL will use reasonable endeavours to prevent any dogs or firearms being brought onto the Land or any adjacent land of the Owner.
- 4.10 The Owner shall advise CPWL of any historical, archaeological or Wahi Tapu sites which are on the Land or are present on or close to any Access Route. CPWL shall use its reasonable endeavours to ensure that historical, archaeological or Wahi Tapu sites are not damaged by CPWL (including its employees and contractors).
- 4.11 If CPWL believes it has unearthed or located a site of historical or archaeological significance or discovers any human remains or Maori artefact it shall take all reasonable practical steps to preserve and safeguard these and forthwith notify the Owner and appropriate Authorities.
- 4.12 CPWL will take all practicable precautions to avoid pollution and erosion occurring on the Land as a result of the Operations.
- 4.13 CPWL will not permit fires to be lit unless:
  - (a) specifically required for the Operations;

- (b) a permit has been obtained where necessary;
  - (c) the fires are under direct supervision at all times; and
  - (d) the fires are completely extinguished immediately after use.
- 4.14 CPWL will, to the extent reasonable and practical, strip and stockpile any Topsoil and other Material removed from the Land for operations in preparation for site restoration. To the extent that CPWL requires an area outside the Works Area, CPWL will consult with the Owner as to:
- (a) the location of stockpiling of Topsoil and other Material; and
  - (b) the location for final deposit of Topsoil and other Material on the Land.
- 4.15 Subject to any specific Site Restoration requirements, CPWL is entitled to remove all or any part of any trees (including shelter belts) and other vegetation on any part of the Works Area but only with the prior approval of the Owner (acting reasonably).
- 4.16 CPWL is entitled to discharge water onto any part of the Land or into any waterway provided that CPWL has or obtains all necessary Resource Consents. CPWL will consult with the Owner prior to applying for any Resource Consents and prior to discharging water.

## **5. NOTIFICATION TO INSURERS AND OTHER REGISTERED INTERESTS**

- 5.1 Where required, the Owner will notify:
- (a) its insurers; and
  - (b) any other third party whose interest in the Land is registered against the Computer Register(s) to the Land,
- of the Easement. CPWL will assist the Owner in the notification process, including providing the Owner with a form of notification, on request by the Owner.
- 5.2 In accordance with clause 9.6, the Owner will obtain written consent to the Easement from:
- (a) any mortgagee whose interest in the Land is registered against the Computer Register(s) to the Land prior to or at the time of registration of the Easement for the purposes of section 90(E) of the Land Transfer Act 1952; and/or
  - (b) any other third party whose interest in the Land is registered against the Computer Register(s) to the Land, and whose consent is required for registration of the Easement.
- CPWL will provide assistance to the Owner in obtaining such consent on request by the Owner.

## **6. SITE RESTORATION AND REINSTATEMENT**

- 6.1 Upon CPWL determining that it has completed Operations on the Works Area, CPWL will:

- (a) complete any agreed road removal and track reconstruction work; and
  - (b) complete any agreed specific Site Restoration requirements;
  - (c) complete all site restoration requirements of any Resource Consents or any Authority; and
  - (d) as soon as reasonably possible after the Works have been completed, repair, level, re-sow and reinstate the Works Area as close as reasonably practical to its condition before Operations commenced.
- 6.2 Where following completion of the Works, the Owner requests CPWL to retain any access tracks or roads, CPWL will not remove such access tracks or roads and CPWL will give notice to the Owner that ownership of the access tracks or roads is vested in the Owner alone and the Owner will be solely responsible for the maintenance of the access tracks or roads.
- 6.3 CPWL will use reasonable endeavours to complete the site restoration works under the Agreement in accordance with good practice in the area in which the Land is situated. The Owner acknowledges that all site restoration works are subject to:
- (a) the provisions of the Easement;
  - (b) the provisions of any Designation and any Resource Consents;
  - (c) any specific agreements reached with the Owner;
  - (d) the provisions of the Plans; and
  - (e) CPWL's obligation to ensure that the Works can operate safely.
- 6.4 CPWL's liability to the Owner for compensation under the Agreement and any other agreement to grant an easement over the Easement Area shall be limited to the remedial work as may be reasonably required under clause 6.1 and for the avoidance of doubt no compensation shall be payable.

## **7. CPWL'S OBLIGATIONS**

- 7.1 CPWL will during the Term of the Agreement:
- (a) comply with all Resource Consents required by CPWL to give effect to the Agreement;
  - (b) comply with the terms and conditions set out in the Agreement;
  - (c) observe and comply with the provisions of all laws governing the actions taken or provided for under the Agreement;
  - (d) fence, where it is physically possible to do so, any areas of the Land which CPWL temporarily occupies before commencing any construction or action that could result in injury to persons or livestock and maintain all such fences; and
  - (e) not call upon the Owner to contribute towards the cost of the erection, maintenance or repair of any fences erected by CPWL.

