

Shareholder Water Augmentation Agreement

Waimea Irrigators Limited

[]

EXAMPLE ONLY

Date:

Parties

1. Waimea Irrigators Limited (**Company**)
2. [] (**Shareholder**)

Background

- A. The Shareholder is a holder of Water Shares in the Company and either (a) holds or intends to hold a Ground Water Permit or a Surface Water Permit within any of Waimea Plains Zones as referred to in the Tasman Resource Management Plan (b) is an Irrigation Scheme Member, or (c) is an investor in the Company.
- B. The Company has entered into a Wholesale Water Augmentation Agreement with Waimea Water Limited enabling it to require the release of Dam Water into the Upper Lee River for the benefit of Affiliated Permit holders.
- C. The Tasman Resource Management Plan provides for a greater level of water reliability for Affiliated Permit holders.
- D. To apply for an Affiliated Permit with the Tasman District Council, the Shareholder must enter into this Agreement.

Agreement

1. Definitions and interpretation

Definitions

- 1.1 In this Agreement unless the context otherwise requires:

Agreement means this Shareholder Water Augmentation Agreement.

Affiliated Permit means a Shareholder's Permit to take and use water in the Waimea Plains Zone that has been granted by Council under the TRMP where the holder of the permit has met the requirements of Affiliation under the TRMP, entered into a Shareholder Water Augmentation Agreement in the form required by the Company (or in the event that the holder of the permit is an Irrigation Scheme, an Irrigation Scheme Member has entered into a Shareholder Water Augmentation Agreement) with the Company and where such Shareholder Water Augmentation Agreement has not been suspended or terminated and "**Affiliated**" will be interpreted accordingly.

Affiliation/Affiliate means the process that allows a Shareholder holding a Shareholder Water Augmentation Agreement to apply to Council to have their Shareholder's Permit converted and/or reissued as an Affiliated Permit under the TRMP.

Company	means Waimea Irrigators Limited.
Constitution	means the constitution of the Company, as may be amended from time to time.
Council	means the Tasman District Council.
Dam	means the Dam owned by WWL to be constructed and situated in the Upper Lee River and referred to as the “Waimea Community Dam” in the TRMP.
Dam Water	means the water stored in the reservoir behind the Dam and/or released into the Upper Lee River under the Wholesale Water Augmentation Agreement.
Finance Charges	means the component of the Water Charges referred to in clause 5.
Financiers	means Crown Irrigation Investments Limited or any bank, financial institution or other third party providing secured financing to WWL in relation to the Scheme or to the Company in relation to its investment in WWL or the Scheme from time to time and includes any security trustee acting on behalf of any such person or persons.
Force Majeure	<p>means any event or circumstance, or combination of events and circumstances:</p> <ul style="list-style-type: none"> (a) that causes or results in preventing or delaying a party from performing any of its obligations under this Agreement; and (b) which is beyond the reasonable control of that party and could not, or the effects of that event or circumstance, or that combination of events or circumstances, could not have been prevented or delayed, overcome or remedied by the exercise by the party of a standard of care and diligence consistent with standard industry practice which occurs after the date of this Agreement and, provided that the event or circumstance or combination of events or circumstances meets the foregoing criteria, includes: <ul style="list-style-type: none"> (i) an act of god; or (ii) a strike or lockout, act of public enemy, war (whether declared or undeclared), blockade, revolution, riot, insurrection, malicious damage, civil commotion; or (iii) lightning, landslide, cyclone, storm, flood, fire, earthquake or explosion; or (iv) an action, inaction, demand, restraint, restriction, requirement, prevention, frustration or hindrance by any Governmental Agency or other competent authority; or

- (v) order of the Court; or
- (vi) an embargo, unavailability or shortage of essential equipment, or other materials, goods, labour or services, lack of transportation or communication; or
- (vii) any breakage of equipment, machinery, lines or pipes, or delivery equipment, washout, subsidence or freezing; or any restraint on access to the Land.

Ground Water Permit	means a permit(s) to take water from a groundwater source in the Scheme Area issued by the Council.
Infrastructure	means the Dam, reservoir, slipway, access roads and other infrastructure and fixtures associated with the Dam.
Irrigation Scheme	means Waimea East Irrigation Company Limited, Redwood Valley Water Supply Scheme Joint Venture and such other reticulated irrigation scheme as may be established from time to time.
Irrigation Scheme Member	means a shareholder or member of an Irrigation Scheme.
Irrigation Scheme Water Augmentation Agreement	means an agreement between the Company and an Irrigation Scheme which, amongst other things, sets out the Irrigation Scheme's rights and responsibilities in respect of the supply of water to its Irrigation Scheme Members.
Land	means the Shareholder's land to which the Shareholder's Permit relates.
Licence Agreement	means a Licence Agreement referred to in clause 6 and in the form set out in Schedule 3.
Licence Moratorium Date	means the date after which licensing is authorised by the board of the Company in its sole and absolute discretion, subject to the consent of the Financiers.
Operating Charges	means the component of the Water Charges referred to in clause 5.
Project Deed	means the Project Deed – Waimea Community Dam entered into between the Company, Council, WWL and Crown Irrigation Investments Limited.
Resource Consent	means the resource consents, including all Dam Water, use, damming, diversion, discharge and any other permits held by WWL, together with all the renewals, variations or amendments to those consents and permits and includes all conditions relating to those consents.
RMA Plan	means any proposed or operative regional or district plan prepared under the Resource Management Act 1991 and administered by the regional or territorial authority (or authorities) which has jurisdiction over the air, land and water resources used by the Company or WWL to construct, maintain and operate the Scheme

or the rights of land owners or occupiers to take and use water in the Waimea Plains Zones, and includes the TRMP.

