

Dated

1 MARCH

2016

LOAN AGREEMENT

Borrower

CENTRAL PLAINS WATER LIMITED

Lender

THE SELWYN DISTRICT COUNCIL

Water Trust

CENTRAL PLAINS WATER TRUST

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PARTIES

- (1) CENTRAL PLAINS WATER LIMITED (the "Borrower")
- (2) THE SELWYN DISTRICT COUNCIL (the "Lender")
- (3) CENTRAL PLAINS WATER TRUST (the "Water Trust")

BACKGROUND

- A. The Borrower wishes to continue the design, development and preparatory work for Stage 2+ of the Scheme.
- B. The Lender has, at the request of the Borrower, agreed to provide the Borrower with a loan facility for this purpose on the terms and subject to the conditions contained in this Agreement.
- C. The Water Trust has agreed to be a party to the Licence to better secure the Facility.

IT IS AGREED:

1. INTERPRETATION

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

- (a) "Agreement" means this loan agreement;
- (b) "Approved Lenders" means the sublicensees under the Approved Lender Sublicences;
- (c) "Approved Lender Sublicences" means the sublicences granted by the Borrower to each of Dairy Holdings Limited, Fonterra Cooperative Group Limited, (now) Purata Farming Limited, Willsden Farm Limited, Chiswick Farm Limited, Prairie Farm Limited, Clovernook Farm Limited, Canterbury Pastoral Limited, Tui Company Limited, Carlow Farm Limited and (now) Mildara Dairy Limited to use the Rakaia River water take consents to allow those parties to irrigate their land (each as amended from time to time);
- (d) "Borrower Negative Pledge" means the negative pledge in clause 9.3(c);
- (e) "Borrower SSA" means the specific security agreement granted by the Borrower in favour of the Lender dated on or about the same date as this Agreement;
- (f) "Business Day" means a day (other than a Saturday or a Sunday) on which registered banks are open for normal banking business in Christchurch;
- (g) "CIIL" means Crown Irrigation Investments Limited;
- (h) "CIIL Facility" means the Subordinated Facility Agreement between the Borrower and CIIL dated 1 July 2014;
- (i) "Deed of Assignment by way of Security of Designation" means the deed entered into by the Borrower and the Lender dated on or about the same date as this Agreement;
- (j) "Default Rate" means 4% per annum above the Interest Rate;

- (k) **"Drawdown Date"** means the date five (5) Business Days after the date on which all of the conditions at clause 2.1 are satisfied or waived, or such later date as the parties agree in writing;
- (l) **"Drawing"** means each drawing made, to be made or deemed to be made by the Borrower under the Facility;
- (m) **"Event of Default"** means any of the events specified in clause 10.1;
- (n) **"Facility"** means the sum of up to \$8,000,000.00 (plus all capitalised interest, fees and costs) lent or to be lent by the Lender to the Borrower pursuant to this Agreement, whether drawn down as one Drawing or a number of Drawings;
- (o) **"Financial Accounts"** means statements of financial performance, statements of financial position and cashflow statements together with any statements, reports (including any directors' and auditors' reports) and notes attached to or intended to be read with any of them;
- (p) **"Financial Year"** means each period of twelve months which make up the financial reporting year of the Borrower, commencing on 1 July in each calendar year and ending on 30 June in the subsequent calendar year;
- (q) **"First Construction Finance Date"** means, where another lender has agreed to provide funding to the Borrower (or any subsidiary or related entity of the Borrower) to be used primarily for, and in an amount sufficient (in the Borrower's reasonable opinion) to enable the Borrower to complete, construction of the Sheffield Scheme, the date on which the Borrower (or any subsidiary or related entity of the Borrower) first receives or is first able to draw down such funding;
- (r) **"GAAP"** means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013;
- (s) **"IAF"** means the Irrigation Acceleration Fund;
- (t) **"Initial Drawdown Date"** means the date that the Borrower first makes a Drawing under the Facility;
- (u) **"Initial Drawdown Period"** means the period commencing on the Drawdown Date and finishing on 31 March 2016;
- (v) **"Intercreditor Deed"** means the Intercreditor and Project Arrangement Deed between, among others, the Borrower, the Lender, the Water Trust, CIIL and ANZ Bank New Zealand Limited (as facility agent and security trustee) dated on or about the date of this Agreement;
- (w) **"Interest Rate"** means 10 percent per annum;
- (x) **"Irrigation Season"** means the period from the 1st of September of each year to the 31st of May of the following year or such other period as the Borrower may from time to time determine;

- (y) **"Licence"** means the licence agreement between the Borrower, the Lender and the Water Trust dated on or about the date of this Agreement, a copy of which is attached as the Schedule to this Agreement;
- (z) **"NZ Dollars"** and **"NZ\$"** means the lawful currency of New Zealand;
- (aa) **"Outstanding Amount"** means, on any date, the aggregate principal amount of all outstanding Drawings as at that date and all unpaid interest, fees and costs that have been capitalised pursuant to the terms of this Agreement;
- (bb) **"Outstanding Moneys"** means, on any date, the aggregate principal amount of all outstanding Drawings at that date, all interest (including default interest), fees and other costs and expenses and all other moneys owing by the Borrower to the Lender under the Transaction Documents on such date;
- (cc) **"Potential Event of Default"** means any event or circumstance which, with the giving of any notice, the passing of time and/or the fulfilment of any other requirement, could become an Event of Default;
- (dd) **"Prospectus"** means the Prospectus and Investment Statement for Central Plains Water Limited dated 4 September 2013 (as amended from time to time);
- (ee) **"Quarterly Date"** means each of 31 March, 30 June, 30 September and 31 December in each year;
- (ff) **"Repayment Date"** means 31 October 2019 or such later date as the parties agree in writing;
- (gg) **"Resource Consents"** has the meaning given to that term in the Licence;
- (hh) **"Scheme"** means the scheme known as the Central Plains Water Enhancement Scheme developed by the Borrower and the Water Trust, and detailed in the Prospectus, to provide surface water for community irrigation to certain land on the central plains of Canterbury as shown in the scheme map in the Prospectus;
- (ii) **"Second Construction Finance Date"** means, where another lender has agreed to provide funding to the Borrower (or any subsidiary or related entity of the Borrower) to be used primarily for, and in an amount sufficient (in the Borrower's reasonable opinion) to enable the Borrower to complete, construction of Stage 2+ in respect of all (or substantially all) of the Stage 2+ Land excluding the Sheffield Scheme, the date on which the Borrower (or any subsidiary or related entity of the Borrower) first receives or is first able to draw down such funding;
- (jj) **"Security Trustee"** means the person appointed from time to time as the security trustee under the Security Trust and Intercreditor Deed, which as of the date of this document is ANZ Bank New Zealand Limited;
- (kk) **"Security Trust and Intercreditor Deed"** means the security trust deed dated 8 April 2014 between, among others, the Debtor and ANZ Bank New Zealand Limited (in various capacities) and Westpac New Zealand Limited (in various capacities);

- (ll) **"Sheffield Scheme"** means that part of Stage 2+ to provide surface water for community irrigation to approximately 3,500 hectares in the Sheffield area;
- (mm) **"Senior Facility"** means the Syndicated Facility Agreement between, among others, ANZ Bank New Zealand (in various capacities), Westpac New Zealand Limited (in various capacities) and the Borrower dated 8 April 2014;
- (nn) **"Stage 1"** means the initial portion of the Scheme (approximately 20,000 ha) which has been constructed in an area bordered by the Rakaia River, Hororata River and Selwyn River (below the confluence with the Hororata River) as shown in the scheme map provided in the Prospectus;
- (oo) **"Stage 1 Construction Shares"** means construction shares issued by the Borrower in relation to Stage 1;
- (pp) **"Stage 2+"** means that part of the Scheme to provide surface water for community irrigation to the Stage 2+ Land (and includes, for the avoidance of doubt, the Sheffield Scheme);
- (qq) **"Stage 2+ Land"** means the area within the Scheme boundary which is not defined as Stage 1 (approximately 37,000ha) as shown in the scheme map provided in the Prospectus;
- (rr) **"Stored Water Release Agreement"** means the stored water release agreement dated 31 May 2013 between the Borrower and Trustpower Limited;
- (ss) **"Tranche"** has the meaning in clause 3.1;
- (tt) **"Transaction Documents"** means:
 - (i) this Agreement;
 - (ii) the Borrower SSA;
 - (iii) the Deed of Assignment by way of Security of Designation;
 - (iv) the Licence;
 - (v) the Intercreditor Deed; and
 - (vi) any other agreement or document which the parties agree will be a Transaction Document for the purposes of this Agreement,

and when referred to in relation to any particular person, means every Transaction Document to which that person is party or by which it is bound;
- (uu) **"Water Trust"** means the Central Plains Water Trust (incorporation number 1409796), established under a Deed of Trust dated 15 April 2003; and
- (vv) **"Works"** means all design, development and preparatory work required to be undertaken in relation to Stage 2+ of the Scheme.

1.2 Interpretation: In this Agreement, unless the context requires otherwise:

- (a) an **"agreement"** includes a contract, document, deed, licence, franchise, undertaking, certificate, instrument or other arrangement (in each case whether oral or written);

- (b) a "**consent**" includes an approval, authorisation, exemption, filing, licence, clearance, order, permit, recording or registration (and references to obtaining consents shall be construed accordingly);
- (c) an Event of Default or Potential Event of Default "**continuing**" is a reference to that Event of Default or Potential Event of Default having occurred and not having been waived by the Lender or remedied to the Lender's satisfaction;
- (d) "**costs**" includes any costs, charges, fees, commissions, indemnities, taxes, damages, losses, expenses (including legal fees and expenses on a full indemnity basis and goods and services and similar taxes thereon), claims, liabilities (absolute or contingent), fines and penalties and includes loss of profit and costs incurred in liquidating or redeploying deposits or other funds;
- (e) a "**directive**" includes any present or future order, regulation, request, requirement or notification by whatever means (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive is addressed);
- (f) "**disposal**" includes:
 - (i) any sale, assignment, exchange, transfer, concession, loan, gift, lease, surrender of lease, licence, reservation, waiver, compromise, release;
 - (ii) any parting with possession or parting with ownership of, or the granting of any option, right or interest, or otherwise dealing with or any agreement to do any of those things; and
 - (iii) the payment of money or any distribution by way of dividend,
 but excludes the creation of a security interest, and "**dispose**" means to make a disposal, and "**acquisition**" and "**acquire**" shall be construed accordingly;
- (g) a "**distribution**" has the meaning given to that term in section 2 of the Companies Act (and as if "**company**" includes any entity);
- (h) the "**dissolution**" of a person includes the winding-up, liquidation, removal from the register or bankruptcy of that person or an equivalent or analogous procedure under the law of any relevant jurisdiction;
- (i) "**environmental law**" includes any law which relates in any way to (a) the environment, (b) the safety, health or use of land, water, buildings or any other property or (c) substances or activities which may affect or otherwise harm the environment or be hazardous to any person and/or the environment, and shall include but not be limited to the Resource Management Act 1991 and the Building Act 1991;
- (j) "**governmental agency**" includes any state or government and any governmental, semi-governmental, judicial, statutory, monetary, accounting or regulatory entity, authority, body or agency or any person charged with the administration of any law or directive but does not include the Lender, except where the Lender is properly exercising its regulatory authority

and not acting on the basis of its interest in the Transaction Documents and/or its interest as a lender to the Borrower;