## **8. INDEMNITY**

8.1 During the Term of the Agreement, CPWL will indemnify the Owner against all claims, actions, losses (excluding loss of profits or indirect or consequential loss) and expenses of any nature which the Owner may suffer or incur or for which the Owner may become liable in respect of or arising out of or in connection with:

- (a) any damage to property or injury to persons arising from anything on the Land caused by any act or omission by CPWL; and
- (b) any liability incurred by the Owner in respect of a breach by CPWL of any legislation governing CPWL's actions on the Land including, without limitation, the RMA, the Health and Safety in Employment Act 1992, the Health and Safety at Work Act 2015, the Building Act 2004, the Electricity Act 1992 and any successors or amendments to any of such Acts,

to the extent that the Owner has not caused or contributed to the event.

## **9. OWNER'S COVENANTS**

9.1 Subject to clause 8, the Owner acknowledges that the reinstatement obligations of CPWL under clause 6, together with the terms and conditions of the Agreement and the Easement, are in full and final settlement and substitution of any claims to compensation the Owner may be entitled to make against CPWL in relation to the Works, the Operations and Site Restoration.

9.2 The Owner agrees, warrants and undertakes to CPWL that:

- (a) no person other than CPWL holds any rights to conduct anything on or under the Works Area including exploration or mining and the Owner will not negotiate or grant any such rights during the Term of the Agreement without obtaining CPWL's prior consent such consent not to be unreasonably withheld;
- (b) no access arrangement or agreement has been negotiated or entered into by the Owner in respect of the Works Area or any part of the Works Area and the Owner will not negotiate or enter into any access arrangement or agreement during the Term of the Agreement without obtaining CPWL's prior consent such consent not to be unreasonably withheld;
- (c) the Owner is the owner of the Land and no other person has any right to claim any rights to ownership of the Land; and
- (d) either the Owner is the sole occupier of the Works Area or the Owner has by the date of the Application Form obtained a deed of covenant with the occupiers of the Works Area under clause 12.3

9.3 The Owner will not, in its capacity as owner or occupier of the Land or both, either directly or indirectly:

- (a) object to the application for or the granting of any Resource Consent sought by CPWL for any Operations;

- (b) object to, advocate against, oppose or impede any action taken by CPWL under the RMA to give effect to any of the matters referred to in the Agreement or for the purpose of undertaking the Operations provided such actions do not cause any further loss to the Owner or the Owner's lessee or tenant (if any) as the case may be (unless the Agreement provides for a right to compensation for that loss);
  - (c) fund, facilitate, assist or promote any other person to take any action that would be in breach of the Agreement if done by the Owner;
  - (d) object to the granting of any other consent required by CPWL to undertake the Operations; or
  - (e) object to the granting of a Designation over that part of the Easement Area used to convey water.
- 9.4 The Owner will promptly give, sign and deliver all written approvals or consents requested by CPWL 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 CPWL pursuant to the Agreement or the Easement.
- 9.5 The Owner will promptly give, sign and deliver all written approvals or consents requested by CPWL to any application for an authority from the Historic Places Trust.
- 9.6 The Owner will execute and return to CPWL all plans and documents including the instrument required to register the Easement within 20 Working Days of receipt of a written request to do so from CPWL and the Owner will do all things reasonably necessary to enable CPWL to obtain and register the Easement against the Computer Register(s) for the Land.
- 9.7 If CPWL is required by any Resource Consent (including the Designation) to undertake any reasonable mitigation measures on the Land, including any planting or earthworks, the Owner will allow CPWL to undertake the mitigation measures and the definition of Operations will be extended to include such reasonable mitigation measures.

## **10. TERMINATION**

- 10.1 The Agreement shall immediately terminate on the later of:
- (a) the end of the period of defects liability under the construction contract for the irrigation infrastructure to be constructed on the Works Area; or
  - (b) registration of the Easement,
- and can otherwise be terminated as follows:
- (c) at any time prior to registration of the Easement, CPWL can terminate the Agreement by giving written notice at any time and for any reason to the Owner that the Agreement is terminated (either immediately or on a specified date); and
  - (d) the Owner can terminate the Agreement by giving written notice if CPWL has not completed the Operations within five (5) years of the date of financial close for Stage 2 of the Irrigation Scheme.



- 10.2 On termination of the Agreement the rights and obligations of the parties under the Agreement, will, except as expressly provided for in the Agreement, cease as at the date of termination provided that neither party will be released from any liability in respect of any obligations incurred or breaches of the Agreement up to and including the date of termination including those under clause 11.
- 10.3 The parties acknowledge that termination of the Agreement pursuant to clauses 10.1(a) and 10.1(b) does not in any way affect the validity or continuance of the Easement or any other agreement between the Owner and CPWL.