Scheme	means the scheme to finance, acquire, construct, maintain and operate the Infrastructure to enable the storage of water behind the Dam and the release of Dam Water into the Upper Lee River.
Scheme Area	means the land as shown outlined in blue at Schedule 2 or as determined by the Company from time to time, at its sole discretion.
Shareholders	means shareholders in the Company.
Shareholders Agreement	means the Shareholders Agreement entered into between the Company and the Council in respect of their respective shares and interests in, and rights and obligations in relation to WWL.
Shareholder's Permit(s)	means a Ground Water Permit (if any) and/or the Surface Water Permit (if any) held by the Shareholder (or held by the irrigation scheme to which the Shareholder is a shareholder or member of) as more particularly set out in Schedule 1.
Shareholder Water Augmentation Agreement	means a shareholder water augmentation agreement between the Company and a/each Shareholder allowing the Shareholder to apply to Affiliate its Shareholder Permit under the TRMP, as revised or updated from time to time.
Specific Charges	means the component of the Water Charges referred to in clause 5.7.
Surface Water Permit	means a permit(s) to take water from a river in the Scheme Area issued by the Council.
Surplus Water	means water available to be taken under a Shareholder's Permit(s) which is surplus to the Shareholder's requirements.
TDC Trigger Event	means a Compensation Event (as defined in the Project Deed, which, as at the date of this Agreement, by way of example, includes any removal or loss of the right to Affiliation of a Shareholder who is bound by a Shareholder Water Augmentation Agreement or an Irrigation Scheme Water Augmentation Agreement) that has occurred as a consequence of a TDC Act (as defined in the Project Deed which, as at the date of this Agreement, by way of example, includes any act or omission by the Council (including any change to the TRMP) except to the extent that act or omission is required at law, to the extent that act or omission is required by central government (including through Crown entities or agencies), or where the Council has no practical discretion not to undertake that act or allow the omission or to determine the consequences of that act or omission).

TRMP	means the Tasman Resource Management Plan, as amended or replaced from time to time.
Unaffiliated Permit	means a Ground Water Permit or Surface Water Permit to take and use water in the Scheme Area granted by the Council where the holder of the permit is not a Shareholder and/or has not entered into a Shareholder Water Augmentation Agreement with the Company, or an Affiliated Permit where a Shareholder Water Augmentation Agreement is suspended or has been terminated.
Waimea Plains Zones	means the Water Management Zones on the Waimea Plain including the Appleby Gravels, Reservoir, Waimea West, Golden Hills, Delta Hope and Eastern Hills, Upper Catchments and Upper and Lower Confined Aquifer zones or as otherwise defined in the TRMP from time to time (and includes any amendments or variations).
Water Charges	means all charges payable by a Shareholder under this Agreement from time to time, including Finance Charges and Operating Charges and Specific Charges.
Water Management Zone	means a defined part of water resource displayed on the planning maps in the TRMP and subject to all applicable rules.
Water Share	means a share giving the holder the right and obligation to enter into this Agreement and such further rights and obligations set out in the Company's Constitution.
Water Share(s)	means all Water Shares held by the Shareholder as more specifically set out in Schedule 1 as at the date of this Agreement and as may be updated or amended from time to time by entry into the Company's share register.
Wholesale Water Augmentation Agreement	means the Wholesale Water Augmentation Agreement entered into between WWL and the Company in relation to, among other things, the release of Dam Water and the rights and obligations of the Company in relation to the Scheme (as amended, supplemented or varied from time to time).
Working Day	means any day of the week other than Saturday, Sunday or statutory holidays on which banks are open for business in the Nelson-Tasman region.
WWL	means Waimea Water Limited and any subsequent owner of the Infrastructure.
WWL Shareholders Agreement	means the Shareholders Agreement entered into between the Company, WWL and the Council in respect of WWL.

2. Interpretation

- 2.1 In the interpretation of this Agreement, unless the context or subject matter otherwise requires:
- (a) singular includes plural and vice versa;
 - (b) any gender includes every gender;
 - (c) a reference to a person includes a corporation, trust, association, partnership, government authority or other legal entity, and where necessary, includes a successor body;
 - (d) where more than one person is named as Shareholder, any provision in this Agreement to be performed by the Shareholder will bind those persons jointly and severally;
 - (e) a reference to an agreement (including this Agreement) or document is to the agreement or document as amended, novated, supplemented or replaced from time to time;
 - (f) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
 - (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
 - (h) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement; and
 - (i) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

3. Term

- 3.1 This Agreement shall commence from the date this Agreement is executed until such time as it is terminated by the Company in accordance with the provisions of this Agreement.
- 3.2 The Shareholder must not terminate, rescind or accept any repudiation of this Agreement.

4. Water Augmentation and Affiliation

- 4.1 Subject to compliance with the Wholesale Water Augmentation Agreement and the Shareholders Agreement, the Company has the right to (and shall) require WWL to release Dam Water from the Dam into the Upper Lee River.
- 4.2 The volume of Dam Water that the Company will require WWL to release for and on behalf of the Shareholder's with Affiliated Permits will be the amount prescribed in the Resource Consent being the consented quantity necessary to maintain environmental flows (under the TRMP) and to maintain the reliability of Affiliated Permits.
- 4.3 The Shareholder, under this Agreement, is entitled to apply under the TRMP to Affiliate its Shareholder's Permit for a volume of water represented by the number of Water Shares held by the Shareholder at a rate of 300m³ of water per week, per Water Share.

