

EXECUTION COPY

Access to Infrastructure Deed

Rangitata Diversion Race Management Limited

Barrhill Chertsey Irrigation Limited

Electricity Ashburton Limited

ACCESS TO INFRASTRUCTURE DEED

DEED DATED 4th December 2009

PARTIES

Rangitata Diversion Race Management Limited (RDRML)

Barrhill Chertsey Irrigation Limited (BCIL)

Electricity Ashburton Limited (EAL)

BACKGROUND

- A. RDRML owns and operates the RDR Scheme, which commenced operation in 1946, taking water from the Rangitata River and the south branch of the Ashburton River and supplying that water to:
- (a) Ashburton Lyndhurst Irrigation Limited;
 - (b) Valetta Irrigation Co-operative Society Limited; and
 - (c) Mayfield Hinds Irrigation Limited,
- for each of those bodies corporate to supply water to their respective members for irrigation and stock water schemes;
- (d) TrustPower Limited, for the operation of the Highbank and Montalto hydroelectric power stations; and
 - (e) Ashburton District Council, for stock water schemes.
- B. RDRML holds all Resource Consents necessary for the operation and maintenance of the RDR Scheme as it is currently operated. The Resource Consents held by RDRML as at the date of this Deed are set out in Schedule 1 ("RDRML Resource Consents").
- C. The JV Parties hold Resource Consents to take and use water for irrigation from the Rakaia River via an intake on the true right at Happy Valley and to discharge water contaminants (being river sediment) back into the Rakaia River. The Resource Consents held by the JV Parties as at the date of this Deed are set out in Schedule 2 ("JV Resource Consents").
- D. The summary details of the JV Scheme whereby the RDR Scheme is used to facilitate the operation of the JV Scheme are as follows:
- (a) Water (taken from the Rakaia River under the JV Resource Consents) will be pumped into the RDR Scheme by or on behalf of the JV Parties and distributed to the JV Scheme Area from the RDR Scheme.
 - (b) Water taken from the Rakaia River under the JV Resource Consents and pumped into the RDR Scheme may flow to the Methven check gates and be delivered to the Ashburton Lyndhurst Irrigation Limited distribution infrastructure shown as Area 4 in Schedule 3. An equivalent volume of water taken from the Rangitata River under the RDRML Resource Consents may be taken from the RDR Scheme and delivered to areas

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upstream of the Ashburton Lyndhurst Irrigation Limited delivery point shown as Area 8 in Schedule 3 (*Water Swap*).

- (c) A storage pond is to be constructed by the JV Parties on land adjacent to the Ashburton Lyndhurst Irrigation Limited Irrigation race to store such volume of water to ensure that the reliability of supply can be maintained to the Ashburton Lyndhurst Irrigation Limited Irrigation race where supply is interrupted for maintenance or other reasons.
- E. RDRML and BCIL entered into an Access to Infrastructure Deed dated 2 June 2009, in respect of the matters referred to in paragraph D above, which was subsequently terminated on 2 September 2009. The JV Parties have requested RDRML to enter into this Deed in respect of the matters referred to in paragraph D above subject to the JV Parties ensuring that the current and future operations of the RDR Scheme and the costs of operating the RDR Scheme are not detrimentally affected thereby.
- F. Following an application by BCIL under section 311 of the RMA, the Environment Court declared that:
- (a) the RDR Scheme can be utilised as a method to convey water taken from the Rakapa River under the JV Resource Consents without affecting consent CRC011237 held by RDRML;
- (b) once waters have been taken in accordance with the relevant consents and entered into the RDR Scheme they may be attributable by the parties in terms of any agreement reached between them to the full extent of the combined consents granted;
- (c) to the extent that any new consent may seek to utilise existing water or further waters introduced into the RDR Scheme, such consents would then form part of the attributable total consents but subject to the terms of any agreement between the relevant consent holders, which defines the use of the resources available to any individual consent holder; and
- (d) the grant of a new consent overlapping with or utilising RDRML infrastructure or consent areas will not detrimentally affect RDRML's existing consents which remain lawful and of full effect,
- (together, the *Declarations*).
- G. This Deed sets out the commercial agreements under which the JV Parties may use the RDR Scheme for the purposes of the matters referred to in paragraphs D(a) and (b) above. This Deed is organised into the following parts:
- (a) Part A - Application, Conditions and Fundamental Principles;
- (b) Part B - Planning and Consultation;
- (c) Part C - Construction;
- (d) Part D - Licence, Operation and Maintenance;
- (e) Part E - Consents;

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- (f) Part F - General Terms; and
- (g) Part G - Definitions and Interpretation.