## **11. ACTION ON TERMINATION OF AGREEMENT**

- 11.1 CPWL will prior to termination of the Agreement pursuant to clause 10.1(c):
- (a) complete and/or discontinue Operations;
  - (b) remove from the Land all buildings, structures, CPWL's Improvements, consumables, plant and equipment owned by CPWL but excluding any Works constructed on the Easement Area or on any Access Routes;
  - (c) make good damage to the Land caused by the removal under clause 11.1(b);
  - (d) complete any restoration works necessary to comply with all Resource Consents and lawful requirements of any Authority to the satisfaction of that Authority; and
  - (e) complete all Site Restoration.
- 11.2 If the Agreement is terminated in accordance with clause 10.1(d), CPWL may complete the actions set out in clause 11.1 as soon as practical after such termination.
- 11.3 Subject to clause 11.4, all additions and alterations made to the Land by CPWL and any CPWL's Improvement, fixtures, consumables, plant and equipment owned by CPWL which are on the Land 180 Working Days after the date of termination of the Agreement will vest in the Owner without right of payment or compensation to CPWL by the Owner. The vesting of such items in the Owner is without prejudice to the rights of the Owner to recover costs incurred by the Owner in removing and/or disposing of such items.
- 11.4 The Owner acknowledges and agrees that nothing in clauses 11.1, 11.2 and 11.3 relates to any of CPWL's Works located on the Easement Area or on any Access Routes, with the intent being that CPWL's rights and obligations in respect of these matters are set out in the Easement.

## **12. ASSIGNMENT AND LEASING**

- 12.1 CPWL may assign, sub-licence, novate or otherwise transfer the whole or any part of its interest in the Agreement to any third party provided that the third party enters into a deed of covenant with the Owner to comply with the provisions of the Agreement in place of CPWL.
- 12.2 The Owner may transfer or assign any of its interest in the Land or the Agreement or may grant an interest in the Land after first obtaining the consent of CPWL, which must

be given if the assignee, transferee or recipient of the interest in the Land enters into a deed of covenant with CPWL that it will comply with the provisions of the Agreement in place of the Owner or, in the case of the grant of an interest in the Land, in addition to the Owner.

- 12.3 The Owner shall use its best endeavours to obtain a deed of covenant from any lessee or other occupier of any part of the Land as at the date of the Application Form or during the Term of the Agreement that the lessee or other occupier will comply with the provisions of the Agreement in addition to the Owner.
- 12.4 Notwithstanding any other provision in the Agreement, the Owner acknowledges that CPWL may assign by way of security all or any part of its rights or interests in the Agreement to CPWL's Financiers or any of them. CPWL's Financiers (or any of them) may at any time assign the rights and interests of CPWL or transfer the rights, interests and obligations of CPWL in the Agreement to a suitable substitute or assignee. In such a case, the Owner will execute any documents reasonably required by CPWL's Financiers (or any of them) to effect an assignment, transfer, novation or other dealing under this clause 12.4.

### **13. HEALTH AND SAFETY**

- 13.1 CPWL will comply with all obligations imposed on CPWL at law as the person in charge of a place of work and will be responsible for the health and safety of any person who enters on the Land at the request of CPWL.
- 13.2 CPWL agrees to comply with all the provisions of the Health and Safety in Employment Act 1992, the Health and Safety at Work Act 2015 (and any subsequent amendments and subordinate regulations to this legislation) and relevant codes of practice. While CPWL is undertaking the Operations, CPWL will be responsible for the health and safety of the Owner and the Owner's contractors, agents and invitees as the case may be when such persons are authorised by CPWL to be within the Works Area. The Owner will and will ensure that its contractors, agents and invitees comply with all health and safety directions given by CPWL within the Works Area.
- 13.3 CPWL agrees that it will consult with the Owner to ensure that CPWL's health and safety practices do not unreasonably affect the Owners operations.
- 13.4 The Owner will comply with all obligations imposed on the Owner at law as owner of the Land relating to the health and safety of persons on or in the vicinity of the Land.
- 13.5 The Owner will provide to CPWL upon request the Owner's rules and procedures, if any, regarding the health and safety of persons on the Land and the identification and mitigation of hazards.
- 13.6 CPWL will comply with any reasonable obligations imposed by the Owner regarding the identification and mitigation of hazards and the health and safety of persons on the Land.

## **14. REGISTRATION AND CAVEATS**

- 14.1 The parties acknowledge and agree that the Agreement is not separately registrable.
- 14.2 CPWL is entitled to lodge a caveat against any Computer Register(s) for the Land to protect its interest under the Agreement. CPWL will withdraw any caveat upon registration of the Easement. CPWL will not unreasonably withhold or delay its consent to any dealing with the Land where the dealing does not adversely affect CPWL's rights under the Agreement or where a deed of covenant as set out in clause 12.2 is entered into.

## **15. WAIVER**

- 15.1 No waiver by either party of any of the provisions of the Agreement, nor any consent by either party to any departure from the Agreement, will be effective unless the same is in writing, and then such waiver or consent will be effective only in the specific instance and for the specific purpose of which it is given.
- 15.2 No failure, delay or indulgence by either party in exercising any of its powers or rights under the Agreement will operate as a waiver of such power or right and a single exercise or partial exercise of any such power or right will not preclude further exercises of that power or right, or the exercise of any other power or right under the Agreement.

## **16. FURTHER ASSURANCES**

- 16.1 The Owner shall do all things and sign all documents reasonably required by CPWL to carry out the Owner's obligations under, and give effect to the intentions of the Agreement.