- 4.4 This Agreement is intended to be a "water supply agreement" for the purposes of the TRMP in connection with the Dam.
- 4.5 Where the Shareholder is an Irrigation Scheme Member, the Shareholder acknowledges that it is the Irrigation Scheme that has the right to apply for and hold an Affiliated Permit with an Affiliated volume including a volume represented by the number of Water Shares held by the Shareholder. The Shareholder's right to take and use the water under the Irrigation Scheme's Affiliated Permit will be subject to their water supply agreement with their respective Irrigation Scheme and the Irrigation Scheme complying with its respective Irrigation Scheme Water Augmentation Agreement.
- 4.6 The Shareholder acknowledges that the intended purpose of the release of Dam Water (among other things) is to improve the reliability of the Shareholder's water take under their Affiliated Permits, but that the Company does not provide any assurance of such ability to take water.
- 4.7 Under no circumstances shall the Shareholder take water in excess of its entitlement under its Shareholder's Permit.
- 4.8 The release of Dam Water is always subject to the availability of Dam Water, the terms of the Resource Consent, the terms of this Agreement, the terms of the Wholesale Water Augmentation Agreement (as the case may be) and any statutory or regulatory requirements including but not limited to, the TRMP. The Company will use reasonable endeavours to procure WWL to release the required volume of Dam Water under clause 4.1, but does not guarantee to the Shareholder the availability or release of Dam Water.
- 4.9 The Shareholder acknowledges that the rights and benefits attaching to an Affiliated Permit are set out in the TRMP and may be subject to change by Council. The Shareholder further acknowledges that the right to take and use water is subject the conditions of their Affiliated Permit.
- 4.10 The Shareholder acknowledges that the Company is not responsible for the Shareholder's ability to take water from the Shareholder's groundwater source pursuant to the Ground Water Permit or to take water pursuant to a Surface Water Permit, or for compliance by the Shareholder with the conditions of its Affiliated Permit.
- 4.11 The Shareholder acknowledges that the Company is not supplying any water directly to the Shareholder and as such the Company gives no warranty, assurance or undertaking that the Dam Water is suitable for domestic or household drinking purposes. The Shareholder and all other users of the Dam Water are responsible for treating, filtering or otherwise dealing with the Dam Water to enable it to be used for domestic or household purposes (if applicable). The Company shall not be liable for any health issues, regulatory requirements or other costs and expenses required or necessary to ensure the Dam Water is potable and safe for household, domestic or human use.
- 4.12 Notwithstanding clause 25, the Shareholder appoints and authorises the Company to act as its agent and on its behalf if the Company, in its sole discretion, considers that a TDC Trigger Event has occurred, including in relation to any claim or claims under the Project Deed. If the Company considers that a TDC Trigger Event has occurred, the Company may in its sole discretion seek compensation from the Council on behalf of the Company, the Shareholder and/or any other shareholders in the Company in accordance with the Project Deed. The Shareholder authorises the Company to apply any compensation payable by the Council in connection with a TDC Trigger Event to pay Finance Charges or to pay or repay amounts owing to Financiers, including by the Company levying an additional Water Charge and applying the compensation from the Council to pay that Water Charge.

5. Water Charges

- 5.1 The Company may charge, and the Shareholder must pay, amounts to be determined in the Company's absolute discretion to recover all operating, capital, financing and other costs and expenses, whether fixed, variable or one-off, incurred by or imposed on the Company or required to operate the Company and meet its obligations, including all amounts payable by the Company to WWL under the Wholesale Water Augmentation Agreement or the Shareholders Agreement. Such charges may include Operating Charges, Finance Charges, Specific Charges or such other charges as may be required to operate the Company.
- 5.2 The Water Charges shall be payable by the Shareholder by direct debit from the Shareholder's nominated bank account. The Shareholder shall do all things and sign all necessary authorities to arrange the direct debit.
- 5.3 The Water Charges shall be charged on a per Water Share basis at such times or at such intervals as the Company shall determine. The Company may charge Water Charges in advance of incurring or paying the relevant amount.
- 5.4 The Water Charges will include all interest, principal, fees and other payments on any bank loan, other loan or financing taken out by WWL to fund the Scheme (including all amounts payable by the Company to WWL under the Wholesale Water Augmentation Agreement in relation to any such loan or financing and any amounts payable by the Company as guarantor or obligor in relation to such loan or financing) or taken out by the Company to fund its investment in WWL or the Scheme or its obligations to WWL. The Shareholder acknowledges that while the Company will use its reasonable endeavours to spread debt payments over time and refinance (or procure the refinancing of) any loan or other financing due, from time to time, the Company may have to render extraordinary Water Charges to repay or reduce debt or to meet requirements of any bank or other Financiers.
- 5.5 The Water Charges may include, without limitation, recovery of:
- (a) the costs associated with the establishment of the Scheme and WWL;
 - (b) the proportion of the cost of operating, maintaining and repairing the Infrastructure payable by the Company under the Water Augmentation Agreement;
 - (c) other costs payable by the Company in accordance with the Shareholders Agreement or the Wholesale Water Augmentation Agreement;
 - (d) the costs of running and administering the Company;
 - (e) the Company's proportion of Resource Consent and Scheme monitoring and compliance costs;
 - (f) costs reasonably incurred by Company directors and directors' fees;
 - (g) costs payable to professionals and service providers to the Company; and
 - (h) any taxes or other governmental or regulatory charges or duties.
- 5.6 Without limiting clause 5.4, Finance Charges shall include recovery of the amounts payable by the Company to WWL in relation to WWL's payment obligations to Crown Irrigation Investments Limited (or its successor or any subsequent financier of WWL) in respect of the Scheme where the Company is a co-obligor or guarantor.
- 5.7 The Water Charges may include Specific Charges incurred by the Company which are particular to the Shareholder in respect of the release of Dam Water (which are not appropriate for the Company to charge to other Shareholders) including, without limitation, costs incurred as a result of the Shareholder breaching this Agreement and/or the conditions