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PART A - APPLICATION, CONDITIONS AND FUNDAMENTAL PRINCIPLES

1. THE JV SCHEME

- 1.1 **Application of this Deed:** For the purposes of clarification, the terms of this Deed apply to the arrangements between the JV Parties and RDRML for the use of the RDR Scheme for the conveyance and distribution of water for irrigation in the JV Scheme Area. This Deed shall not restrict the JV Parties in distributing water for irrigation without using the RDR Scheme in areas outside the JV Scheme Area and in applying for consents in respect of those areas.

2. CONDITIONS

- 2.1 **Conditions precedent to be satisfied:** This Deed is conditional on:

- (a) all of the shareholders of RDRML approving the terms and provisions of this Deed;
- (b) RDRML being satisfied, notwithstanding the Declarations, that no Consent is required in addition to the RDRML Consents, the JV Consents and the Additional Consents, to implement the matters referred to in paragraph D of the Background;
- (c) the shareholders of BCIL passing a special resolution approving BCIL entering into this Deed as a major transaction as required by Section 129 of the Companies Act 1993;
- (d) the JV Parties entering into the Pumping Deed and all of the conditions to the Pumping Deed being satisfied or waived in accordance with its terms;
- (e) BCIL receiving irrevocable commitments from investors to subscribe for securities pursuant to the BCIL Offer for an aggregate subscription amount of at least \$4,000,000;
- (f) TrustPower Limited and RDRML entering into the TrustPower Access and Use of RDR Deed;
- (g) the JV Parties obtaining funding from a third party lender on terms satisfactory to the JV Parties for a sum of no less than \$11,000,000, to be used to assist in the funding of the JV Scheme; and
- (h) EAL's board approving the terms of this Deed and all other arrangements and matters relating to the JV Scheme in its sole and absolute discretion (and without having to give any reason or justification in the event this condition is not satisfied).

- 2.2 **Waiver:** The JV Parties acknowledge that the conditions contained in clauses 2.1(a), 2.1(b) and 2.1(c) have been inserted for the sole benefit and protection of RDRML and RDRML may waive these conditions at any time by giving written notice to the JV Parties.

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- 2.3 **Cancellation:** If any condition in clause 2 is not fulfilled (or in respect of the conditions in clauses 2.1(a), 2.1(b) or 2.1(c), waived in accordance with clause 2.2), by 5.00 pm on 23 December 2009, either party may cancel this Deed by giving written notice to the other and, if so cancelled, this Deed shall, subject to clause 22.1, be of no further force or effect and all parties shall be released from their obligations under this Deed. The cancellation of this Deed in accordance with this clause 2.3 shall not affect a party's accrued rights or obligations at the date of cancellation.
- 2.4 **Condition Subsequent:** If following the date upon which this Deed becomes unconditional in respect of the conditions in clause 2.1, the allotment of any of the securities referred to in clause 2.1(a) is invalid or becomes voidable, or BCIL is required to return the subscription monies received in respect of any such securities, under the Securities Act 1978, either party may cancel this Deed by giving written notice to the other and, if so cancelled, this Deed shall, subject to clause 22.1, be of no further force or effect and all parties shall be released from their obligations under this Deed. The cancellation of this Deed in accordance with this clause 2.4 shall not affect a party's accrued rights or obligations at the date of cancellation.
- 2.5 **Interdependent conditions:** The condition in clause 2.1(d) that all of the conditions to the Pumping Deed being satisfied or waived (the "Pumping Deed Interdependent Condition") will be satisfied if the Pumping Deed has been duly entered into by each party to it and all the conditions in the Pumping Deed are satisfied or waived except any condition which requires the Pumping Deed Interdependent Condition to be satisfied.

3. FUNDAMENTAL PRINCIPLES

- 3.1 **Application of Fundamental Principles:** The parties agree that the Fundamental Principles upon which their relationship is based and in accordance with which this Deed will be interpreted and given effect to, including in relation to any variation of this Deed, any document contemplated by, or entered into pursuant to, this Deed, or in relation to any dispute under this Deed or any document contemplated by, or entered into pursuant to, this Deed, are set out in clause 3.2. The JV Parties further acknowledge and agree that:
- (a) the Fundamental Principles must be given effect to in the interpretation and application of this Deed;
 - (b) any breach by the JV Parties of any of the Fundamental Principles will constitute a Fundamental Default of this Deed by the JV Parties; and
 - (c) the provisions of this clause 3 are for the benefit of RDRML and each Participant, and may be enforced by any of them.
- 3.2 **Fundamental Principles:** The Fundamental Principles are as follows:
- (a) the operation and maintenance of the RDR Scheme, the rights of the Participants in respect of the RDR Scheme and the operations of the Participants, and the RDR Scheme Rights, are not to be detrimentally affected in any manner as a matter of law, or by any other effect, whether directly or indirectly, by the JV Scheme (including by the undertaking of