## **17. NON-MERGER**

- 17.1 Notwithstanding any rule of law to the contrary, the agreements, obligations and warranties of the parties set out in the Agreement will not merge in any instruments executed or registered pursuant to the Agreement but will remain in full force and effect and enforceable to the fullest extent possible until the Agreement is terminated.

## **18. NOTICES**

- 18.1 Any notice or other communication given under the Agreement must be in writing delivered to the address or sent to the email address in New Zealand from time to time notified by either party in writing to the other party. Until any other address or email address of either party is notified, they are as set out below.

### **Central Plains Water Limited**

PO Box 9424  
Tower Junction  
Christchurch 8149

Email: [admin@cpwl.co.nz](mailto:admin@cpwl.co.nz)

## **Owner**

The address set out in the Application Form

- 18.2 A notice delivered by hand is deemed to have been received at the time of delivery. A notice sent by email is deemed to have been received at the time of transmission provided that a confirmation of transmission is received by the sender.

## **19. ENTIRE AGREEMENT**

- 19.1 Except to the extent provided in any other duly executed agreement between the parties, any document executed by or on behalf of the Owner in relation to the Owner's land, the Water Use Agreement, CPWL's constitution or the terms of issue of any Shares, the Agreement sets out the entire agreement and understanding between the parties in relation to the matters contemplated by the Agreement and in particular supersedes any prior agreement, correspondence, or undertaking made between them.
- 19.2 The Owner acknowledges and agrees that it has not relied on any representations made by CPWL or its advisors or agents regarding the subject matter of the Agreement, including, without limitation, the Operations, the Works, the Easement, the Land and the compensation payable by CPWL.

## **20. DISPUTE RESOLUTION**

- 20.1 The dispute resolution provisions set out in the Easement will apply to any dispute or difference which arises under the Agreement, modified as follows:
- (a) in resolving any dispute or difference relating to farm management or related compensation issues, CPWL and the Owner may each obtain advice from a senior farm advisor provided that the farm advisor must have at least 10 years' relevant experience; and
  - (b) where the dispute or difference is in respect of an objection by the Owner under clause 6 to CPWL's final compensation assessment, CPWL must appoint a senior farm advisor (who must have at least 10 years' experience) to determine the compensation and the Owner may, at CPWL's cost, obtain advice from a senior farm advisor (who must have at least 10 years' relevant experience).

## DEFINITIONS

In the Agreement, unless a contrary intention is required:

**Access Requirements** means any restrictions on access to the Land as agreed between CPWL and the Owner in accordance with clause 1.1(b) and recorded on the Plans;

**Access Route** means that part of the Land identified as the access route, access track or similar to be agreed between CPWL and the Owner in accordance with clause 1.1(b) and recorded on the Plans;

**Agreement** means the Application Form together with these General Terms and the Plans;

**Application Form** means the application form relating to Construction Shares attached to the PDS and which has been completed and signed by (or on behalf of) the Owner;

**Authority** means the government, any department or agency of the government, any statutory or regulatory agency or authority, and any local government entity having jurisdiction or authority over or in respect of the Land or the use or occupation of the Land;

**Construction Shares** means the construction shares issued under the PDS;

**CPWL** means Central Plains Water Limited and includes the successors and permitted assigns of CPWL, and unless the context otherwise requires includes the employees, contractors, consultants, agents and invitees of CPWL;

**CPWL's Financiers** means the lenders providing secured financing to CPWL from time to time and includes any security trustee acting on their behalf;

**CPWL's Improvement** means any temporary structure, including any building or other structure, road, carpark, track, access way, culvert, ford, bridge, irrigation work, water race, fence, gate or conveyor owned by CPWL on the Land, but excludes any Works constructed by CPWL on the Land pursuant to the Agreement or any other Works owned by CPWL on the Land;

**Designation** has the same meaning as in section 166 of the RMA and includes any varied, substitute, additional, replacement or new Designation;

**Easement** means the right to convey water and electricity/telecommunications easement in gross to be granted by the Owner to CPWL pursuant to the Agreement the form of which is set out in Schedule 2;

**Easement Area** means that part of the Land to be subject to the Easement as shown on the Plans;

**General Terms** means the terms and conditions set out in this document (including the schedules) as amended or varied from time to time;

**GST** means goods and services tax imposed under the Goods and Services Tax Act 1985;

**Irrigation Scheme** means the irrigation scheme providing surface water for community irrigation on the Central Plains (which is currently the area in Canterbury bounded by the Rakaia and Waimakariri Rivers, the Southern Alps and State Highway 1 or such area as defined by the CPWL board from time to time);

**Land** means that part of the Owner's Land agreed between CPWL and the Owner in accordance with clause 1.1 as being required for the construction of the pipeline as part of the Irrigation Scheme and shown on the Plans;

**Material** means any material extracted and removed from the Works Area by the Operations except Topsoil;

**Owner** means the person subscribing for Construction Shares as described in section 1 of the Application Form and includes the executors, administrators and successors of the persons comprising the Owner, and unless the context otherwise requires includes employees, contractors and agents of the Owner;

**Owner's Improvement** means any building or other structure, road, carpark, track, access way, culvert, ford, bridge, irrigation work, water race, fence, gate or conveyor owned by the Owner on the Land;