- (k) **"guarantee"** includes any indemnity, letter of credit, suretyship, third party security or any other obligation (whatever called and of whatever nature):
 - (i) to pay, purchase, provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services or otherwise) for the payment or performance of; or
 - (ii) otherwise to be responsible or assume liability for or in respect of, any indebtedness or obligation of another person;
- (l) **"indebtedness"** includes any obligation (whether present or future, actual or contingent, secured or unsecured and whether incurred alone, severally, jointly or jointly and severally, as principal surety or otherwise) relating to the payment or repayment of money;
- (m) a **"law"** includes common law and any constitution, decree, judgment, legislation, order, ordinance, by-law, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and **"lawful"** shall be construed accordingly);
- (n) something having a **"material adverse effect"** on a person is a reference to it having a material adverse effect (a) on its financial condition or business (and/or, as applicable, on the consolidated financial condition or business of the group of companies of which it forms part) or (b) on its ability to perform its obligations under any Transaction Document or, as the context may require, (c) on the Lender's ability to recover any amount payable by the Borrower under the Transaction Documents or to enforce performance of that person's obligations under the Transaction Documents (and **"material adverse change"** shall be construed accordingly);
- (o) **"on demand"** means on the receipt by the Borrower in accordance with the notice provisions of this Agreement of any demand in writing that has been signed by any authorised officer of the Lender;
- (p) **"person"** includes any individual, firm, company, corporation, association of persons (corporate or not), trust or governmental agency (in each case whether or not having separate legal personality);
- (q) any **"property"** of the Borrower includes any property in which the Borrower has rights;
- (r) **"resource consent"** has the meaning given to it by section 2 of the Resource Management Act 1991;
- (s) a **"security interest"** includes a **"security interest"** (as defined in section 17 of the PPSA), a mortgage, encumbrance, lien, pledge, charge (whether fixed or floating), finance lease, deferred purchase, sale and repurchase, flawed asset, sale and leaseback, title retention, assignment by way of security, trust, hypothecation, and any other security agreement or arrangement of whatsoever nature (however described) that in substance secures payment or performance of an obligation without regard to the form of the transaction and the identity of the parties; and

- (l) **"subsidiary"** of any person means any subsidiary of such person within the meaning given to that term in sections 5 and 6 of the Companies Act 1993; and
- (u) **"tax"** includes any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called (including any interest, penalties, fines and charges in respect of taxes) imposed, levied, collected, withheld or assessed by any governmental agency, on whomsoever imposed, levied, collected, withheld or assessed.

1.3 Miscellaneous: In this Agreement, unless the context requires otherwise:

- (a) references to **clauses** and **schedules** are clauses of and schedules to this Agreement;
- (b) **derivatives** of any defined word or term shall have a corresponding meaning;
- (c) the **headings** to clauses shall be ignored in construing this Agreement;
- (d) the word **including** and other similar words do not imply any limitation;
- (e) any **party** to this Agreement or any other agreement includes its successors and permitted assignees, transferees, substitutes and executors and administrators;
- (f) the **plural** includes the **singular** and vice versa and a word indicating a **gender** includes each other gender;
- (g) the expression **"at any time"** shall also mean **"from time to time"**;
- (h) a **statute** includes that statute as amended from time to time and any regulations, orders in council and other instruments issued or made under that statute from time to time;
- (i) references to an **agreement** or **document** is to the agreement or document as amended, novated, supplemented or replaced from time to time; and
- (j) a reference to a **time of the day** is to New Zealand time.

2. CONDITIONS

2.1 Conditions precedent: The Facility is not available unless and until:

- (a) **Transaction Documents:** the Lender has confirmed to the Borrower that it has received, in a form and substance reasonably satisfactory to it, an executed copy of this Agreement and the Transaction Documents together with all documentation contemplated by this Agreement and/or necessary to register any security at the appropriate registry with the priority required by the Lender;
- (b) **Security Trustee and CIIL approval:** each of the Security Trustee and CIIL have confirmed to the Borrower, the Water Trust and the Lender that it approves the borrowing and granting of the Licence and the securities contemplated in the Transaction Documents;
- (c) **Water Trust approval:** the Water Trust has confirmed to the Borrower and the Lender that it approves the borrowing and the granting of the Licence contemplated in the Transaction Documents;

- (d) **Approved Lender consents:** each of the Approved Lenders has confirmed to the Borrower and the Lender that it will waive its rights to use water pursuant to the Approved Lender Sublicences on terms and conditions acceptable to the Lender;
 - (e) **Lender satisfaction:** the Lender, acting reasonably, has confirmed to the Borrower that it is satisfied that the Borrower has disclosed all relevant information, including (but not limited to) any agreements with third parties pertaining to the Scheme and the use of the Resource Consents and designations pertaining to the Scheme, including the right to take and use water and/or any part of the Scheme infrastructure;
 - (f) **Approval of timeline:** the Borrower has provided to the Lender, and the Lender, acting reasonably, has approved, the timeline specifying key milestones relating to the design rights and intellectual property development of Stage 2+;
 - (g) **Borrower's approval:** the Borrower has confirmed to the Lender and the Lender is satisfied that the Borrower has sufficient funding for the design, development and preparatory work for Stage 2+; and
 - (h) **Consultation:** the Lender has confirmed to the Borrower that it has completed a consultation process, in a method reasonably satisfactory to it, on or before 4 November 2015.
- 2.2 **Final Lender approval:** the conditions set out in clauses 2.1(a), 2.1(c) and 2.1(f) must be satisfied or waived (by the Lender) on or before the date 5 Business Days after the date of this Agreement.
- 2.3 **Agreement of no effect:** Other than clause 1 and this clause 2, no clause of this Agreement will be of any force or effect unless and until the conditions in clause 2.1 are satisfied.
- 2.4 **No claims:** If any of the conditions set out in clause 2.1 have not been satisfied by the dates specified for satisfaction or such later date as is agreed in writing by the parties, then this Agreement may be terminated by notice given by either party to the other and if so shall be of no further force or effect and no party will have any claim against the other arising under or in connection with that termination other than in respect of any breach of this clause 2 that occurred before such termination.

3. THE FACILITY

- 3.1 **Grant of Facility:** The Lender shall make the Facility available to the Borrower, on the terms and subject to the conditions of this Agreement, in five tranches of:
- (a) **Tranche 1:** \$1,000,000 (for the Sheffield Scheme);
 - (b) **Tranche 2:** \$3,000,000;
 - (c) **Tranche 3:** \$2,000,000;
 - (d) **Tranche 4:** \$1,000,000; and
 - (e) **Tranche 5:** \$1,000,000,
- (each a "Tranche").
- 3.2 **Availability of Facility:** The Lender will make Tranche 1 of the Facility available to the Borrower on and after the Drawdown Date. The Lender will make each subsequent Tranche of the Facility

available to the Borrower on and after the date five (5) Business Days after all of the relevant milestones for that Tranche (as detailed below) are completed, provided that no higher numbered Tranche will be made available for draw down until all material milestones for all earlier Tranches have been completed. The milestones for Tranches 2 to 5 are as follows:

Tranche	Milestones	Drawing amount
2	<p>1.The Borrower has provided to the Lender (acceptable to the Lender):</p> <p>(a)evidence that it has used \$4,000,000 (or substantially used \$4,000,000) of its own funding and used \$3,700,000 (or substantially used \$3,700,000) of the first tranche of IAF funding (to the extent that such funding is available) in relation to the design, development and preparatory work for Stage 2+;</p> <p>(b)certification from a suitably qualified independent irrigation/water engineer acceptable to the Lender that there will be sufficient run of river and stored water, which, in the opinion of the Lender, will be sufficient for the operation of the Scheme for Stage 2+ Land at a level acceptable to the Lender;</p> <p>(c)evidence that the variation of the Stored Water Release Agreement increasing the volume of water available to the Borrower to the level contained in the letter from the Borrower to Trustpower Limited dated 7 September 2015 has been signed.</p> <p>2.The Lender and Trustpower Limited have entered into an arrangement, acceptable to the Lender (acting reasonably), in relation to the supply of water by Trustpower Limited in the event that the Stored Water Release Agreement is terminated.</p> <p>3.The Lender is satisfied that there are no adverse economic factors which will impact on the financial viability of Stage 2+.</p>	\$3,000,000
3	<p>The Lender, acting reasonably, being satisfied that the Scheme remains financially and economically viable including:</p> <p>(a) the Lender having received information on:</p>	\$2,000,000

	<ul style="list-style-type: none"> • costings based on preliminary design; • indicative (non-binding) uptake; and • a conceptual funding plan; and <p>(b) the Borrower having either:</p> <ul style="list-style-type: none"> • secured a further tranche of IAF funding, or having alternative funds to substantially match the drawing amount for Tranche 3; or • demonstrated to the Lender it can complete the design work within remaining funds available under the Facility (including Tranches 3, 4 and 5). 	
4	<p>The Lender, acting reasonably, being satisfied that the Scheme remains financially and economically viable including:</p> <p>(a) having received information on:</p> <ul style="list-style-type: none"> • construction costs for the construction of infrastructure required for Stage 2+ (based on tender prices received by the Borrower); • binding funding agreements, terms sheets or letters of offer in relation to Stage 2+ (subject only to usual conditions precedent (including due diligence)); and • an acceptable work program and strategy to complete any acquisitions and meet financial close. <p>(b) the Borrower having either:</p> <ul style="list-style-type: none"> • secured a further tranche of IAF funding, or having alternative funds to substantially match the drawing amount for Tranche 4; or • demonstrated to the Lender it can complete the design work within remaining funds available under the Facility (including Tranches 4 and 5). 	\$1,000,000
5	<p>The Lender having received information on, and being satisfied with (acting reasonably), binding water user uptake (whether through a successful equity raise or a commitment to enter into a water</p>	\$1,000,000

	user agreement).	
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- 3.3 **Expiry of Facility:** If the Borrower fails to make a Drawing during the Initial Drawdown Period, the Facility will expire and the Lender will no longer be required to make the Facility available to the Borrower.
- 3.4 **Drawings:** The Borrower may make Drawings from any Tranche:
- (a) provided it has provided the Lender not less than 5 Business Days' notice in writing of its intention to make a Drawing;
 - (b) in minimum amounts of \$500,000 each; and
 - (c) on any Business Day after that Tranche is made available by the Lender pursuant to clause 3.2 and before the Repayment Date.
- 3.5 **Number of Drawings:** The Borrower can make any number of Drawings under any Tranche of the Facility, provided only that the aggregate amount of all Drawings under a Tranche cannot exceed the amount of the Facility made available under that Tranche as set out in clause 3.1.
- 3.6 **Purpose:** The purpose of the Facility is to assist the Borrower to meet part of the costs of the Works. The Borrower warrants that it will use Drawings from the Facility only for that purpose. The Borrower will be deemed to warrant, each time the Borrower requests a further Drawing under the Facility, that the Borrower has used all previous Drawings only to assist the Borrower to meet part of the costs of the Works and for no other purpose.
- 3.7 **Security:** Without limiting or prejudicing any other security interest the Lender may take from the Borrower, or any other party, the Borrower acknowledges that its obligations under this Agreement will be secured by the Licence, the Borrower SSA, the Deed of Assignment by way of Security of Designation and the Borrower Negative Pledge.