imposed by its Shareholder's Permit in relation to its water take and/or use, including enforcement costs and administration costs.

- 5.8 The Water Charges determined in accordance with clause 5.1 to 5.7 above shall be payable by the Shareholder to the Company whether or not:
- (a) there is a Force Majeure Event; or
 - (b) Dam Water is released from the Dam; or
 - (c) there is any failure by the Company to perform its obligations or any suspension or termination in accordance with clause 11 or 12; or
 - (d) the Shareholder takes or uses (or is entitled to take and use) water under its Shareholder Permit(s); or
 - (e) the Shareholder's Affiliated Permit(s) remains Affiliated or become Unaffiliated Permits.
- 5.9 The Shareholder must pay the Water Charges within fifteen Working Days following the date of each invoice. All Water Charges are GST exclusive.
- 5.10 The Company may, in its absolute discretion, differentiate between the Shareholder and other Shareholders in relation to the amount of Water Charges payable per Water Share taking into account any variations in the cost of meeting the requirements of the holders of Water Shares.
- 5.11 In the event of non-payment of any Water Charges (or any other payments) due under this Agreement, then without prejudice to the Company's other rights and remedies, penalty interest at a rate of 5% above the then current commercial overdraft rate of a bank selected by the Company shall accrue from the date of non-payment to the date the payment is actually made. The Shareholder shall also be responsible for the Company's recovery costs including legal costs on a client/solicitor basis.
- 5.12 All amounts due under this Agreement shall be paid in full without set-off or deduction of any kind.

6. Licensing of Water Shares/Water Rights

- 6.1 If the Shareholder has Surplus Water under its Affiliated Permit that is not being used by the Shareholder, then the Shareholder may, after the Licence Moratorium Date, licence its Surplus Water to another Shareholder with an Affiliated Permit provided that:
- (a) the Shareholder and proposed licensee enter into a Licence Agreement on the approved form as set out in Schedule 3 (or such other form as the Company may require from time to time);
 - (b) the licensing of Surplus Water is approved by the Company Board of Directors, in its absolute discretion; and
 - (c) the licensing of Surplus Water is approved by the Council as a transfer of water rights under the RMA (if required).
- 6.2 The Shareholder further acknowledges that entering into a Licence Agreement for Surplus Water does not release the Shareholder from any of its obligations under this Agreement or any new Shareholder Water Augmentation Agreement in accordance with clause 15 and the Shareholder will remain liable for any breach of the terms and conditions of this Agreement by any licensee.

7. Metering

- 7.1 The Shareholder acknowledges that the Council may require the installation and maintenance of water meters, telemetry, data loggers and related equipment at or near the Shareholder's groundwater or surface take as required by the conditions of their Ground Water Permit and/or Surface Water Permit. The Shareholder will comply fully with all such requirements at all times.
- 7.2 If required by the Council and/or the Company, the Shareholder must promptly install (or replace), at its cost, metering equipment to meter and monitor the water taken and used by the Shareholder to ensure compliance with the Shareholder's Permit(s) and compliance by the Shareholder with the terms of this Agreement. Repair and replacement of any metering equipment as required from time to time shall be the Shareholder's sole cost and responsibility.
- 7.3 The Shareholder shall in no circumstances tamper or interfere with any metering, telemetry and data logging devices and shall take reasonable steps to prevent interference and tampering by any other person.
- 7.4 The Shareholder consents to access by the Company to its water use records as collected and held by the Council or its agents, and consents to the Council providing such information to the Company at the request of the Company.
- 7.5 Upon request, the Shareholder will promptly provide to the Company all information and records relating to its Affiliated Permit, Ground Water Permit, Surface Water Permit and water take and use, including for any licensee (if applicable).
- 7.6 The Shareholder grants the Council and the Company the right at any time and from time to time, without being deemed to commit a trespass, to enter onto the Land and to operate, inspect, maintain, read or repair any metering equipment (including all telemetry equipment) on the Land.
- 7.7 Upon request by the Company or the Council, the Shareholder will (at the Shareholder's cost) promptly arrange for independent testing and/or auditing of the metering equipment in accordance with the Company's or the Council's requirements.
- 7.8 The information collected from the metering equipment by the Council (or by the Company) shall be taken to be correct unless there is a manifest error in that information.

8. Company's Obligations

- 8.1 The Company shall:
- (a) Use all reasonable endeavors to procure WWL to;
 - (i) operate the Scheme in a professional manner and to the appropriate industry standards which may be updated from time to time; and
 - (ii) repair and maintain the Infrastructure of the Scheme in accordance with its obligations under the Wholesale Water Augmentation Agreement; and
 - (b) Promptly pay and discharge all amounts due by it or obligations imposed on it in relation to the release of Dam Water or the operation of the Scheme or its own operations, including in particular its obligations under the Wholesale Water Augmentation Agreement.