**Owner's Land** means all of the Owner's land in the Stage 2 Area (including the land contained in each title listed in the Application Form);

**Operations** means the construction, installation, operation, inspection and maintenance of the Scheme Infrastructure and any other actions that CPWL considers expedient or necessary to give full effect to the Agreement according to its true intent including operations undertaken by CPWL in relation to the Resource Consents;

**PDS** means the product disclosure statement issued by CPWL dated 3 May 2016;

**Plans** means the plans setting out the intended location and extent of the Scheme Infrastructure on the Owner's Land, the Land, the Works Area, the extent of the Operations and (if applicable) any specific Access Requirements, Access Route, timetable and Site Restoration agreed between CPWL and the Owner in accordance with clause 1.1 (as amended and or supplemented by CPWL and the Owner from time to time);

**Resource Consent** has the same meaning as in section 87 of the RMA and includes any Designation affecting the Land;

**RMA** means the Resource Management Act 1991;

**Scheme Infrastructure** has the meaning given to that term in the Water Use Agreement;

**Shares** has the meaning given to that term in the Water Use Agreement;

**Site Restoration** means any restoration works necessary to comply with clause 1.1(c) and recorded on the Plans;

**Stage 2 Area** means the area defined as the Stage 2 area in the PDS;

**Term** means the period of time commencing on the date of signing of the Application Form and ending when the Agreement is terminated;

**Topsoil** means the topsoil layer (including organic debris, duff and/or litter layers) of the Land;

**Water Use Agreement** means the Application Form together with the Water Use Agreement General Terms referred to in the Application Form;

**Working Day** means any day of the week excluding Saturday, Sunday, national statutory holidays and Canterbury anniversary day;

**Works** means pipework, pumps and electrical works roading, temporary buildings, stockpiles and Material, wherever located (including on other land) and includes all or any part of any earthwires, foundations, buildings, pipes, bridges, ground stays, supports, casings, devices, appliances, metering devices and other apparatus, structures, fixtures and equipment which CPWL considers necessary or expedient to give effect to its rights under the Easement and extends to include all or any fences, access tracks (including culverts, bridges and other supports) and gates constructed by CPWL and intended by CPWL to remain permanently on the Land; and

**Works Area** means a corridor of approximately 20m which includes the Easement Area, Access Routes and any other area of the Land shown on the Plans as being affected by the Operations.

SCHEDULE 2

FORM OF EASEMENT

Form B

---

**Easement instrument to grant easement or *profit à prendre*, or create land covenant**

(Sections 90A and 90F Land Transfer Act 1952)

**Grantor**

--

**Grantee**

<b>CENTRAL PLAINS WATER LIMITED</b>
-------------------------------------

**Grant of Easement or *Profit à prendre* or Creation of Covenant**

<p><b>The Grantor</b> being the registered proprietor of the servient tenement(s) set out in Schedule A <b>grants to the Grantee</b> (and, if so stated, in gross) the easement(s) or <i>profit(s) à prendre</i> set out in Schedule A, <b>or creates</b> the covenant(s) <b>set out</b> in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)</p>
--

**Schedule A**

*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right to convey water, right to convey electricity, and right to convey telecommunications and computer media	[insert]	[insert]	In gross



**Form B – continued**

**Easements or *profits à prendre* rights and powers (including terms, covenants and conditions)**

*Delete phrases in [ ] and insert memorandum number as required; continue in additional Annexure Schedule, if required*

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2002 ~~and Schedule Five of the Property Law Act 2007~~

The implied rights and powers are hereby **[varied]** ~~[negated]~~ ~~[added to]~~ or ~~[substituted]~~ by:

~~{Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952}~~

~~{the provisions set out in Annexure Schedule 1 }, such provisions to be subject to the provisions set out in Annexure Schedule 2 (if any)-~~

**Covenant provisions**

*Delete phrases in [ ] and insert Memorandum number as required; continue in additional Annexure Schedule, if required*

The provisions applying to the specified covenants are those set out in:

~~{Memorandum number \_\_\_\_\_, registered under section 155A of the Land Transfer Act 1952}~~

~~{Annexure Schedule}~~

*Insert instrument type*

Easement

*Continue in additional Annexure Schedule, if required*

## ANNEXURE SCHEDULE 1

### 1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** Unless a contrary intention appears:

“**Associated Plant and Equipment**” means underground electricity and communication lines, off take structures, monitoring and control gear, fences and any other plant or equipment deemed by the Grantee to be necessary or desirable for the operation of the Pipeline for irrigation purposes.

“**Construct**” includes construct, lay, Maintain, upgrade, replace and remove.

“**Easement Land**” means the land marked on Deposited Plan, and includes the Turnout Pad located on the land marked on Deposited Plan .

“**Irrigation Scheme**” means the scheme constructed and/or operated by the Grantee for the supply of water for irrigation in the area between the Malvern foothills, the Rakaia River, State Highway One and the Waimakariri River.

“**Land**” means the Servient Tenement in Schedule A.

“**Maintain**” includes repair, renew, alter, inspect and improve.