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the Works) or the JV Scheme Rights or by any application for the JV Scheme Rights;

- (b) without limiting clause 3.2(a), when considering whether or not the operation or maintenance of the RDR Scheme, the rights of the Participants in respect of the RDR Scheme and the operations of the Participants, and the RDR Scheme Rights, are or are not detrimentally affected as referred to in clause 3.2(a), this will be determined by RDRML comparing the position against the position of the JV Scheme not taking place and no JV Scheme Rights having been granted or applied for;
- (c) without limiting or restricting the provisions of clauses 3.2(a) and 3.2(b), the JV Scheme (including by the undertaking of the Works) and the JV Scheme Rights, must not directly or indirectly:
 - (i) reduce the volume of water available and taken or able to be taken by RDRML from the RDR Scheme pursuant to the RDR Scheme Rights; or
 - (ii) affect the quality of water available and taken and used or able to be taken and used by RDRML from the RDR Scheme pursuant to the RDR Scheme Rights; or
 - (iii) increase the volatility or otherwise detrimentally affect the reliability of the supply of water available to be taken by RDRML from the RDR Scheme pursuant to the RDR Scheme Rights; or
 - (iv) increase the volatility or otherwise detrimentally affect the reliability, quality or volume of the supply of water from the RDR Scheme to any Participant; or
 - (v) affect any existing RDR Scheme Rights or make it more difficult or costly for RDRML to seek or obtain any renewal or further or new or varied RDR Scheme Rights; or
 - (vi) affect any existing Consent of a Participant or make it more difficult or costly for a Participant to seek or obtain any further or new or varied Consent; or
 - (vii) affect detrimentally the operation or operational flexibility of the RDR Scheme or the operations of any of the Participants; or
 - (viii) increase the costs of RDRML or any Participant unless the JV Parties have agreed to, and are, paying all such increased costs; or
 - (ix) increase any existing, or result in any new, compliance or other costs of RDRML or any Participant.

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PART B - PLANNING AND CONSULTATION

4. PLANNING AND CONSULTATION ON PROPOSED WORKS

- 4.1 **Submit all Preliminary Designs to RDRML:** As soon as reasonably practicable after the date of this Deed and no later than 10 Business Days after the date on which this Deed becomes unconditional (or such later date as the parties may agree in writing), the JV Parties shall submit to RDRML for its approval all of the designs, plans, specifications and other documents to construct and implement the Initial Works (*Preliminary Designs*).
- 4.2 **Full Information to be provided:** The information provided by the JV Parties under clause 4.1 shall include all relevant information on temporary works, the installation of monitoring equipment, the systems for receiving and recording information from the monitoring equipment, and all remedial work to be undertaken and which it is contemplated may be caused by or result from the Initial Works and such other information as RDRML may require in respect of the Initial Works or to complete its review of the Preliminary Designs.
- 4.3 **Consultation with RDRML:** The JV Parties must consult fully with RDRML and its advisers in respect of the Initial Works including all items under clause 4.2. Such consultations shall include:
- (a) submitting to RDRML for approval a programme (*Programme*) which sets out:
 - (i) the order in which the JV Parties propose to carry out the Initial Works (including each stage of design, procurement, manufacture, delivery to the relevant site, construction, erection, testing and commissioning);
 - (ii) details of the contractors and technical advisers which the JV Parties propose to use in respect of the Initial Works including the terms of their engagement;
 - (iii) the periods for the pre-construction reviews and any other submissions, approvals and consents which RDRML may require (for example, peer review of feasibility or technical reports prepared or commissioned by the JV Parties);
 - (iv) proposed arrangements for access to the RDR Scheme;
 - (v) the health and safety requirements to be observed by the JV Parties and their contractors;
 - (vi) proposed licence rights to be granted by RDRML to the JV Parties;
 - (vii) proposed insurance cover and arrangements;
 - (viii) proposed list of "classic" or ordinary maintenance costs (including the nature of such costs, the likely periods and/or occurrences of such maintenance);