- 8.2 The Company may on a regular basis and from time to time provide to the Shareholder a policy and/or guideline (as appropriate) relating to the release of Dam Water from the Dam taking into account the following factors:
- (a) the restrictions that may be placed on the release of that Dam Water for any reason under the Resource Consent, an RMA Plan and the Shareholder's Ground Water Permit and/or Surface Water Permit or under the Wholesale Water Augmentation Agreement; and
 - (b) any requirement under any statutory or legal requirements for restricting the release of the Dam Water.

9. Shareholder's Works and Obligations

- 9.1 The Shareholder will be solely responsible (at its cost) for installing and maintaining all of its own irrigation infrastructure and related works as it determines may be required to take and distribute water on the Land.
- 9.2 The Shareholder shall, at all times:
- (a) hold the number of Water Shares as set out in Schedule 1, unless otherwise agreed in writing by the Company;
 - (b) observe and comply with the Constitution, its Shareholder Permit and all relevant statutes and bylaws and irrigation practices and procedures (including as determined and notified from time to time by the Company);
 - (c) ensure that any lessee, licensee or other occupier of the Land and any licensee of Surplus Water complies in all respects with the terms of this Agreement; and
 - (d) ensure that it keeps its personal details up to date with the Company including a contact name and contact details.

10. Transfer of Water Shares

- 10.1 The Shareholder shall only transfer its Water Shares in accordance with the provisions of the Constitution.

11. Breach of Agreement

- 11.1 In the event of the Shareholder committing any breach of the terms of this Agreement and such breach continuing beyond 10 Working Days after written notice from the Company requiring such breach to be remedied, the Company may, without payment of any damages or compensation to the Shareholder or any other person:
- (a) suspend the Shareholder's right to the release of Dam Water from the Dam in accordance with this Agreement and notify the Council of the suspension. The result of such suspension will be that the Shareholder's Affiliated Permit will become Unaffiliated and the Shareholder will not be entitled to take and use water under its Shareholder's Permit(s) on the basis that it is Affiliated. The suspension, and un-affiliation, will continue until such time as the Company is satisfied that all breaches have been remedied; and
 - (b) after the breach has continued for 30 Working Days, forfeit all of the Shareholder's Water Shares in the Company and terminate this Agreement pursuant to clause 12 (notwithstanding that the Shareholder may not be in breach in respect of all of its Water Shares).

- 11.2 The liability of the Shareholder for Water Charges shall continue as provided by clause 5 notwithstanding any of the above actions by the Company.
- 11.3 The Company is not obliged to take any action under this clause 11.

12. Termination

- 12.1 In addition to its rights under clause 11, the Company shall be entitled at any time to immediately terminate this Agreement if:
- (a) the Shareholder ceases to hold any Water Shares in the Company;
 - (b) the Shareholder fails to contest within 10 Working Days of service any petition of bankruptcy or for winding up;
 - (c) the Shareholder makes any compromises with or enters into any arrangement with its creditors;
 - (d) any execution, levy or distress is levied against the Shareholder or the assets of the Shareholder's business;
 - (e) the Shareholder has any receiver, manager or other custodian (either temporary or permanent) appointed with respect to the Shareholder or in respect or all or any part of the Shareholder's business;
 - (f) the Shareholder becomes subject to a deed of arrangement with its creditors; or
 - (g) the Shareholder purports to assign or charge its rights or interest under this Agreement, without the prior written consent of the Company.
- 12.2 The Shareholder shall remain liable for the payment of all monies owing and for any breach of this Agreement up to the date of termination of this Agreement and for the payment of all Water Charges until such liability is taken over by another Shareholder(s) through the transfer of Water Shares in accordance with the terms of the Constitution.
- 12.3 In the event of the Company terminating this Agreement for any reason then the Company shall not be liable to the Shareholder for any costs, damages, claims or compensation of any kind or nature whatsoever nor shall the Shareholder have any right of action against the Company arising out of the termination of this Agreement.
- 12.4 On termination all of the Shareholder's Water Shares shall be subject to the lien and forfeiture provisions of the Company's Constitution.

13. Dispute Resolution

- 13.1 The Shareholder and the Company shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under this Agreement.
- 13.2 Every dispute or difference that is not resolved by discussion between the Shareholder and the Company may be referred by either party to mediation.
- 13.3 If a dispute has been referred to mediation then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The parties shall each bear the party's own costs in the mediation, and shall each pay half the costs of the mediator.

- 13.4 The matter in dispute shall be referred to arbitration if:
- (a) the parties have been unable to agree upon a mediator within 10 Working Days of the dispute being referred to mediation; or
 - (b) mediation has taken place and no agreement has been reached.
- 13.5 The dispute or difference shall be referred to a sole arbitrator for resolution if the Shareholder and the Company agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Working Days, an arbitrator will be appointed by the President for the time being of the Canterbury-Westland Branch of the New Zealand Law Society at the request of either or both of them.
- 13.6 Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.
- 13.7 The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this clause and the decision of the arbitrator will be final and binding on the parties.