“**Operate**” means operate, inspect and test the Pipeline and the Associated Plant and Equipment.

“**Persons under the control of the Grantee**” include any engineers, surveyors, workmen, contractors, agents, professional advisers or other employees, licensees, lessees or invitees (but excluding members of the public), with or without any vehicle, machinery or equipment, of or authorised by the Grantee.

“**Pipeline**” means the underground pipeline Constructed by the Grantee on the Servient Tenement as part of the Irrigation Scheme for the purpose of conveying water, including without limitation any Turnout Pad (as expanded on in clause 2.3).

“**Earth**” means soil, mud, gravel, rock, sediment and other excavated material.

“**Survey**” means survey, site investigation and pegging.

“**Turnout Pad**” means infrastructure located primarily on and above the surface of the ground comprising the pipeline and associated electrical and telecommunications systems, enabling the collection and transmission of data related to water flow through the pipeline and providing a point of water delivery.

“**Working Day**” means any day other than a Saturday, a Sunday, a public holiday in Canterbury, and any day in the period 25 December to 2 January (inclusive).

Insert instrument type

Easement

*Continue in additional Annexure Schedule, if required*

**1.2 Interpretation:** Unless a contrary intention appears:

- a) a reference to a person includes any other entity or association recognised by law and the reverse;
- b) words referring to the singular number include the plural number and the reverse;
- c) words referring to one gender include every other gender;
- d) any reference to any of the parties by their defined terms includes that party's executors, administrators or permitted assigns or both or being a company its successors or permitted assigns or both;
- e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- f) every agreement or undertaking expressed or implied by which more persons than one agree or undertake any obligation or derive any benefit under this Easement Instrument, or both, binds and is for the benefit of such persons jointly and severally;
- g) clause headings are for reference purposes only;
- h) a reference to an item is a reference to the corresponding item in the Schedule;
- i) where any words or phrases are given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- j) a reference to an exhibit, annexure or Schedule is a reference to the corresponding exhibit, annexure or Schedule to this Easement Instrument;
- k) a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; and
- l) the calculation of all periods of time or notice exclude the day on which the period or notice is given and the day on which the period or notice expires.

**2 GRANT OF RIGHTS POWERS AND PRIVILEGES**

- 2.1 Grant of right to convey water:** The Grantor hereby grants to the Grantee an easement in gross in perpetuity to Construct and Operate a Pipeline and Associated Plant and Equipment, and to convey water in any quantity capable of being safely conveyed from time to time in free and unimpeded flow through the Pipeline under the Easement Land together with and subject to the following rights, powers and privileges for the Grantee and Persons under control of the Grantee:

Insert instrument type

Easement

*Continue in additional Annexure Schedule, if required*

- a) **Right to remove vegetation:** The right to keep the Easement Land clear of, and remove, any vegetation or structures which are or are likely in the opinion of the Grantee to:
- (i) be a danger or a hazard to the safety or the operation of the Pipeline and the Associated Plant and Equipment; or
  - (ii) otherwise interfere with the operation of the Pipeline and the Associated Plant and Equipment,
- either before or after the date of commencement of the Construction.
- b) **Right to Maintain Pipeline:** The right to Maintain the Pipeline and the Associated Plant and Equipment on the Easement Land.
- c) **Right of entry:** The right to enter on the Land, and to remain on the Land with or without equipment or vehicles for any purposes associated with the Construction, Maintenance and Operation of the Pipeline and the Associated Plant and Equipment.
- d) **Right to erect notices:** The right to erect and Maintain on the Easement Land signs and notices. The Grantee will consult the Grantor about reasonable locations for the signs.
- e) **Right to take safety measures:** Without limitation to the Grantee's obligations under clause 0, the right to take such measures as the Grantee reasonably thinks necessary for the safety of persons and property.
- f) **Right to access:** The right to have reasonable access to the Easement Land through the Land and any other land of the Grantor adjacent to it for the purposes of exercising any of the powers granted in this Easement Instrument at any time and with and without vehicles, plant and equipment provided that:
- (i) such rights shall be exercised only over routes and in such manner agreed in advance between the Grantor and Grantee (acting reasonably), provided that routes adequate to the Grantee's reasonable requirements shall be available to the Grantee at all times;
  - (ii) such rights shall be exercised in such manner as will minimise damage to the Land and disturbance to any occupier; and
  - (iii) the Grantee will promptly make good any damage caused by the Grantee to the Land, any other land or the Grantor's property.
- g) **Easement Land as access:** The right to use the Easement Land for access to those parts of the Pipeline and the Irrigation Scheme situated on land other than the Easement Land.
- h) **Other rights:** Any other rights set out in this Easement Instrument.