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- (ix) proposed list of "non-classic" maintenance and operating costs (including the nature of such costs, the likely periods and/or occurrences of such maintenance) which should fall within the definition of JV Opex Costs; and
 - (x) such other information as RDRML may require in respect of the Preliminary Designs and the Initial Works;
- (b) whenever required by RDRML, providing a description of the arrangements and methods which the JV Parties propose to adopt for the execution of the Initial Works;
- (c) submitting to RDRML for approval all final designs, plans and specifications for the Initial Works (collectively, the *Plans* and following RDRML's approval, the *Final Plans*);
- (d) whenever required by RDRML, providing such information as RDRML may require in respect of the Preliminary Designs, the Initial Works, the Programme, the Plans or the Final Plans;
- (e) providing to RDRML such information as RDRML may require to satisfy RDRML that the Initial Works will be undertaken so as not to infringe a Fundamental Principle;
- (f) making such variations to the Programme or the Plans as RDRML may require; and
- (g) procuring such access to its contractors and technical advisers as RDRML may require.

A failure by the JV Parties to comply with this clause 4.3 shall be a Fundamental Default under this Deed.

- 4.4 **No acceptance of liability:** Any consultation with, or approval given by, or on behalf of, RDRML shall not be an acceptance by RDRML of any liability by RDRML for the Preliminary Designs, the Initial Works, the Programme, the Plans or the Final Plans and, for the avoidance of doubt, RDRML shall not owe the JV Parties or any other person any duty of care in respect of such Preliminary Designs, the Initial Works, the Programme, the Plans or the Final Plans.
- 4.5 **No variation without consent:** The JV Parties shall not vary or alter the Programme or the Final Plans without first:
- (a) fully consulting with RDRML; and
 - (b) obtaining RDRML's approval.
- 4.6 **RDRML right to consult:** Prior to giving approval to the Plans, the Programme, or any variations to the Plans, Final Plans or the Programme, RDRML shall be entitled to:
- (a) seek independent advice;
 - (b) obtain a peer review from an expert; and

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- (c) seek approval from RDRML's shareholders.

RDRML may impose such conditions to any approval given by it under this clause 4.6, including a condition that any or all of the matters in sub-clauses 4.6(a), (b) and (c) be undertaken so as to give effect to and / or seek to ensure compliance with the Fundamental Principles.

- 4.7 **Benefit of Indemnities:** The JV Parties shall ensure that the benefit of any warranties, guarantees and indemnities granted in favour of them (or either of them) by an adviser, contractor or other person engaged by the JV Parties for the purposes of the Plans, the Final Plans and/or the Initial Works extends to, and is enforceable by, RDRML and each Participant.
- 4.8 **Compliance of Plans:** Without prejudice to clause 4.6, it shall be a condition to RDRML's approval of the Plans that the JV Parties have:
- (a) confirmed to RDRML that the Plans comply with:
- (i) all applicable statutes, regulations, local authority requirements, district plans and district rules, or other requirements imposed by any Authority;
 - (ii) the Resource Consents held by the JV Parties and RDRML; and
 - (iii) Best Practice;
- (b) provided RDRML with copies of duly executed engagement letters and/or contracts containing the warranties, guarantees and indemnities referred to in clause 4.7; and
- (c) fully complied with clause 5.13.
- 4.9 **Alterations, replacement and additions to the Works:** If the JV Parties propose to carry out any Additional Works, the JV Parties shall submit to RDRML for its approval all of the designs, plans, specifications and other documents to construct and implement the Additional Works and the provisions of this clause 4 (save for clause 4.1) and clause 5 shall apply mutatis mutandis as if references in those clauses to "Initial Works" were to the Additional Works.