4. INTEREST

- 4.1 **Interest:** Interest shall accrue on the Outstanding Amount at the Interest Rate.
- 4.2 **Calculation:** Interest shall be calculated daily on the Outstanding Amount (on the basis of a 365 day year) and shall be capitalised and form part of the Outstanding Amount for the purposes of calculating interest on the 31st day of March, 30th day of June, 30th day of September and the 31st day of December in each year.
- 4.3 **Default Interest:** If the Borrower fails to make any payment due under this Agreement, default interest will be payable in accordance with clause 14.

5. REPAYMENT

- 5.1 **Repayment:** The Borrower will repay:
- (a) the Outstanding Amount in respect of Tranche 1 on the earlier of the Repayment Date or the First Construction Finance Date; and
 - (b) the Outstanding Moneys in respect of all other Tranches to the Lender on the earlier of the Repayment Date and the Second Construction Finance Date.

It is acknowledged by the parties that the First Construction Finance Date and the Second Construction Finance Date may be the same date, in which case all Outstanding Moneys will be repayable on the earlier of that date and the Repayment Date.

5.2 **Prepayment:** The Borrower may, with the prior written consent of the Security Trustee and CIIL, prepay any Outstanding Moneys (or any part thereof) in multiples of NZ\$100,000.00 at any time.

5.3 **Redraw:** The Borrower may not redraw any moneys prepaid or repaid.

6. SECURITY INTERESTS

6.1 **Security interest:** The Borrower will grant the Lender:

- (a) a first ranking security interest under the Borrower SSA; and
 - (b) a Deed of Assignment by way of Security of Designation,
- to secure the obligations of the Borrower under this Agreement.

6.2 **Discharge of security:** The security interests granted under the Borrower SSA and the Deed of Assignment by way of Security of Designation will be discharged and surrendered on repayment in full of the Outstanding Moneys, provided that any security interest granted by the Borrower in relation to the proceeds received by the Borrower from the issue of any Sheffield Shares (as defined in the Borrower SSA) will be discharged and surrendered on the First Construction Finance Date.

7. LICENCE

7.1 **Licence:** In consideration for the Lender entering into this Facility, the Borrower will grant, assign or transfer the rights and interests set out in the Licence and the Water Trust will consent to such grant, assignment or transfer.

7.2 **Discharge of Licence:** The grants, assignments and transfers under the Licence will be discharged and surrendered on repayment in full of the Outstanding Moneys provided that each licence, sub-licence and agreement to licence under the Licence relating to the Sheffield Scheme will be discharged and surrendered on the First Construction Finance Date.

8. REPRESENTATIONS AND WARRANTIES

8.1 **Representations and Warranties of the Borrower:** The Borrower represents and warrants to the Lender that:

- (a) **Power and Corporate Authority:** it has power, and all necessary corporate action (including passing all resolutions) has been taken to authorise it to enter into, execute and deliver, exercise its rights and perform its obligations under the Transaction Documents;
- (b) **Binding Obligations:** its obligations under the Transaction Documents are legal, valid and binding and enforceable against it;
- (c) **No Contravention:** its entry into, exercise of its rights and performance of its obligations under, the Transaction Documents do not and will not violate or contravene any applicable law or its constitutive documents nor cause any limit on its powers;

- (d) **Consents:** all action, conditions and things (including the obtaining of consents and other requirements) required to be taken, fulfilled and done to ensure:
 - (i) that it is able to lawfully enter into, exercise its rights and perform its obligations under, the Transaction Documents;
 - (ii) that those obligations are legal, valid, binding and enforceable against it; and
 - (iii) that the Transaction Documents are admissible in evidence in the courts of New Zealand,
 have been taken, fulfilled and done and are in full force and effect.
- (e) **No Default:** it is not, after making proper enquiry, aware of any breach by it of, or failure to comply by it with, any obligations imposed on it under any agreement to which it is party or which is binding on it or any of its assets;
- (f) **No Litigation:** no litigation, claim, arbitration or administrative proceeding before or of any court, arbitrator, tribunal or governmental agency or dispute with any governmental agency is current, pending or (to the best of its knowledge and belief) threatened against it;
- (g) **No Security:** it is, and will at all times be, the sole legal and beneficial owner of all its assets and no security interest exists over any of its assets other than those disclosed to the Lender (except as otherwise expressly permitted in or required by any Transaction Document and other than any security interest which arises by statute);
- (h) **No Dissolution:**
 - (i) no order has been made, resolution passed or legal proceedings issued (other than a vexatious or frivolous proceeding) and no corporate action has been taken, notice given or other step taken or (to the best of its knowledge and belief) threatened against it for the dissolution or re-organisation of, or for the appointment of a receiver, manager, inspector, trustee, statutory manager or other similar person in respect of, it or the whole or any part of its assets; and
 - (ii) it has not made nor does it intend to make any assignment, arrangement or composition for the benefit of its creditors generally nor has any moratorium been agreed or declared in respect of or affecting all or any material part of its indebtedness.
- (i) **Execution will not Create Security:** the execution and delivery of the Transaction Documents and the exercise of its rights and performance of its obligations under the Transaction Documents do not and will not result in the existence of nor oblige it to create any security interest over all or any of its present or future assets save in favour of the Lender nor will it result in the acceleration of any obligation or cause an event of default (however described) under any agreement to which it is a party or which is binding on it or its assets;
- (j) **Financial Accounts:**
 - (i) its most recent audited Financial Accounts give a true and fair view of:
 - (1) Its financial position as at the date to which the relevant Financial Accounts relate; and

- (2) The operational results of the Borrower during the period covered by the relevant Financial Accounts;
 - (ii) there has been no material adverse change since the delivery of its most recent audited Financial Accounts; and
 - (iii) its most recent audited Financial Accounts comply with GAAP except to the extent disclosed in them and with all applicable laws;
 - (k) **Financial projections:** all financial projections of the Borrower disclosed to the Lender, and the assumptions on which they are based, were arrived at after due and careful consideration and enquiry, and genuinely represented the views of the person providing that information. The Borrower is not aware of any material facts or circumstances which have not been disclosed to the Lender and which could make any such projections untrue, incomplete, inaccurate or misleading in any material respect;
 - (l) **Full Disclosure:** all information provided to the Lender in connection with the Transaction Documents was, at the time it was provided, true, complete and accurate in all material respects and not misleading and it is not aware of any material facts or circumstances that have not been disclosed and which would, if disclosed, materially adversely affect the decision of a person considering whether or not to provide finance to it;
 - (m) **No Event of Default:** no Event of Default or Potential Event of Default has occurred and is continuing or will occur as a result of making the Facility available; and
 - (n) **Subsidiaries:** it has no subsidiaries other than those subsidiaries (if any) previously disclosed in writing to the Lender (which subsidiaries include Te Pirita Irrigation Limited).
- 8.2 **Reliance:** The Borrower acknowledges that the Lender has or will have relied on the representations and warranties contained in clause 8.1 in executing this Agreement and making all or any part of the Facility available.

9. COVENANTS

9.1 Appointment and continuation of Director:

- (a) Where a vacancy arises on the Borrower's board and any part of the Facility is outstanding, the Borrower shall recommend and support to the Borrower's shareholders appointment of the Lender's nominee ("**Nominee**") as a replacement director to fill such vacancy. The Lender agrees to put forward as its Nominee an appropriately qualified and skilled person to fill the relevant vacancy.
- (b) The Borrower covenants with the Lender that while any part of the Facility is outstanding it shall not do anything to encourage or promote the removal of the Nominee from the Borrower's board (other than where the Nominee breaches any of his or her duties as a director under the Companies Act 1993 and, if such a breach is capable of remedy, such breach is not remedied within five (5) Business Days of the Borrower's board requesting the Nominee to remedy the breach).

- (c) If the Nominee has been appointed to the Borrower's board, on the Lender receiving written request from the Borrower at any time after all Outstanding Moneys have been repaid, the Lender will procure that the Nominee resigns as a director of the Borrower as soon as reasonably practicable.
- (d) For the avoidance of doubt, the Lender is only permitted one nominee on the Borrower's board at any one time.

9.2 General Covenants: The Borrower covenants with the Lender that it will:

- (a) **Comply with Laws:** duly and promptly comply with all laws applicable to it;
- (b) **General Consents:** obtain and maintain in full effect and comply with all consents which may be necessary or desirable to enable it to perform and comply with its obligations under, or for the validity or enforceability of, the Transaction Documents;
- (c) **Environmental Matters:** without limiting clause 9.2(a) or 9.2(b) and unless the Lender expressly agrees in writing otherwise:
 - (i) maintain proper procedures to monitor and use all reasonable endeavours to ensure compliance by it and its subsidiaries with all environmental laws and directives;
 - (ii) in relation to itself and each of its subsidiaries, obtain, maintain in full effect and comply with all consents and other requirements (including, without limitation, any certificates of compliance, warrants of fitness, resource and building consents and orders) under all environmental laws and directives, which may be necessary or desirable in respect of its or their respective continuing business and/or the land, buildings, water or other property owned, occupied or otherwise used by it or any of its subsidiaries; and
 - (iii) notify the Lender of all actual or potential environmental liabilities which may have a material adverse effect on it as soon as reasonably practicable after becoming aware of such liabilities and provide the Lender with reasonable details of the action taken or proposed to be taken in relation to such liabilities;
- (d) **Notify Event of Default:** notify the Lender of the occurrence of any Event of Default or any Potential Event of Default immediately upon becoming aware of it (giving full details of it and of any steps taken or to be taken as a result);
- (e) **Legal Proceedings:** promptly deliver to the Lender details of any material current pending or threatened litigation, claim, arbitration or administrative proceeding which, had it been current or pending or threatened as at the date of this Agreement, would have rendered the warranty in clause 8.1(f) incorrect;
- (f) **Design information:** provide all operational and/or design information arising from the operation of Stage 1 and the design process for Stage 2+ on a monthly basis;
- (g) **Flow measurements:** provide copies of all flow measurement records on a monthly basis; and
- (h) **Certificate:** ensure that the Lender is provided with a certificate, from a suitably qualified engineer to be agreed by the Borrower and Lender or (where the Borrower and Lender

cannot agree on an appointment within 15 Business Days' of the date of this Agreement) nominated by the president for the time being of the Institute of Professional Engineers New Zealand, within 5 Business Days of the end of each calendar month during the term of the Loan certifying that the Borrower did not use more than 14 cumecs of water at any point in time during the immediately preceding calendar month.