Insert instrument type

Easement

Continue in additional Annexure Schedule, if required

**2.2 Grant of right to convey electricity, telecommunications and computer media:**

- a) in respect of the right to convey electricity the Grantor hereby grants to the Grantee an easement in gross in perpetuity to convey electricity under the ground of the Easement Land; and
- b) in respect of the right to convey telecommunications and computer media the Grantor hereby grants to the Grantee an easement in gross in perpetuity to convey telecommunications and computer media under the ground of the Easement Land, together with and subject to the rights, powers and privileges for the Grantee and Persons under control of the Grantee implied in the specified classes of easement by the Land Transfer Regulations 2002, varied by deleting clause 14 of the Fourth Schedule of the Land Transfer Regulations 2002 and substituting the following clause:

*"14 Where there is a conflict between the provisions of the Fourth Schedule of the Land Transfer Regulations 2002 and the provisions of this Easement Instrument, the provisions of this Easement Instrument shall prevail."*

- 2.3 All provisions of this Easement Instrument relating to the Pipeline shall extend in all respects to allow for any Turnout Pad (primarily located for the avoidance of doubt above the surface of the land) separately identified in the definition of the "Easement Land" as being for that purpose.

**3 GRANTOR'S USE OF AND EFFECTS ON EASEMENT LAND**

- 3.1 **Use:** For the avoidance of doubt, the Grantor shall have the right to use the Easement Land, provided it does not interfere with or affect in any way the rights of the Grantee granted in this Easement Instrument.

- 3.2 **Excavation:** The Grantor shall not:

- a) remove or add any Earth from the Land; or
- b) disturb any Earth on the Land

where any such work may have an adverse effect on the Pipeline, Associated Plant and Equipment or the Easement Land without either:

- (a) the prior written consent of the Grantee; or
- (b) a certificate being provided to the Grantee prior to such work commencing by a Chartered Engineer that there will be no adverse effect on the Pipeline or the Easement Land as a result of the planned work.

- 3.3 **Improvements:** The Grantor shall not without the prior written consent of the Grantee:

- (a) build or effect any improvements (including without limitation any fence) on or in the Easement Land; or
- (b) permit any utilities to be located within the Easement Land.

*Insert instrument type*

Easement

*Continue in additional Annexure Schedule, if required*

- 3.4 **Trees:** The Grantor shall not plant any trees upon the Easement Land.
- 3.5 **Fires:** The Grantor shall not light any fires or burn off vegetation on or within 10 metres of the Easement Land.
- 3.6 **Interference:** The Grantor shall not obstruct or interfere in any way with the Construction, Operation or use of the Pipeline, Associated Plant and Equipment and/or the Irrigation Scheme by the Grantee or Persons under the control of the Grantee.
- 3.7 **No negative effect:** The Grantor shall not undertake any act or omission which may in the reasonable opinion of the Grantee have a negative effect on the Pipeline, Associated Plant and Equipment and/or the Irrigation Scheme or their use.
- 3.8 **Ownership:** The Grantor acknowledges that the Grantee is and remains at all times the legal and beneficial owner of the Pipeline and all Associated Plant and Equipment and all other structures that the Grantee or any Persons under the control of the Grantee Construct on the Easement Land, and neither the Grantor nor any mortgagee, encumbrancee nor any chargeholder of the Grantor shall have any interest in such structures.
- 3.9 **Right to Mortgage:** The Grantor acknowledges that the Grantee has a right to and may elect to grant a mortgage of its interest under this Easement instrument.
- 3.10 **Grantee may remedy:** The Grantee shall be entitled to take all reasonable steps to abate or remedy any breach by the Grantor of this Easement Instrument, and to recover any costs and expenses incurred by the Grantee from the Grantor, provided always that before taking any such steps the Grantee shall first give the Grantor a reasonable opportunity to remedy the breach. The Grantee shall not be liable to the Grantor in any way for any loss or damage suffered by the Grantor as a result of the Grantee exercising its rights under this clause.
- 3.11 **Emergencies:** The Grantee may from time to time, if it considers that there is an emergency involving public safety, temporarily exclude entry by all persons to the Easement Land. The Grantee shall notify the Grantor of the situation as soon as reasonably practicable.
- 3.12 **Breach of Easement Instrument:** The Grantor indemnifies, and keeps indemnified, the Grantee for any reasonably foreseeable costs, losses, expenses, damages or claims incurred or suffered by the Grantee resulting from any breach by the Grantor of the terms of this Easement Instrument.
- 4 OBLIGATIONS OF THE GRANTEE**
- 4.1 **Maintenance:** The Grantee shall maintain the Pipeline and the Associated Plant and Equipment in good repair.
- 4.2 **Disturbance:** Without limiting the rights of the Grantee under this Easement Instrument, the Grantee shall carry out works permitted by this Easement Instrument as expeditiously as possible.