14. Force Majeure

- 14.1 If either party is unable to carry out any of its obligations under this Agreement because of any event or circumstances of Force Majeure, this Agreement shall remain in effect but except as otherwise provided, both parties' obligations (other than the Shareholder's obligations as to payment of Water Charges, which shall continue unaffected), shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:
- (a) the non-performing party gives the other party prompt notice describing the circumstances of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
 - (b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
 - (c) no obligations of either party that accrued before the Force Majeure caused the suspension of performance are excused as a result of the Force Majeure;
 - (d) the non-performing party uses all reasonable efforts to remedy its inability to perform as quickly as possible.
- 14.2 If the event or circumstance the Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either party to resume its obligations under this Agreement, the parties agree to negotiate in good faith as to how this Agreement may be mitigated or terminated utilising if necessary the dispute resolution procedures set out in clause 13, provided always that the Shareholder's obligation to pay Water Charges shall continue until such time as the Company determines otherwise.

15. Contract Review

- 15.1 The Company may at any time review and amend the terms and conditions of the Shareholder Water Augmentation Agreement, including this Agreement including (but not limited to) amendments to take account of changes in legislation or statutory requirements, the Resource Consent, district or regional plans (including RMA Plans), farming or irrigation practice, the requirements of the Financiers in connection with the financing or refinancing of the Scheme

or the Company's investment in the Scheme any changes agreed by the Company with WWL and/or the Council in relation to the Scheme or its operation.

- 15.2 The Shareholder shall become bound by the amendment on receiving written notice of the change or alternatively at the discretion of the Company shall be required to enter into a new Shareholder Water Augmentation Agreement and pay all the Company costs in respect of the preparation and execution of the new Shareholder Water Augmentation Agreement, including but not limited to legal costs on a client/solicitor basis.

16. Limitation of Liability

- 16.1 If the release of Dam Water is reduced or stopped, for any reason whatsoever, including, without limiting the generality of the foregoing, water shortage, change in any law or regulation or other regulatory reasons, damage to any Infrastructure, breach by WWL or any other person of any obligation or any other reason outside the control of the Company, or due to a failure by the Shareholder or other Shareholders to comply with their respective Ground Water Permits and/or Surface Water Permits, then such reduction, stoppage or failure to release shall in no way give any right to any claim in compensation or other remedy against the Company.
- 16.2 The Company shall be under no liability to the Shareholder (whether in contract, tort or otherwise) for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising:
- (a) out of the release of or failure to release the Dam Water; or
 - (b) out of any inability of the Shareholder to take or use water, or any limitation or condition on the right of the Shareholder to take and/or use water, or any change to the ability to have its Shareholder's Permit(s) Affiliated under the TRMP or any change to the basis for, or rights or benefits of, holding an Affiliated Permit.
- 16.3 If, notwithstanding clauses 16.1 and 16.2, the Company is found to be liable to the Shareholder in any circumstances, then the maximum amount the Company will be liable for to the Shareholder under this Agreement or in any way whatsoever, is an amount equal to the lesser of:
- (a) the previous calendar year's annual Operating Charges under clause 5.5 as paid by the Shareholder; or
 - (b) the actual loss or damage suffered by the Shareholder.
- 16.4 The Shareholder shall keep the Company indemnified against all costs, claims, demands, expenses, losses and liabilities of whatsoever nature, including without limiting the generality of the foregoing, claims for consequential loss (including loss of profits/production) which may be made against the Company and which the Company may sustain, pay or incur as a result of any act or omission of the Shareholder (or the Shareholder's directors, employees, contractors, servants, agents or invitees) or breach of its obligations under this Agreement.
- 16.5 For the purposes of this clause 16, references to the Company shall include the Company's directors, employees, contractors, servants, agents or invitees.

17. Delegation

- 17.1 The Company may at any time and from time to time validly delegate any of its powers, rights and discretions hereunder to any person or persons and the exercise of any such power, rights, or discretion by any such person or persons shall be deemed to be a valid exercise thereof by the Company.

18. Exclusion of Partnership and Agency

- 18.1 Nothing in this Agreement shall create, or constitute or be deemed to create or constitute a partnership between the parties or any of them and the Company nor to constitute or create or be deemed to create or constitute a party as an agent of any other party for any purpose whatsoever.
- 18.2 Except as provided for in this Agreement, no party shall have any authority or power whatsoever to bind or commit, act or represent or hold itself out as having authority to act as an agent of, or in any way bind or commit the other party to any obligations.

19. No waiver

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

20. Assignment

- 20.1 The Shareholder shall not assign, transfer, mortgage or charge the Shareholder's interest in this Agreement without the prior written consent of the Company.
- 20.2 If there is a change of trustees of the trust who are parties to this Agreement then the rights are assignable to the new trustees provided there is no change to the Land to which Water is being delivered.
- 20.3 Without limiting clause 32, the Company may at any time assign or transfer the benefit of this Agreement without the prior consent of the Shareholder and upon such transfer the assignee shall be required to comply with the obligations of the Company under this Agreement. The Company may assign or charge the benefit of the rights and interest of the Company in this Agreement, including any payments due and payable under this Agreement to any Financier. If any assignment occurs under this provision all references in this Agreement to the Company shall thereafter be interpreted and construed as if that reference was to the relevant assignee of that benefit. If required, the Shareholder agrees to do or execute anything reasonably required by the Company to effect any assignment, transfer, novation or other dealing under this clause 20.3

21. Notices

- 21.1 All demands, consents and notices authorised or required to be made under this Agreement shall be in writing and may be given to, or served upon a party by:
- (a) being left at the party's address as stated below; or
 - (b) by email, to the recipient party's notified email address stated below.
- 21.2 The notified addresses of the parties are as follows:

Company:

Address:

C/- Waimea Irrigators Limited

PO Box 3171
Richmond 7050

28. Counterparts

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

29. Entire Agreement

29.1 This Agreement, the Schedule and Appendices, the Company's Constitution and the terms of issue of the Water Shares held by the Shareholder, set out the entire agreement and understanding between the parties in relation to the matters contemplated by this Agreement and in particular supersedes any prior agreement, correspondence, or undertaking made between them.