9.3 Negative Covenants: The Borrower covenants with the Lender that (except with the prior written consent of the Lender) it will not seek to:

- (a) **Indebtedness:** incur any indebtedness which in aggregate exceeds NZ\$2,500,000.00 at any time, other than:
 - (i) indebtedness incurred or arising under any Financing Document (as defined in the Senior Facility) or any other agreement which the Borrower has entered into and disclosed in writing to the Lender as at the date of this Agreement (including, for the avoidance of doubt, the CIIL Facility and the Senior Facility);
 - (ii) indebtedness arising under the Transaction Documents;
 - (iii) indebtedness incurred or arising under any hedging arrangements or transactions;
 - (iv) indebtedness incurred in the ordinary course of business, including supplier account facilities and overdraft facilities;
 - (v) indebtedness to be used primarily for, and in an amount sufficient (in the Borrower's reasonable opinion) to enable the Borrower to complete, construction of the Sheffield Scheme; and/or
 - (vi) any existing indebtedness;
- (b) **Repayment:** repay any indebtedness other than:
 - (i) in the ordinary course of its business;
 - (ii) in relation to overdraft or supplier account facilities;
 - (iii) indebtedness incurred or arising under any hedging arrangements or transactions;
 - (iv) pursuant to, and in accordance with, the Senior Facility and/or the CIIL Facility and/or the Financing Documents (as defined in the Senior Facility) or any other agreement which the Borrower has entered into and disclosed in writing to the Lender as at the date of this Agreement; or
 - (v) indebtedness incurred and used primarily for the construction of the Sheffield Scheme in accordance with the terms of the relevant loan documentation.
- (c) **Negative Pledge:** create or permit to subsist any security interest over the whole or any part of its assets, except:
 - (i) As created under or otherwise expressly permitted in any Transaction Document;
 - (ii) that secures indebtedness permitted under clause 9.3(a);
 - (iii) as previously disclosed in writing to the Lender;

- (iv) that arises in the ordinary course of the Borrower's business, including:
 - (1) a security interest created by a lease for a term of more than 1 year; and
 - (2) a purchase money security interest in any goods;
- (v) any security interest over land and/or associated consents to fund the purchase of any land for, or in relation to, Stage 2+;
- (vi) any security interest which arises by statute or operation of law; or
- (vii) a netting or set-off arrangement entered into in the ordinary course of the Borrower's banking arrangements for the purpose of netting debit and credit balances;
- (viii) any security interest the Lender agrees in writing is permitted;
- (d) **Provide Accommodation:** lend or otherwise provide any other financial accommodation to, give any guarantee or like instrument in respect of, or otherwise assume any indebtedness of, any person;
- (e) **Change of Business:** make any material change in the nature or scope of its business as presently conducted;
- (f) **Disposals:** either by one transaction or a series of transactions, whether related or not and whether at one time or over a period of time, dispose of all or any material part of its assets (disregarding any disposals made in the ordinary course of business on normal commercial terms and at arm's-length or for the purposes of carrying out construction, operation or development of Stage 1 or Stage 2+);
- (g) **Dividends/Distributions:** make any distribution;
- (h) **Shares:** acquire its own shares or exercise any option to redeem its shares;
- (i) **Acquisition of Shares:** purchase or subscribe for shares in another person;
- (j) **Prohibition on Calling:** pass any resolution that any of its capital that has not been called up, is not to be capable of being called up;
- (k) **No Release of Shareholders:** become party to any agreement or arrangement whereby the liability of any of the Borrower's shareholders in respect of any unpaid capital is released or reduced or any funds or property of the Borrower are applied or used in reduction of the shareholders' liability in respect of unpaid capital;
- (l) **Financial Assistance:** give financial assistance to any person, directly or indirectly, for or in connection with the purchase of shares issued or to be issued by it or by its holding company; or
- (m) **Amalgamation:** amalgamate or make any proposal to amalgamate with any other company.

9.4 Reporting covenants and financial information: The Borrower covenants with the Lender that it will promptly deliver to the Lender:

- (a) **annual accounts:** as soon as they are available but in any event within 90 days after the end of each Financial Year, in respect of each Financial Year, its annual audited Financial Accounts;
- (b) **management accounts:** within 45 days after each Quarterly Date, a copy of the relevant management report for the Borrower for the quarter ending on that Quarterly Date provided under the Senior Facility; and
- (c) **MPI reporting:** copies of the monthly reports it provides to the Ministry for Primary Industries.

10. DEFAULT

10.1 Default: An Event of Default shall have occurred if, and only if, at any time, whether or not within the control of any party, any of the following events occurs:

- (a) **Non-Payment:** any amount payable by the Borrower under clause 5.1 of this Agreement is not paid on the relevant date required by that clause;
- (b) **Abandonment:** the Borrower abandons:
 - (i) the operation of Stage 1; or
 - (ii) the development of Stage 2+; or
- (c) **Liquidator or Receiver:** a liquidator, receiver or receiver and manager is appointed or any application is made for such appointment in respect of the Borrower or the whole or any part of its assets and the application is not withdrawn or, as the case may be, the appointment is not discharged within 14 days of being made or appointed.

10.2 Enforcement: At the time of or at any time after the occurrence of an Event of Default and without prejudice to any other remedies the Lender may have, the Lender may by notice to the Borrower do all or any of the following:

- (a) **Cancel Facility:** cancel the Facility with immediate effect whereupon the Lender's obligations under the Facility shall cease;
- (b) **Accelerate Outstanding Moneys:** declare all or any part of the Outstanding Moneys to be immediately due and payable, whereupon the Outstanding Moneys will become so due and payable; or
- (c) **Exercise Rights:** exercise all or any of its rights under any Transaction Document and at law.

11. PAYMENTS

11.1 Currency of Account: The NZ Dollar is the currency of account and payment for each amount at any time due under any Transaction Document.

11.2 Payments: Each payment to the Lender under any Transaction Document is to be made at the time specified in the relevant Transaction Document or if no time is specified during normal banking hours, in each such case on the due date, in cleared funds and to the bank account which the Lender specifies from time to time, by notice to the Borrower.

11.3 Business Days: If any payment is due to be made under any Transaction Document on a day which is not a Business Day, that payment shall be made on the next succeeding Business Day and in each case any interest will be adjusted accordingly.

11.4 Payments to Be Free and Clear: All sums payable by the Borrower under the Transaction Documents shall be paid:

- (a) **No Restriction:** free and clear of any restriction or condition;
- (b) **No Withholding:** free and clear of and (except to the extent required by law) without any deduction or withholding on account of any tax; and
- (c) **No Set-off:** without any deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise.

11.5 Gross-Up: If:

- (a) **Borrower:** the Borrower is required by law to make any deduction or withholding from any amount paid or payable by it under any Transaction Document; or
- (b) **Lender:** the Lender is required by law to make any payment on account of tax (other than tax on overall net income of the Lender) on or in relation to any amount received or receivable by it under any Transaction Document,

then the amount payable by the Borrower in respect of which such deduction, withholding or payment is required to be made will be increased to the extent necessary to ensure that, after the making of such deduction, withholding or payment, the Lender receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount which it would have received and so retained had no such deduction, withholding or payment been made.

11.6 Reinstatement: If any payment to the Lender under any Transaction Document is avoided by law, the Borrower's obligation to have made such payment will be deemed not to have been affected or discharged and the Borrower shall on demand indemnify the Lender against any costs, claim, loss, expense or liability (together with any taxes thereon) sustained or incurred by the Lender as a result of it being required for any reason (including any dissolution law) to refund all or part of any amount received or recovered by it in respect of such payment and in any event pay to the Lender on demand the amount so refunded by it. The Lender and the Borrower will, in any such case, be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights they respectively would have had, if that payment had not been made.

12. CHANGE IN CIRCUMSTANCES

12.1 Illegality: If, at any time and for any reason, it is or will become unlawful or contrary to any directive issued by a governmental agency for the Lender to make available, fund or continue to provide all

or any part of the Facility or to exercise any of its rights or carry out any of its obligations under any Transaction Document, the Lender will not be obliged to make or continue to provide the Facility. In any such case the Lender may by notice to the Borrower cancel the Facility with immediate effect and the Borrower shall, on such date as the Lender may have specified, repay all or, if permitted, part of the Outstanding Moneys.

12.2 Increased Costs: If as a direct or indirect result of the introduction of any law or directive or any change to any law or directive or in its interpretation by a court or any governmental agency (including, in each such case, but without limitation, any law or directive relating to taxes) all or any of the following occur:

- (a) **Cost Increased:** the cost to the Lender of making available, funding or continuing to provide the Facility or performing any of its other obligations or exercising any of its rights under any Transaction Document is increased (other than by reason of a change in the tax on overall net income of the Lender);
- (b) **Return Reduced:** any sum received or receivable by, or the effective return to, the Lender under any Transaction Document is reduced (except on account of tax on overall net income of the Lender); or
- (c) **Payment Required:** the Lender makes any payment (except on account of tax on overall net income of the Lender) or foregoes any return on or calculated by reference to the amount of any sum received or receivable by it under any Transaction Document,

(including, in each such case, but without limitation, any diminished yield to the Lender arising from any imposition of, or increase or other change in, any capital adequacy, risk weighting, reserve asset, balance sheet or other requirement or ratio), then and in any such case:

- (i) the Lender will use its reasonable endeavours to notify the Borrower upon becoming aware of any such event; and
- (ii) the Borrower shall indemnify and keep indemnified the Lender against that increased cost, reduction, payment or foregone return and shall from time to time on demand pay to the Lender the amount certified by the Lender to be necessary to so indemnify it.

12.3 Negotiation: Without affecting the Borrower's obligations to make any payments under clause 12.2, if notice is given to the Borrower under clause 12.2, the Borrower and the Lender will, if the Borrower so requests, for a period of 30 days (or such longer period as the Lender may agree) discuss in good faith whether there are any mutually satisfactory alternative means by which the Facility might be made or continued (not involving the Lender in any increased cost or liability or reduced return) which would avoid or minimise the circumstances giving rise to such a notice.

12.4 Force Majeure: The Lender will not be liable for any failure to perform or comply with its obligations under the Transaction Documents resulting directly or indirectly from any action or inaction of any governmental agency, any strike or other labour disturbance or any other cause whatever (including any previously referred to in this clause 12) which is beyond its control.

13. INDEMNITIES

13.1 General Indemnities: The Borrower will, on demand from time to time by the Lender, indemnify and hold the Lender harmless against all costs, losses, expenses, claims, actions, suits, judgements, damages, penalties, obligations or liabilities (including loss of profit and costs and losses incurred in liquidating or redeploying deposits or other funds acquired or arranged in connection with the Facility or any part thereof) (all "**costs**") sustained or incurred by the Lender directly or indirectly as a result of:

(a) **Payment Other Than on Due Date:** any amount payable by the Borrower (including at its election) under any Transaction Document not being paid when due (whether by prepayment, acceleration or otherwise) but, so far as is appropriate, credit shall be given for any default interest paid under clause 14; or

(b) **Event of Default:** the occurrence or continuance of any other Event of Default, by payment to the Lender of the amount certified by the Lender to be required to compensate it for all such costs.