Insert instrument type

Easement

*Continue in additional Annexure Schedule, if required*

- 4.3 Disturbance to stock:** Where any activity carried out by the Grantee involves the use of heavy machinery or equipment which is likely to cause a significant disturbance to stock on the Grantor's land due to noise and/or vibration, the Grantee shall consult with the Grantor in good faith prior to undertaking such activity in accordance with its rights under this Easement Instrument, so as to reduce the impact on stock by operating the machinery or equipment at appropriate times.
- 4.4 Reinstatement:** The Grantee shall reinstate any pipes, cables, or other service conduits of the Grantor or any third party having the right to lay, use or Maintain them on any part of the Land which are damaged by the carrying on by the Grantee of any work.
- 4.5 Gates:** The Grantee shall leave all gates on the Land open or closed as it finds them. The Grantor shall provide to the Grantee, at the expense of the Grantee, copies of keys to any locks fitted to any of the gates on the Land required by the Grantee to exercise its rights in accordance with this Easement Instrument.
- 4.6 No obligation to convey:** For the avoidance of doubt, the Grantee is not obliged by this Easement Instrument to convey water through the Pipeline. The Grantee is entitled at its discretion to discontinue and thereafter recommence the conveyance of water through the same at any time and from time to time.
- 4.7 Obligations of the Grantee:** The Grantee shall:
- (a) comply with, and ensure that all Persons under the control of the Grantee comply with, at all times, the Grantor's health and safety policies as amended from time to time when accessing the Land and exercising the Grantee's rights; and
  - (b) comply with the provisions of all statutes, ordinances, regulations and by-laws issued made or given by any competent authority in any way relating to its use of the Easement Land.
- 4.8 Interference:** Except as expressly authorised by this Easement Instrument, the Grantee shall:
- (a) not unreasonably interfere with the Grantor's ordinary use of the Land; or
  - (b) damage the Grantor's property.
- 4.9 Safety:** The Grantee shall Operate and Maintain the Pipeline and the Associated Plant and Equipment in a safe manner and shall leave the same in as safe a condition as is reasonably practicable.
- 4.10 Breach of Easement Instrument:** The Grantee indemnifies, and keeps indemnified, the Grantor for any reasonably foreseeable costs, losses, expenses, damages or claims incurred or suffered by the Grantor resulting from any breach by the Grantee of the terms of this Easement Instrument.
- 4.11 Insurance:** The Grantee will maintain public liability insurance at a reasonable cover level commensurate with operating the Pipeline, Associated Plant and Equipment and Irrigation Scheme. The Grantee will provide a copy of the insurance cover upon reasonable request by the Grantor.

*Insert instrument type*

Easement

*Continue in additional Annexure Schedule, if required*

4.12 **Loss:** The Grantee will not be responsible for any loss or damage suffered by the Grantor except where such loss or damage is due to the negligent or wilful acts or omissions of the Grantee or any Persons under the control of the Grantee.

## 5 CONTACT DETAILS

The Grantor and the Grantee shall each provide to the other, and update from time to time as necessary, the names and contact details (including urgent contact details) of their representatives for the purposes of this Easement Instrument.

## 6 ASSIGNMENT

The Grantee may, with prior notice to the Grantor, transfer, lease, assign or licence all or any part of its estate or interest in the Easement Land and / or the rights in this Easement Instrument or any parts of those rights.

## 7 BINDING

This Easement Instrument shall be binding on and enure for the benefit of the executors, administrators, successors and assigns of both parties.

## 8 FURTHER ASSURANCE

The Grantor shall immediately at the request of the Grantee execute and deliver any further documents or assurances and do all acts and things reasonably required by the Grantee to give full force and effect to the provisions of this Easement Instrument.

## 9 NO DETERMINATION

No power is implied in respect of this Easement Instrument for the Grantor to determine the Easement Instrument for breach of any provision of this Easement Instrument, it being the intention of the parties that the Easement Instrument shall subsist unless surrendered in writing.

## 10 NON MERGER

The agreements, obligations and warranties of the parties shall not merge on registration of this Easement Instrument.

## 11 GOVERNING LAW

This Easement Instrument is governed by and construed in accordance with the laws of New Zealand.

## 12 DISPUTES

12.1 **Dispute resolution process:** Subject to clause 12.2, neither the Grantee nor the Grantor may



*Insert instrument type*

Easement

*Continue in additional Annexure Schedule, if required*

commence any proceedings relating to any dispute which touches the construction, meaning or effect of this Easement Instrument or the rights or liabilities of the parties to this Easement Instrument unless the party has taken all reasonable steps to comply with the following provisions:

- (a) If there is a dispute between the Grantee and the Grantor in relation to this Easement Instrument, the parties shall endeavour to resolve the dispute by agreement.
- (b) If the parties do not reach an agreement, either the Grantee or the Grantor may by notice to the other party refer the dispute to mediation. The mediation will be in Christchurch and conducted under the LEADR New Zealand Incorporated ("LEADR") standard mediation agreement. If the Grantee and the Grantor do not agree on a mediator or the mediator's fees, the mediator shall be appointed or the fees set by the chair of LEADR (or his/her nominee) at the request of either party. The Grantee and the Grantor shall bear the mediator's fees equally.
- (c) If the dispute is not resolved within fifteen (15) Working Days of the appointment of the mediator, either the Grantee or the Grantor may by notice to the other party refer the dispute to arbitration. The arbitration will be conducted in Christchurch by a single arbitrator under the Arbitration Act 1996. If the Grantee and the Grantor do not agree on an arbitrator within five (5) Business Days of receipt of the notice of arbitration, the arbitrator shall be appointed by the President of the New Zealand Law Society (or his/her nominee) at the request of either party.

12.2 Nothing in clause 12.1 shall preclude the Grantee or the Grantor from seeking urgent equitable relief before a court.