30. Consumer Guarantees Act 1993

30.1 Water is being released to the Shareholder, for the purposes of trade, and the Shareholder agrees that as both the Company and Shareholder are "in trade", pursuant to Section 43 (2) of the Consumer Guarantees Act 1993, the application of that Act is excluded for the benefit of the Company.

31. Governing Law

31.1 This Agreement shall be governed and take effect in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.

32. Financiers

32.1 The Shareholder acknowledges that:

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

32.2 The Shareholder agrees to do or execute anything reasonably required by the Financiers to effect any assignment, transfer, novation or other dealing under this clause 32.

32.3 For the purposes of the Contract and Commercial Law Act 2017, each Financier is entitled to enforce against the Shareholder the provisions of this clause 32.

32.4 The remedies of damages and cancellation as against any Financier under or in connection with the assignment by way of security of the Company's rights under this Agreement made pursuant to the security documents the Company has granted in favour of the Financiers are hereby expressly excluded for the purpose of section 54 of the Contract and Commercial Law Act 2017.

33. Independent Advice

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

Execution

EXECUTED as an Agreement

Signed by **Waimea Irrigators Limited** as:

Director's signature

Director's signature

Director's full name

Director's full name

Signed by [_____] as Shareholder (if a Company, to be signed by its Director(s) see note), in the presence of (if applicable):

(Signature of authorised signatory)

Signature of witness

(Name of authorised signatory)

Name of witness

(Signature of authorised signatory)

Occupation

(Name of authorised signatory)

Address

Note: signing by a company:

- I. If there are two or more directors of a company, two directors must sign and no witnessing is necessary.
- II. If there is only one director of the company that director signs and the signature must be witnessed.

Schedule 1

Shareholder: []

Number of Water Shares: [] (or as may be updated or amended from time to time by entry into the Share Register)

Shareholder's Permit(s) (Ground Water Permit or Surface Water Permit (if any)): []

EXAMPLE ONLY

Schedule 2

Scheme Area



N
1:51,000

The Scheme Area
Affiliated permits need to source water from this area
0 1 2 3 4 km
Scale 1:51,000

EXAMPLE ONLY

Licence Agreement

[STANDARD FORM]

DATED the _____ day of _____ 20____

Parties

(1) _____ [please print] (the Licensor/owner)

(2) _____ [please print] (the Licensee)

Background

The Licensor, wishes to licence the rights to its Surplus Water to the Licensee for the current Season in accordance with clause 6 of the Shareholder Water Augmentation Agreement attached at Schedule 3.

It is Agreed

1. Definitions

Ground Water Permit means the permit held by the Licensee set out in Schedule 1.

Licence means this water use licence.

Licence Fee means the licence fee set out in Schedule 1.

Licensee's Land means the licensee's property set out in Schedule 1.

Licensor's Land means the licensor's property set out in Schedule 1.

Maximum Volume of Water means the maximum volume of water set out in Schedule 1.

Shareholder Water Augmentation Agreement means the agreement between the Company and the Licensor allowing rights to Dam Water as revised or updated from time to time in accordance with its terms and attached to this Licence at Schedule 3.

Surface Water Permit means the permit held by the Licensee and as more particularly described in Schedule 1.

Surplus Water means water available to be taken under the Licensor's Affiliated Permit and the Shareholder Water Augmentation Agreement which is surplus to the Licensor's requirements.

Unless the context otherwise requires, terms defined in the Shareholder Water Augmentation Agreement shall have the same meaning in this Licence.

2. Term

- 2.1 The Licensor grants the Licensee an exclusive Licence to the rights to Surplus Water under the Affiliated Permit up to the volume as set out in the Schedule, for the period commencing on the [] and expiring on the [](Term).
- 2.2 The parties agree and acknowledge that the Term shall be no shorter than 12 months and no longer than 36 months from the date of this Licence.

3. Fee

- 3.1 In consideration of the Licence granted, the Licensee must pay to the Licensor the Licence Fee. The Licence Fee shall be paid by the Licensee to the Licensor within 5 Working Days of the Company approving this Licence in accordance with clause 4 below or as otherwise agreed between the parties.

4. Company Consent

- 4.1 The parties acknowledge that this Licence is conditional upon the Company's approval within 10 Working Days and the Company may in its sole discretion, withhold its approval to the Licence.