13.2 Independent Obligations: Each of the indemnities contained in this Agreement constitutes a separate and independent obligation from the other obligations in this Agreement giving rise to an independent cause of action irrespective of any time, credit or other indulgence on the part of the Lender or any other matter.

14. DEFAULT INTEREST

14.1 Default Interest: The Borrower shall pay interest at the Default Rate on any amount payable by it to the Lender under any Transaction Document which the Lender does not receive when due. Default interest is to be calculated on a daily basis (based on a year of 365 days) on any such overdue amount from its due date to the date of actual receipt by the Lender (both before and after judgment).

14.2 Payment of Default Interest: Default interest will be due and payable, without the need for demand, on the last Business Day of each month, or if demanded earlier in writing, within five (5) Business Days of such demand.

15. EVIDENCE OF DEBT

15.1 Maintain Account: The Lender will maintain, in accordance with its usual practice, an account evidencing the amounts from time to time lent by and owing to it under the Facility.

15.2 Certificate: A certificate of the Lender as to:

(a) **Amounts:** any amount, interest rate or exchange rate payable under the Facility or any entry made in any account maintained by the Lender will (in the absence of manifest error) be prima facie evidence of such amount, rate or entry; or

(b) **Other Facts:** any other fact relating to the Facility or any Transaction Document which might reasonably be expected to be within the Lender's knowledge, will be prima facie evidence of such fact,

in each case for all purposes including any legal action or proceedings.

16. NOTICES

- 16.1 **Method:** Each notice, agreement and other communication (each a "communication") to be given, delivered or made under this Agreement is to be in writing but may be sent by personal delivery, post (by airmail if to another country) or facsimile.
- 16.2 **Addresses:** Each communication under this Agreement is to be sent to the address of the relevant party set out below or to any other address from time to time designated for that purpose by at least five Business Days' prior notice to the others. The initial address details of the parties are:

The Lender:	The Selwyn District Council
Postal Address:	PO Box 90, Rolleston 7643
Delivery:	2 Norman Kirk Drive, Rolleston 7614
Facsimile No:	03 347 2799
Attention:	Chief Executive
The Borrower:	Central Plains Water Limited
Postal Address:	PO Box 9424, Tower Junction, Christchurch 8149
Delivery Address:	Level 1, 114 Wrights Road, Addington Christchurch 8042
Attention:	Chief Executive Officer

- 16.3 **Receipt:** A communication under this Agreement will only be effective:

- (a) **Delivery:** in the case of personal delivery, when delivered;
- (b) **By Post:** if posted or delivered to a document exchange, five (5) Business Days, in the place of receipt, after posting (by airmail if to another country) or delivery to the document exchange; or
- (c) **By Facsimile:** if made by facsimile, upon production of a transmission report confirming transmission by the machine from which the facsimile was sent which indicates the facsimile number of the recipient designated for the purpose of this Agreement,

provided that any communication received or deemed received after 5 pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent shall be deemed not to have been received until the next Business Day in that place.

17. COSTS AND EXPENSES

- 17.1 **All Costs:** Provided that the Lender makes the first Tranche available to the Borrower, the Borrower shall pay:
- (a) **Preliminary Costs:** on demand, all reasonable costs and expenses of whatever nature and any taxes thereon incurred by the Lender in considering the request for funding and providing and arranging the Facility;
 - (b) **Establishment Costs:** on demand, all reasonable costs and expenses of whatever nature and any taxes thereon incurred by the Lender in or in connection with the negotiation, preparation, execution and (as applicable) registration of any Transaction Document;

- (c) **Amendment Costs:** on demand, all reasonable costs and expenses of whatever nature and any taxes thereon incurred by the Lender in or in connection with and any amendment of, supplement to or waiver in respect of any Transaction Document; and
 - (d) **Enforcement Costs:** on demand, all reasonable costs and expenses of whatever nature and any taxes thereon incurred by the Lender in or in connection with enforcing or protecting or endeavouring to enforce or protect, any rights under any Transaction Document and/or any amendment of, supplement to or waiver in respect of any Transaction Document.
- 17.2 **Capitalisation of costs:** The Lender agrees to pay the costs referred to in clause 17.1(a) and (b) in the first instance, but on the basis that the amount of those costs will be added to and form part of the Outstanding Moneys under this Agreement.
- 17.3 **GST:** If any party is required to pay a sum under any Transaction Document, that party shall also be required to pay any goods and services tax payable under the Goods and Services Tax Act 1985 in respect of the supply to which sum relates.
- 17.4 **Taxes:** The Borrower shall pay all stamp, registration and other documentary taxes to which any Transaction Document, or any payment made or to be made under a Transaction Document, is or at any time may be subject and will indemnify the Lender on demand against any costs which the Lender may incur or sustain directly or indirectly as a result of or in connection with any failure so to pay or delay in paying any such taxes.
- 18. BENEFIT OF AGREEMENT**
- 18.1 **Borrower May Not Assign:** The Borrower may not assign or transfer all or any of its rights and obligations under or in relation to the Transaction Documents.
- 18.2 **Lender May Assign:** Subject to clause 20, the Lender may at any time assign all or any of its rights or transfer all or any of its obligations under or in relation to any Transaction Document to any person. Any such transfer will become effective as against all parties to the relevant Transaction Documents when the transferee has provided an undertaking (which is addressed to such other parties) stating that it agrees to be bound by the relevant Transaction Documents and to perform the obligations transferred to it.
- 18.3 **Same Rights:** Any assignee or transferee of the Lender in accordance with this clause will have the same rights (and, as applicable, obligations) against the Borrower (or a proportion of such rights or obligations in the case of a partial assignment or transfer) as it would have had if it had been a party to the relevant Transaction Documents.
- 18.4 **Disclosure of Information:** The Borrower irrevocably authorises the Lender to disclose to any potential assignee or transferee of its rights and obligations under the Transaction Documents, or to any other person with whom the Lender is contemplating entering into contractual relations in connection therewith or to whom such disclosure is, in the reasonable opinion of the Lender, necessary or desirable, such financial and other information about the Borrower and its respective financial condition as the Lender shall consider appropriate.

19. MISCELLANEOUS

- 19.1 **Time of Essence:** Time is of the essence in respect of all dates and times for performance by the Borrower of its obligations under the Transaction Documents.
- 19.2 **Amendments, Waivers and Consents:** Any provision of this Agreement may be amended only by agreement in writing between each of the parties to this Agreement. Any waiver may be given at any time but only if the Lender agrees in writing. Any consent under any provision of this Agreement must also be in writing. Any such waiver or consent may be given subject to any conditions thought fit by the person giving it and shall be effective only in the instance and for the purpose for which it was given.
- 19.3 **Lender's Capacity:** The granting of any consent or approval by the Lender in its capacity as a shareholder of the Borrower will not of itself be deemed to be a consent or approval by the Lender under this Agreement.
- 19.4 **No Implied Waivers:** A failure to exercise or delay in exercising any right under any Transaction Document will not operate as a waiver of that right, nor will any single or partial exercise of any right preclude any other or further exercise of that right or the exercise of any other right.
- 19.5 **Rights Cumulative:** The rights provided in the Transaction Documents are cumulative and not exclusive of any rights provided under any other agreement or by law.
- 19.6 **Partial Invalidity:** The illegality, invalidity or unenforceability at any time of any provision of a Transaction Document under any law, will not affect the legality, validity or enforceability of the remaining provisions of the Transaction Documents nor the legality, validity or enforceability of that provision under any other law.
- 19.7 **Survival of Covenants:** Without prejudice to clause 6.2 or clause 7.2, the payment and indemnity obligations of the Borrower under this Agreement will survive the termination of the Facility and payment of all other indebtedness under the Transaction Documents.
- 19.8 **Counterparts:** This Agreement may be signed in any number of counterparts (including facsimile and PDF counterpart), each of which shall be deemed an original and when taken together will constitute one and the same instrument. Each party may enter into this Agreement by signing any such counterpart copy. No counterpart shall be effective until each party has executed at least one copy.
- 19.9 **Facsimile or PDF Signature:** The parties may sign a counterpart copy of this Agreement by photocopying a facsimile or PDF of this Agreement and signing that photocopy. The transmission by facsimile or email by a party to the other of a counterpart copy of this Agreement signed by that party shall be deemed proof of signature of the original and the signed facsimile or PDF so transmitted shall be deemed an original.
- 19.10 **Delivery:** Without limiting any other mode of delivery, this Agreement will be delivered:
- (a) by the Borrower and the Water Trust on the earlier of:
 - (i) physical delivery of an original of this Agreement, executed by that party, into the custody of the Lender the Lender's solicitors; and

- (ii) transmission by that party, its solicitors or any other person authorised in writing by that party of a facsimile, photocopied or scanned copy of an original of this Agreement, executed by that party, to the Lender or the Lender's solicitors; and
- (b) by the Lender on the earlier of:
 - (i) physical delivery of an original of this Agreement, executed by that party, into the custody of the Borrower or the Borrower's solicitors; and
 - (ii) transmission by that party, its solicitors or any other person authorised in writing by that party of a facsimile, photocopied or scanned copy of an original of this Agreement, executed by that party, to the Borrower or the Borrower's solicitors.

19.11 Governing Law: This Agreement is governed by and shall be construed in accordance with New Zealand law.


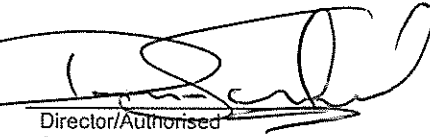
20. INTERCREDITOR DEED

20.1 The parties acknowledge and agree that the terms of this Agreement and each of the Transaction Documents are subject to the Intercreditor Deed. In particular (but without limitation):

- (a) any provision of this Agreement entitling the Lender to receive a payment of principal or interest or any other amount whatsoever under any Transaction Document is subject to such payment being permitted by the Intercreditor Deed; and
- (b) any provision of this Agreement entitling the Lender to assign or transfer any of its rights or obligations under a Transaction Document is subject to such assignment or transfer being permitted by the Intercreditor Deed.

EXECUTION

SIGNED for and on behalf of
CENTRAL PLAINS WATER LIMITED
in the presence of

)
)
)  
Director Director/Authorised
Signatory

Signature

Full Name

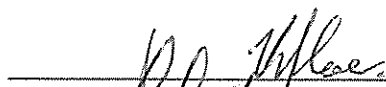

Address

Occupation

Note: If two directors sign, no witness is necessary. If a director and authorised signatory sign, both signatures are to be witnessed. If the director and authorised signatory are not signing together, a separate witness will be necessary for each signature.

THE COMMON SEAL of THE
SELWYN DISTRICT COUNCIL
was hereto affixed by and in the
presence of:

)
)
)
)

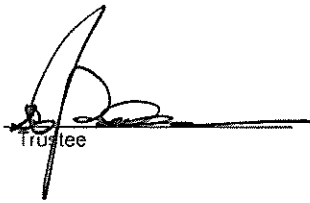
Mayor

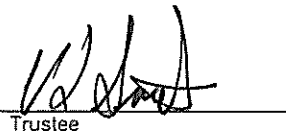
Chief Executive




SIGNED for and on behalf of
CENTRAL PLAINS WATER TRUST
in the presence of

)
)
)


Trustee


Trustee


Signature

Full Name

Gerard Tristan Dale

Address

Solicitor
Christchurch

Occupation

**SCHEDULE
LICENCE AGREEMENT**

Dated

2016

LICENCE AGREEMENT

CENTRAL PLAINS WATER LIMITED

and

CENTRAL PLAINS WATER TRUST

and

THE SELWYN DISTRICT COUNCIL

LICENCE AGREEMENT

DATED

2016

PARTIES

- (1) CENTRAL PLAINS WATER LIMITED ("CPWL")
- (2) CENTRAL PLAINS WATER TRUST (the "Water Trust")
- (3) THE SELWYN DISTRICT COUNCIL (the "Council")

BACKGROUND

- A. The Council is providing CPWL with funding pursuant to the Loan Agreement for the purposes of the design, development and preparatory work for Stage 2+ of the Scheme.
- B. CPWL has agreed to grant, assign or transfer to the Council various rights and interests relating to the Scheme on the terms and conditions set out in this Agreement.
- C. The Water Trust has consented to the grant, assignment and transfer of CPWL's rights and interests relating to the Scheme on the terms and conditions set out in this Agreement.

IT IS AGREED:

1. INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

- (a) "ACWT" means the Ashburton Community Water Trust Board;
- (b) "ACWT Agreement" means the Memorandum of Agreement between CPWL, the Water Trust and ACWT dated 15 May 2006 as varied by the memorandum of variation dated 1 March 2008;
- (c) "Agreement" means this licence agreement and includes the schedules;
- (d) "Building Consents" means all consents, permissions, concessions or rights obtained or to be obtained by CPWL or the Water Trust relating to Stage 2+ under the Building Act 2004 and all applications for such consents, permissions, concessions or rights, including, without limitation, all consents and applications relating to the construction or development of the Stage 2+ headrace and/or distribution network, including the consents listed in schedule 2 to this Agreement (but, in each case, only to the extent they relate to Stage 2+);
- (e) "Commencement Date" means the date on which each licence, sub-licence, agreement to licence and conveyance agreement comes into force in accordance with clause 9.1;
- (f) "CPW Sites" means any infrastructure or land related to the Scheme controlled or operated by CPWL to which licences are granted under clauses 3 and 5;

- (g) **"Head Licence"** means the licence granted by the Water Trust to CPWL to use the Resource Consents for the purposes of developing, constructing and operating the Scheme, the terms of which are contained in the Water Trust Agreements;
- (h) **"Intake"** means the intake owned and controlled by CPWL at or about map reference NZMS 260 K36:072-391 associated with the take of water from the Rakaia River (for conveyance along the Stage 1 Headrace) including but not limited to, the canal headworks and control structures, all water meter(s) and telemetry system, fish screens, flow gate(s), channels and diversion activities;
- (i) **"Intellectual Property Rights"** means the design rights and other intellectual property for, or related to, Stage 1 and Stage 2 including all rights belonging to or arising from the applications for the Resource Consents made by the Borrower in respect of the Scheme and all data, maps, plans, drawings, specifications, reports (including expert reports) and other information of whatever kind relating to the Scheme, the Resource Consents and the subsequent implementation of such Resource Consents, but, for the avoidance of doubt, does not include any general intellectual property rights of CPWL, including any trademarks;
- (j) **"Intercreditor Deed"** means the intercreditor and project arrangement deed between ANZ Bank New Zealand Limited (as facility agent and security trustee), CIIL, the Council, the Borrower and the Water Trust dated on or about the same date as this Agreement;
- (k) **"Loan Agreement"** means the loan agreement between CPWL, the Water Trust and the Council dated on or about the same date as this Agreement;
- (l) **"Nitrogen Allocation"** means the allocation of 979 tonnes of nitrogen (calculated using Overseer® version 6.1.3) as recorded in Table 11(j) of Variation 1 of the proposed Land and Water Regional Plan, as adjusted from time to time to reflect changes to the Overseer® model;
- (m) **"Nitrogen Allocation Policy"** means CPWL's nitrogen allocation policy or strategy (as amended from time to time) as set out on CPWL's website;
- (n) **"Project Creditors"** has the meaning given to that term in the Intercreditor Deed;
- (o) **"Rakaia Resource Consents"** means all Resource Consents permitting CPWL to take water from the Rakaia River, including:
 - (i) CRC137417 to take up to 40 cumecs of water from the Rakaia River; and
 - (ii) CRC062685 to take up to 6 cumecs of water from the Rakaia River (in subservience to specified existing water take consents);
- (p) **"Rakaia Sub-Licences"** means the sub-licences granted by CPWL to each of Dairy Holdings Limited, Fonterra Co-operative Group Limited, (now) Purata Farming Limited, Willsden Farm Limited, Chiswick Farm Limited, Praise Farm Limited, Clovernook Farm Limited, Canterbury Pastoral Limited, Tui Company Limited, Carlow Farm Limited and (now) Mildara Dairy Limited to use the Rakaia Resource Consents to allow those parties to irrigate their land (each as amended from time to time);

- (q) **"Rakaia Water"** means water that is available to CPWL under the Rakaia Resource Consents;
- (r) **"Resource Consents"** means all of the resource consents and any other permission, concession or right granted to and held by the Water Trust or the Borrower (whether in its own name or as licensee) at the date of this Agreement or in the future under the Resource Management Act 1993 in relation to the Scheme, including all applications for such resource consents, permissions, concessions or rights and the existing resource consents, permissions, concessions and rights specified in schedule 1 to this Agreement (but in each case only to the extent they relate to Stage 2+);
- (s) **"Stage 1 Land"** means land which is situated, in whole or in part, in Stage 1 as outlined in the Scheme map attached as schedule 3 to this Agreement;
- (t) **"Stage 1 Headrace"** means that part of the canal between the Intake and Leaches Road, Selwyn as outlined in the Scheme map attached as schedule 2 to this Agreement, but, for the avoidance of doubt, does not include any part of the headrace constructed in connection with Stage 2+;
- (u) **"Stage 2+ Nitrogen"** means 725 tonnes of nitrogen per year (calculated using Overseer® version 6.1.3) of the Nitrogen Allocation as adjusted from time to time to reflect changes to the Overseer® model and any adjustment under clause 7.2(c) of this Agreement;
- (v) **"Termination Date"** means the date on which the relevant licence, sub-licence, agreement to licence and conveyance agreement terminates in accordance with clause 9.2;
- (w) **"Trustpower Agreement"** means the Stored Water Release Agreement between CPWL and Trustpower Limited dated 31 May 2013;
- (x) **"Trustpower Water"** means stored water from Lake Coleridge available to CPWL pursuant to the Trustpower Agreement;
- (y) **"Waimakariri Resource Consents"** means all Resource Consents permitting CPWL to take water from the Waimakariri River, including:
 - (i) CRC61972 to take up to 24 cumecs of "B" permit water from the Waimakariri River; and
 - (ii) CRC136234 to take up to 1 cumecs of "A" water from the Waimakariri River;
- (z) **"Waimakariri Sub-Licences"** means each sub-licence issued by CPWL prior to the date of this Agreement in relation to CPWL's right to take "A" water from the Waimakariri River pursuant to the Waimakariri Resource Consents;
- (aa) **"Waimakariri Water"** means water that is available to CPWL under the Waimakariri Resource Consents;
- (bb) **"Water Consents"** mean all Resource Consents permitting the Borrower to take Rakaia Water and Waimakariri Water, including the following:
 - (i) Rakaia Resource Consents;

- (ii) Waimakariri Resource Consents;
- (iii) CRC061973 to use up to 65 cumecs of water taken from the Rakaia and Waimakariri Rivers for the irrigation of up to approximately 60,000 hectares of land;

and "Water Consent" means any of them; and

(cc) "Water Trust Agreements" means each of the following agreements:

- (i) the memorandum of agreement dated 5 November 2004 between CPWL and the Water Trust;
- (ii) the agreement dated 21 September 2006 between CPWL and the Water Trust;
- (iii) the deed of covenant dated 22 November 2007 between CPWL and the Water Trust; and
- (iv) the supplementary deed dated 24 November 2008 between CPWL and the Water Trust.

1.2 **Definitions in Loan Agreement:** Terms capitalised but not defined in this Agreement have the meaning given to them in the Loan Agreement.

1.3 **Interpretation:** For the purposes of this Agreement, the following rules of interpretation shall apply:

- (a) References to the "Council" shall include references to any party to whom the Council may transfer all or part of its rights under this Agreement; and
- (b) The principles of interpretation set out in clauses 1.2 and 1.3 of the Loan Agreement apply to this Agreement.

2. WATER CONSENTS

2.1 **Rakaia Water:** CPWL grants to the Council an exclusive irrevocable sub-licence to take, use, and otherwise benefit from the available Rakaia Water from the Commencement Date until the Termination Date on the terms and conditions of this Agreement. The Council's rights under this clause are at all times subject to:

- (a) CPWL's water take requirements for Stage 1 (as determined by CPWL), which shall not, at any time, exceed 14 cumecs;
- (b) the Rakaia Sub-Licences to the extent that they have not been waived or subordinated to the rights of the Council; and
- (c) the water sharing arrangements between CPWL and ACWT as set out in the ACWT Agreement and any future arrangements between CPWL, the Water Trust and ACWT relating to the sharing and/or use of Rakaia Water (provided that any future arrangements shall not increase the water available to ACWT above 5.74 cumecs),

and the Council shall have no right to any water under the Rakaia Resource Consents to the extent that such water is required for Stage 1 or under the Rakaia Sub-Licences or has been allocated to ACWT under the ACWT Agreement.

2.2 Conveyance of water: From the Commencement Date until the Termination Date, CPWL agrees to convey any Rakaia Water and any Trustpower Water available to the Council under clauses 2.1 and 2.3 of this Agreement along the Stage 1 Headrace on the terms and conditions of this Agreement. From the Commencement Date until the Termination Date, the Council may also convey any Rakaia Water and/or any Trustpower Water available to the Council under clauses 2.1 and 2.3 of this Agreement along the Stage 1 Headrace if:

- (a) CPWL has abandoned the operation of Stage 1; and
- (b) no other party (including the Security Trustee or any receiver appointed by the Security Trustee) is operating and/or managing the Stage 1 Headrace.

2.3 Trustpower Water:

- (a) On, or as soon as reasonably practicable after, the Commencement Date the Council and CPWL will enter into an agreement with CPWL relating to the purchase and supply of Trustpower Water on the form then used by CPWL for the purchase and supply of Trustpower Water with owners of Stage 1 Land ("**Stored Water Agreement**").
- (b) From the Commencement Date until the Termination Date, the Council shall be entitled to order Trustpower Water pursuant to the Stored Water Agreement provided that at all times there is sufficient Trustpower Water available for Stage 1.
- (c) Until the Stored Water Agreement has been executed by both the Council and CPWL, any Trustpower Water ordered by the Council from CPWL will be deemed to have been ordered pursuant to the Stored Water Agreement, and the provisions in the Stored Water Agreement shall apply to any such order of Trustpower Water.