5. Warranties

- 5.1 The Licensee warrants that it has an Affiliated Permit (or if the Licensee is an Irrigation Scheme Member, that its Irrigation Scheme has an Affiliated Permit).
- 5.2 The Licensee warrants and undertakes not to take or use more water than the volume set out in the Schedule.
- 5.3 The Licensee acknowledges and agrees to comply with all of the Licensor's obligations in the Shareholder Water Augmentation Agreement (other than the covenant for payment of Water Charges and other money) which are able to be performed by the Licensee as if all those obligations were set out in this Licence as obligations binding on the Licensee.
- 5.4 For the avoidance of doubt, if this Licence is in respect of land different to the Licensor's Land as set out in the Shareholder Water Augmentation Agreement (and Schedule 1 of this Licence), the Licensee acknowledges that reference to the "Land" throughout the Shareholder Water Augmentation Agreement shall be read to include the Licensee's Land.
- 5.5 The Licensee shall indemnify the Licensor against all actions, proceedings, calls, costs, expenses, claims, demands, damages or losses on account of breach of covenant or otherwise in the Shareholder Water Augmentation Agreement which result from the Licensee's breach of any of the Licensee's obligations expressed or implied in this Licence.
- 5.6 The Licensor acknowledges that notwithstanding the licensing of Surplus Water in accordance with this Licence, it will still be bound by the Shareholder Water Augmentation Agreement with the Company and will remain liable to the Company for any breach of the terms of such Shareholder Water Augmentation Agreement.

6. Contract and Commercial Law Act 2017

- 6.1 The Licensee acknowledges that for the purposes of the Contract and Commercial Law Act 2017 this Licence entered into for the benefit of, and is enforceable by, the Company in addition to the Licensor.

7. Assignment

- 7.1 The Licensee shall not be entitled to assign, sub-licence or otherwise dispose of all or any part of its interest under this Licence.

8. Termination

- 8.1 The Licensor shall be entitled to terminate this Agreement by notice in writing if the Licensee commits a breach of any of the terms of this Licence, and, if that breach is capable of remedy, the Licensee fails to remedy that breach within 10 Working Days after the Licensor gives notice to the Licensee requiring that remedy.
- 8.2 The Licensor shall be entitled to terminate this Licence with immediate effect by notice in writing to the Licensee, if:
- (a) the Licensee fails to contest within 10 Working Days of service any petition of bankruptcy or for winding up;
 - (b) the Licensee makes any compromises with or enters into any arrangement with its creditors;
 - (c) any execution, levy or distress is levied against the Licensee or the assets of the Licensee's business;
 - (d) the Licensee has any receiver, manager or other custodian (either temporary or permanent) is appointed with respect to the Licensee or in respect or all or any part of the Licensee's business;
 - (e) the Licensee becomes subject to a deed of arrangement with its creditors; or
 - (f) the Licensee purports to assign or charge its rights or interest under this Licence.
- 8.3 Upon termination of this Licence for whatever reason the Licensee shall immediately cease to use the Dam Water licenced in accordance with the terms of this Licence.

9. Disputes

- 9.1 The parties shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under this Licence.
- 9.2 Every dispute or difference that is not resolved by discussion between the Shareholder and the Company may be referred by either party to mediation.
- 9.3 If a dispute has been referred to mediation then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The parties shall each bear the party's own costs in the mediation, and shall each pay half the costs of the mediator.
- 9.4 The matter in dispute shall be referred to arbitration if:
- (a) the parties have been unable to agree upon a mediator within 10 Working Days of the dispute being referred to mediation; or
 - (b) mediation has taken place and no agreement has been reached.

- 9.5 The dispute or difference shall be referred to a sole arbitrator for resolution if the Licensor and the Licensee agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Working Days, an arbitrator will be appointed by the President for the time being of the Canterbury-Westland Branch of the New Zealand Law Society at the request of either or both of them.
- 9.6 Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.
- 9.7 The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this clause and the decision of the arbitrator will be final and binding on the parties.

10. Miscellaneous

- 10.1 This Licence shall be governed by and interpreted according to the laws of New Zealand. Each party irrevocably submits itself to the jurisdiction of the Courts of New Zealand over any proceedings arising out of, or relating to this Licence.
- 10.2 No failure or delay on the part of any party in exercising any power or right under this Licence shall operate as a waiver, nor shall any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power hereunder.
- 10.3 No modification or alteration of, or addition to any of the provisions of this Licence shall be made unless agreed to by the parties and the Company, in writing.
- 10.4 If any provision or part of a provision of this Licence shall not be enforceable, then that provision or part provision shall be deemed to be deleted and the rest of this Licence shall remain in full force and effect.
- 10.5 This Licence may be executed in any number of counterparts and all the counterparts when taken together will constitute one document and Licence. Each party may execute and enter into the Licence by executing a counterpart. The parties acknowledge that the Licence may be executed by an exchange of facsimile and/or scanned and emailed PDF copies and execution of the Licence by these means is valid and sufficient execution.

EXECUTION

Signed by _____

as Licensor by:

Director's signature

Director's signature

Director's full name

Director's full name

Signed by _____

as Licensee by:

Director's signature

Director's signature

Director's full name

Director's full name

EXAMPLE ONLY

Schedule 1

Licensee's Land:	
Licensor's Land:	
Ground Water Permit:	
Surface Water Permit:	
Volume of Surplus Water:	
Licence Fee:	\$

EXAMPLE ONLY

Schedule 2

Company Consent:

Waimea Irrigators Limited consents to the attached Licence Agreement, but without prejudice to its rights, powers and remedies under the Shareholder Water Augmentation Agreement.

DATED the _____ day of _____ 20__

SIGNED for and on behalf of the _____)

WAIMEA IRRIGATORS LIMITED)

by _____ Director

and by _____ Director/Authorised Person

Witnessed by (if signed other than by two Directors)

Witness's Signature _____

Full Name _____

Occupation _____

Address _____

Schedule 3

[attach relevant Shareholder Water Augmentation Agreement between Licensor and Company]

EXAMPLE ONLY