2.4 Acknowledgments: The Council acknowledges that:

- (a) the conveyance of water under clause 2.2 is subject to the Council carrying out such necessary further construction and integration work to enable the water to be conveyed through the Stage 1 Headrace and comply with the Resource Consents, the Head Licence and CPWL's then current operating procedures including, without limitation, updating the diversion point from the Rakaia River, extending the existing (or creating a new) spillway at the Hororata River for increased water, constructing the infiltration gallery and modifying the controls on the Intake; and
- (b) the conveyance of water under clause 2.2 and/or the capacity available in the Stage 1 Headrace may be restricted:
 - (i) to comply with any direction that might be issued by a governmental agency;
 - (ii) to maintain, inspect or perform other works on the Stage 1 Headrace;
 - (iii) due to the occurrence of physical loss or damage or if the relevant assets are unavailable or due to a force majeure event;
 - (iv) to prevent any damage to property and/or to protect personal safety; or
 - (v) as required by law.

2.5 **Waimakariri Water:** CPWL grants to the Council a non-exclusive and irrevocable sub-licence of each Waimakariri Resource Consent to take, use, and otherwise benefit from the Waimakariri Water from the Commencement Date until the Termination Date on the terms and conditions of this Agreement, provided that the Council's rights under this sub-licence are, at all times subject to:

- (a) CPWL's water take requirements for Stage 1 (as determined by CPWL), which shall not, at any time, exceed 14 cumecs; and
- (b) the Waimakariri Sub-Licences,

and the Council shall have no right to any water under the Waimakariri Resource Consents pursuant to its sub-licence to the extent that such water is required for Stage 1 or under the Waimakariri Sub-Licences.

3. LICENCE TO USE HEADRACE AND ACCESS LAND

3.1 **Grant of licence:** CPWL grants to the Council a non-exclusive and irrevocable licence to access any land owned (legally or in equity), leased or otherwise occupied by CPWL, or over which CPWL has any rights to access (whether pursuant to a licence agreement or otherwise) surrounding the Stage 1 Headrace, the Intake and any of the other CPW Sites, for the purposes of carrying out any further infrastructure construction agreed to under this Agreement including completing the construction of the infiltration gallery (also known as the fish screen) by adding two further manifolds adjacent to the current two manifolds, extending the connecting header pond and completing any work or construction described in clause 2.4(a).

3.2 **Term:** The term of the licences contained in this clause 3 commences on the Commencement Date and expires on the Termination Date and is otherwise on the terms and conditions of this Agreement.

4. SUB-LICENCE OF SCHEME RESOURCE CONSENTS

4.1 **Grant of sub-licence:** Subject to the terms and conditions on which the Water Consents and any other Resource Consents have been licenced or sub-licenced pursuant to any other provision in this Agreement, CPWL grants to the Council a non-exclusive and irrevocable sub-licence to use any Resource Consents and other Scheme consents for the purposes of, or associated with, conveying water from the Rakaia River to, and operating, Stage 2+ from the Commencement Date until the Termination Date on the terms and conditions of this Agreement, provided that the exercise of any rights under any Resource Consent or other Scheme consent must have no actual or potentially adverse effect on:

- (a) the rights of CPWL, a Project Creditor or the Water Trust;
- (b) Stage 1; or
- (c) the operation of Stage 1.

5. LICENCE OF STAGE 2+ CONSENTS

5.1 **Grant of licence:** CPWL grants to the Council an exclusive and irrevocable licence:

- (a) to use the Building Consents; and
 - (b) to use all of CPWL's right, title and interest in any Stage 2+ Land,
- from the Commencement Date until the Termination Date on the terms and conditions of this Agreement.

6. LICENCE OF INTELLECTUAL PROPERTY

- 6.1 Grant of licence:** CPWL grants to the Council a non-exclusive licence to use the Intellectual Property Rights from the Commencement Date until the Termination Date on the terms and conditions of this Agreement.
- 6.2 Acknowledgement:** The Council acknowledges:
- (a) CPWL's rights in and ownership of the Intellectual Property Rights and that the Council does not own the Intellectual Property Rights; and
 - (b) that it shall not acquire any right or title to or interest of any kind in the Intellectual Property Rights otherwise than as granted pursuant to this Agreement.
- 6.3 Protection of Intellectual Property:** The Council will ensure that its (and will procure that each of its assignee's, transferee's or licensee's) use of the Intellectual Property Rights will not infringe on the rights of any third parties.

7. AGREEMENT TO SUBLICENCE STAGE 2+ NITROGEN

- 7.1 Agreement to grant sublicence:** CPWL agrees to grant to the Council a sublicence, on its standard form, to use all of the Stage 2+ Nitrogen in accordance with the Nitrogen Allocation Policy from the Commencement Date until the Termination Date on the terms and conditions of this Agreement.
- 7.2 Acknowledgement:** The Council acknowledges:
- (a) the Water Trust and CPWL's rights in the Stage 2+ Nitrogen and that the Council does not own the Stage 2+ Nitrogen;
 - (b) that it shall not acquire any right or title to or interest of any kind in the Stage 2+ Nitrogen otherwise than as granted pursuant to this Agreement; and
 - (c) that the amount of Stage 2+ Nitrogen will automatically reduce by the amount of nitrogen apportioned to the Sheffield Scheme on the date on which CPWL (or any subsidiary or related entity of CPWL) first receives or is able to draw down funds from any other lender to be used primarily for construction of the Sheffield Scheme.
- 7.3 Confirmation:** CPWL confirms that it will:
- (a) provide information to the Council, in a timely manner, to enable the Council to assess the progress of the application for a discharge consent in relation to nitrogen for new irrigation (in accordance with Variation 1 of the proposed Land and Water Regional Plan) from the Canterbury Regional Council; and

- (b) provide reasonable notice to the Council of, and allow the Council to comment on, any amendment of, or variation to, the Nitrogen Allocation Policy in place at the date of this Agreement if such amendment or variation will impact on the Stage 2+ Nitrogen.

8. VARIATION OF RESOURCE CONSENTS

8.1 **Variation:** Subject to clauses 8.2, 8.3 and 8.4, from the Commencement Date until the Termination Date the Council may, at its cost, make an application to the Canterbury Regional Council:

- (a) to vary the existing Resource Consents or Building Consents; or
- (b) for new resource consent(s) or building consent(s),

in order to exercise its rights under this Agreement, provided that any variation or new consent must have no actual or potentially adverse effect on:

- (c) the rights of CPWL, a Project Creditor or the Water Trust;
- (d) Stage 1; or
- (e) the operation of Stage 1.

8.2 **Consultation:** Prior to making any application under clause 8.1, the Council shall first consult with CPWL on the nature and content of any application (including but not limited to an application for building consent and/or resource consents) and any designs of the additional infrastructure required as a result of the exercise of the licences and/or sub-licences under this Agreement. CPWL and the Council will conduct all consultation under this clause in good faith with the objective of resolving all outstanding issues. Once consultation is complete and so long as the Council can demonstrate it has in good faith heard and taken into account any CPWL comments in relation to the application or design, CPWL will not object to the application and will be available to make submissions in support of the application and provide the Council with all affected party consents under the Resource Management Act 1991, provided that any variation or new consent must have no actual or potentially adverse effect on:

- (a) the rights of CPWL, a Project Creditor or the Water Trust;
- (b) Stage 1; or
- (c) the operation of Stage 1.

8.3 **Progress Updates:** The Council shall keep CPWL and the Water Trust informed in respect of the processing of the application. Any further amendments shall only be made once the process outlined in this clause has been followed.

8.4 **Project Creditors:** Any application under this clause shall only be made with the prior written approval of the Security Trustee which shall be withheld unless the Security Trustee is satisfied that any variation or new consent would have no actual or potential adverse effect on:

- (a) the development, operation and maintenance of Stage 1;
- (b) the Security Trustee's, the Project Creditors' or CPWL's rights in relation to Stage 1; or

- (c) the coverage of, or the ability of any party to claim under, the insurances taken out in respect of any Stage 1 Assets (as defined in the Intercreditor Deed), including their design, construction or operation.

- 8.5 **Council to provide information:** The Council shall, in relation to any variation or new consent, provide the Security Trustee with all information and any other assistance reasonably requested or required, or that the Council considers would be useful, to assist the Security Trustee to understand the extent to which Stage 1 would be affected by the variation or new consent.
- 8.6 **Water Trust:** If the Water Trust is satisfied that the variation to the existing Resource Consents requested by the Council will not have any actual or potentially adverse effect on the rights of the Water Trust and the basis upon which the Water Trust holds the relevant Resource Consents and the Water Trust has received any consents it considers are required from the Security Trustee, the Water Trust shall provide all reasonable assistance to the Council in respect of any application made by the Council under this clause 8 and shall provide the Council with all affected party consents under the Resource Management Act 1991.
- 8.7 **Costs:** The Council agrees to meet CPWL's and the Water Trust's reasonable costs in considering and assisting with any application under this clause (including any costs of the Security Trustee or a Project Creditor for which CPWL is responsible).

9. TERM OF LICENCES AND SUB-LICENCES

- 9.1 **Commencement:** Notwithstanding any other provision of this Agreement, each licence, sub-licence, agreement to licence and conveyance agreement under this Agreement will only come into force following an Unremedied Debtor Default (as defined in the Intercreditor Deed) occurring, and shall continue in force until it is terminated in accordance with the terms of this Agreement.
- 9.2 **Termination:**
 - (a) Each licence, sub-licence and agreement to licence (and any resulting licence) under this Agreement relating to the Sheffield Scheme will be automatically terminated on the First Construction Finance Date.
 - (b) Each licence, sub-licence and agreement to licence (and any resulting licence) granted under this Agreement, the Stored Water Agreement and any rights granted under clauses 2.2 and 8.1 will be automatically terminated on the repayment in full of the Outstanding Moneys under the Loan Agreement.

10. PERFORMANCE OBLIGATIONS OF THE COUNCIL

- 10.1 **Comply with Head Licence:** The Council shall, in exercising its rights under the licences and sub-licences granted under this Agreement and its rights under clause 8.1 of this Agreement, observe all terms and conditions of the Head Licence and not do or omit to do any act or thing which may result in CPWL being in breach of the Head Licence.
- 10.2 **Comply with consents:** The Council will comply with all of the terms and conditions of the Resource Consents, Building Consents and any other applicable consent.

10.3 Land Covenants: In accessing and using any CPW Sites, the Council covenants and agrees with CPWL that it will, at its own cost and expense:

- (a) keep the CPW Sites at all times clean and free of rubbish and make good any damage to the CPW Sites caused by the Council;
- (b) maintain, replace, repair and keep the CPW Sites in good and substantial repair and condition. Except where repair or replacement of capital or structural items is required as a result of the act, omission or negligence of the Council, this obligation excludes fair wear and tear and works of a capital or structural nature;
- (c) not to do anything in, on or about the CPW Sites which may constitute a nuisance or annoyance or be in breach of any legislation, regulations or by-laws;
- (d) comply with all health and safety requirements advised by CPWL, and any health and safety policies and/or procedures notified by CPWL;
- (e) comply with the terms of any agreements which grant CPWL the right to access the CPW Sites; and
- (f) ensure that the CPW Sites do not become a danger to the safety of members of the public.

10.4 Infrastructure Covenants:

- (a) The Council and CPWL will agree the timing, nature and terms applying to the Council's proposed interface with Stage 1 (including integration with CPWL's infrastructure, control and management systems and consent arrangements) prior to commencing any construction pursuant to the licences and/or sub-licence granted under clauses 2, 3, 4 and 5, having regard to the need to maintain continuity of supply to Stage 1 water users. CPWL will not withhold its agreement arbitrarily or unreasonably and if there is any dispute between the Council and CPWL under this clause, the matter shall be referred to an independent engineer to be appointed by the parties, or failing such appointment, by the Chief Executive for the time being of the Institution of Professional Engineers New Zealand and the decision of the independent engineer shall be binding on both parties.
- (b) The Council covenants and agrees that any further infrastructure construction it undertakes under the licences and/or sub-licence granted clauses 2, 3, 4 and 5 will be carried out:
 - (i) in a good, professional and workmanlike manner;
 - (ii) to sound and accepted building and engineering standards;
 - (iii) in accordance with the general concept of the Scheme;
 - (iv) without in any way interfering with the operations of Stage 1;
 - (v) outside the Irrigation Season; and
 - (vi) at the Council's own cost.

10.5 Operating Costs:

- (a) From the Commencement Date until the Termination Date:

- (i) The Council will pay its proportional share of the cost to CPWL of administering, maintaining, and operating the Intake and the Stage 1 Headrace (including obtaining, holding and renewing resource consents) in relation to the Rakaia Water conveyed along the Stage 1 Headrace, as certified by CPWL to the Council acting in good faith.
- (ii) The Council will pay its share of the cost to CPWL and the Water Trust of administering, complying with, maintaining, and operating the Resource Consents and/or Building Consents and any licences sought under this Agreement, as certified by CPWL or the Water Trust (as applicable) to the Council acting in good faith.
- (iii) The frequency and terms upon which the payment of the Council's share of costs is made under this clause 10.5 shall be agreed by the parties acting reasonably. In reaching further agreement, the parties shall have regard to the possibility of a payment regime including rolling average proportions and the payment monthly in advance of any budgeted fixed base charge(s).

11. INDEMNITY AND INSURANCE

- 11.1 Full indemnity:** To the fullest extent possible, the Council indemnifies CPWL and the Water Trust for any and all liability for loss, damage, costs or proceedings arising out of or in relation to the exercise of any rights set out in this Agreement.
- 11.2 No Liability:** Neither CPWL nor the Water Trust, or their respective agents, consultants or any other persons receiving water from, or involved with the operation of Stage 1 shall have any liability to the Council for any loss which may be sustained by the Council in connection with a suspension or restriction on the delivery of water pursuant to clause 2.4.
- 11.3 Public liability insurance:** The Council will, at its own cost, at all times during the term of each licence and sub-licence under this Agreement maintain public liability insurance (such policy to include but not be limited to cover for exemplary and punitive damages for personal injury) in a sum of not less than \$10,000,000.00 for any one claim. If requested by CPWL, the Council will produce to CPWL such written evidence as CPWL may reasonably require of the currency of that policy.
- 11.4 Construction insurance:** The Council will, at its own cost, at all times during construction of any further infrastructure pursuant to the provisions of this Agreement, maintain construction insurance in an amount and to an extent approved by CPWL as being reasonable and customary for the proposed construction works. The Council will provide CPWL with evidence satisfactory to CPWL that such insurance is in place prior to commencing any construction works. If requested by CPWL, the Council will produce to CPWL such written evidence as CPWL may reasonably require of the currency of that policy.
- 11.5 Operational insurance:** The Council will, at its own cost, at all times during the operations of Stage 2+ pursuant to the provisions of this Agreement, maintain operational insurance in an amount and to an extent approved by CPWL as being reasonable and customary for the proposed operations. The Council will provide CPWL with evidence satisfactory to CPWL that such insurance is in place prior to commencing operations of Stage 2+. If requested by CPWL, the Council will produce to CPWL such written evidence as CPWL may reasonably require of the currency of that policy.

12. WATER TRUST CONSENT

12.1 **Consent:** Subject to clauses 12.1(a) and 12.1(b), the Water Trust hereby consents to CPWL granting the rights and interests to the Council as set out in this Agreement and, to the extent that the Water Trust is the owner or otherwise interested in the subject of such rights and interests as head-licensor under the Head Licence or otherwise, agrees to be bound by such grant to the intent that the Council may exercise its rights under and in accordance with this Agreement. For the absolute avoidance of doubt:

- (a) nothing in this Agreement permits the Council to do any act or thing which would, if done by CPWL, amount to a breach of the terms of the Head Licence or the Resource Consents; and
- (b) the Council's recourse against the Water Trust is limited to the exercise of its rights under, and in accordance with, this Agreement.

12.2 **Head Licence:** The Water Trust undertakes not to cancel the Head Licence for any reason whatsoever (including default by CPWL) without first consulting with the Council and providing the Council with at least 30 days to remedy or cure the relevant issue that could allow the Water Trust to cancel the Head Licence (where such issue is capable of remedy).

13. TRANSFER OF RIGHTS

13.1 **Transfer:** Subject to clause 13.2, the Council shall only be entitled to assign, licence, transfer or otherwise dispose of all or part of any of the rights granted to it pursuant to this Agreement with the prior written consent of the Water Trust (not to be unreasonably withheld). It shall not be unreasonable for the Water Trust to withhold its consent pursuant to this clause 13.1 if it considers (acting reasonably) that the proposed assignee, licensee or transferee or person who otherwise takes the relevant rights, benefits or obligations of the Council under this Licence Agreement:

- (a) is not reputable; or
- (b) does not:
 - (i) have the financial means and operational and technical ability to comply with; or
 - (ii) employ or otherwise have access to persons having the appropriate qualifications, experience and technical competence to enable the Council to comply with, the Council's obligations under this Agreement.

13.2 **Consent:** The Council shall obtain the prior written consent of the Security Trustee to any assignment, licence, transfer or other disposition pursuant to clause 13.1, in accordance with the terms and provisions of clause 9.1 of the Intercreditor Deed.

14. NOTICES

14.1 **General:** The parties will comply with the notice provisions as set out in the Loan Agreement with all consequential amendments and as if references to the parties to it were references to CPWL and the Council.

15. DISPUTES

- 15.1 **Negotiation:** The parties agree to use reasonable endeavours to resolve any dispute or difference arising out of or in connection with this Agreement in the spirit of good faith and on a commercially realistic basis by negotiation between the appropriate people from each party.
- 15.2 **Mediation:** Failing resolution under clause 15.1, the parties may agree to mediation before an independent mediator.
- 15.3 **Limitation:** Nothing in this clause 15 will prevent either party from taking immediate steps to seek relief before an appropriate court.

16. MISCELLANEOUS

- 16.1 **No partnership:** Nothing contained in the Agreement shall be deemed or construed by the Council or CPWL or by any third party as creating the relationship of partnership, principal and agent or joint venture.
- 16.2 **Licence only:** The Council acknowledges and agrees that the rights conferred on the Council by this Agreement rest in contract only and will not create in or confer on the Council any tenancy or any estate or interest in any land owned by CPWL and that the rights of the Council are those of a licensee or sub-licensee only.
- 16.3 **Contracts (Privity) Act:** For the purposes of the Contracts (Privity) Act 1982, each party to this document agrees that any provision which confers or purports to confer a right or benefit on the Security Trustee, the Project Creditors or any person acting on their behalf or any receiver appointed by them shall be enforceable by those persons. However, only the consent of the Council, CPWL and the Water Trust is required for any amendment made to this Deed.
- 16.4 **Governing Law:** This Agreement is governed by the laws of New Zealand and the Council, the Water Trust and CPWL submit to the jurisdiction of the Courts of New Zealand.

17. INTERCREDITOR DEED

- 17.1 CPWL, the Water Trust and the Council acknowledge and agree that the terms of this Agreement and each of the Transaction Documents are subject to the Intercreditor Deed. In particular (but without limitation) any provision of this Agreement entitling the Council to assign or transfer any of its rights or obligations under a Transaction Document is subject to such assignment or transfer being permitted by the Intercreditor Deed.

EXECUTION

SIGNED for and on behalf of)
CENTRAL PLAINS WATER LIMITED)
in the presence of) _____ Director _____ Director/Authorised
Signatory

Signature

Full Name

Address

Occupation

Note: If two directors sign, no witness is necessary. If a director and authorised signatory sign, both signatures are to be witnessed. If the director and authorised signatory are not signing together, a separate witness will be necessary for each signature.

SIGNED for and on behalf of)
CENTRAL PLAINS WATER TRUST)
in the presence of) _____ Trustee _____ Trustee

Witness signature

Full Name

Address

Occupation

THE COMMON SEAL of THE)
SELWYN DISTRICT COUNCIL)
was hereto affixed by and in the)
presence of:)

Mayor

Chief Executive

SCHEDULE 1
RESOURCE CONSENTS

1. Use Water: CRC061973
2. Take Water:
 - CRC061925
 - CRC061972
 - CRC160803 (replaces CRC144919, CRC137417 & CRC021091)
 - CRC151200
 - CRC150940
 - CRC150942
 - CRC150944
 - CRC161091
3. Divert Water
 - CRC061768
 - CRC144916 (replaces CRC061940)
 - CRC061943
4. Discharge Diverted Water
 - CRC144920 (replaces CRC061980)
 - CRC061982
5. Discharges to Water and Land
 - CRC102334
 - CRC061949
 - CRC102335
6. Discharges during Operations and Maintenance
 - CRC102329
 - CRC102333
 - CRC145276 (replaces CRC102337)
7. Construction Phase Discharges
 - CRC102332
 - CRC061928
 - CRC145275 (replaces CRC102336)
8. Remove, Excavate and Deposit Material and Vegetation (Rakaia River)
 - CRC144917 (replaces CRC102330)
 - CRC144918 (replaces CRC102331)
9. Remove, Excavate and Deposit Material and Vegetation (Waimakariri River and Others)
 - CRC145274 (replaces CRC061814)
 - CRC102325
 - CRC102326
 - CRC102328
10. Steeles Road Consents (Rakaia River)
 - CRC062685
 - CRC062686
 - CRC062680
 - CRC063823
11. Sheffield Consent: CRC136234 (replaces CRC100581.1)
12. Global Consent to install irrigation distribution network
 - RC155373
13. Individual Consents to install irrigation distribution network
 - RC065214 (Central)
 - RC065215 (Darfield)
 - RC065216 (Sheffield)
 - RC065217 (Springfield)

BUDDLEFINDLAY

RC065218 (Te Pirita)

RC065219 (Windwhistle)

14. Additional Bywash Discharges

RC075156

SCHEDULE 2
BUILDING CONSENTS

1. Headrace Canal
BCA143490
2. Intake Gates and Structures
BCA151894

SCHEDULE 3
SCHEME MAP

CENTRAL PLAINS ENHANCEMENT SCHEME AREA