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PART C - CONSTRUCTION

5. CONSTRUCTION OF THE WORKS

- 5.1 **Conditions to Access and Commencement of Construction:** Without prejudice to clause 11.1, the JV Parties are not entitled to any access to the RDR Scheme, and must not commence any construction or other matters in respect of the Initial Works, unless and until RDRML has approved the Plans in accordance with Part B. A failure by the JV Parties to comply with this clause 5.1 shall be a Fundamental Default under this Deed.
- 5.2 **Grant of Licence by RDRML:** RDRML grants to the JV Parties for the period starting on the date on which the Plans are approved in accordance with Part B and ending on the date which is the earlier of the date on which this Deed expires and the date on which this Deed is terminated in accordance with its terms, a licence to carry out the Initial Works on the RDR Scheme in accordance with the Final Plans (including upon such conditions as RDRML may specify in accordance with clause 4.6), subject always to clause 6.11 and clause 11.1.
- 5.3 **Access to RDR Scheme:** RDRML shall give all contractors, invitees, and other persons nominated by the JV Parties access to the RDR Scheme for the purpose of carrying out the Initial Works in accordance with the Final Plans at such times and on such conditions as RDRML may, acting reasonably, specify from time to time.
- 5.4 **JV contract with Manager:** The JV Parties shall appoint a person to manage and supervise the construction of the Initial Works (*Manager*) and shall ensure that the agreement it enters into with the Manager provides for:
- (a) the Manager to report directly to the PCG;
 - (b) the Manager to attend and participate at meetings of the PCG if requested by the PCG;
 - (c) the Manager to act in accordance with the Instructions of the PCG and the RDRML Representative from time to time;
 - (d) in the event that there is a conflict between Instructions given by the JV Parties to the Manager and those given by the PCG or the RDRML Representative, the Manager must comply with the PCG's Instructions or the RDRML Representative's instructions (as the case may be);
 - (e) in the event that there is a conflict between instructions given by the PCG to the Manager and those given by the RDRML Representative, the Manager must comply with the RDRML Representative's instructions; and
 - (f) RDRML and the RDRML Representative to have no liability to the Manager (or any other person except the JV Parties, pursuant to this Deed) whatsoever, including in respect of any direction or instruction or other matter undertaken whether as part of the PCG, as permitted under the agreement between the JV Parties and the Manager, pursuant to any clause of this Deed, or otherwise.

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The JV Parties shall ensure that such agreement expressly provides for the matters set out in sub-clauses (a) - (f) to be for the benefit of, and enforceable by, RDRML pursuant to the Contracts (Privity) Act 1982. No person shall be appointed Manager without the prior approval of RDRML. Any instructions given by the RDRML Representative to the Manager must be, in the RDRML Representative's opinion, in accordance with this Deed and consistent with any approvals given by RDRML for the Plans, the Final Plans or the Programme.

- 5.5 **Creation of PCG:** As soon as reasonably practicable following the appointment of the Manager and prior to the commencement of construction of the Initial Works, the parties will establish a Project Control Group (PCG) comprised as follows:

- (a) one representative of RDRML (*RDRML Representative*);
- (b) one representative of the JV Parties (*JV Representative*); and
- (c) one representative of the Manager.

- 5.6 **Purpose of PCG:** The purpose of the PCG is to:

- (a) monitor progress on the construction of the Initial Works;
- (b) subject to clause 5.8, supervise and, where appropriate direct, the Manager; and
- (c) where appropriate, make recommendations to the parties regarding any amendments to the Final Plans or the Initial Works.

- 5.7 **PCG Meetings:** A representative of the Manager shall be entitled to attend and participate (but not vote) in meetings of the PCG, unless, and to the extent that, the PCG determines otherwise. The PCG shall meet at least weekly to discuss progress of the construction of the Initial Works. Any decision of the PCG shall require the approval of both the RDRML Representative and the JV Representative. The PCG shall keep minutes of all meetings including a list of items to be attended to by the contractor for the Initial Works or any other party. The parties agree that while the PCG may make recommendations to the parties, no recommendation or decision of the PCG shall be binding in any respect on the parties.

- 5.8 **RDRML Right of Direction and Veto:** The RDRML Representative shall be entitled to:

- (a) direct the Manager to stop or suspend construction of the Initial Works or to do or cease to do any other act or thing in connection with the Initial Works; or
- (b) veto any decision or direction of the PCG,

In each case, where the RDRML Representative believes, acting reasonably, that such action is prudent or necessary to avoid a breach of a Fundamental Principle, any other provision of this Deed, or any consent or approval given by RDRML pursuant to this Deed.

- 5.9 **PCG to determine procedures:** Subject to clause 5.7 and clause 5.8, the PCG shall determine its own procedures and meeting requirements including provisions

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for quorums, appointments of alternates for representatives and decision making processes.

5.10 JV's responsibilities: The JV Parties shall be responsible for:

- (a) ensuring the Initial Works are undertaken:
 - (i) in a proper and workmanlike manner and in accordance with Best Practice; and
 - (ii) in a manner consistent with this Deed including in accordance with the Final Plans and as agreed by the PCG;
- (b) prior to the Operational Period, maintaining the Initial Works and for all costs and charges relating to the maintenance, and carrying on, of the Initial Works (including all the Manager's fees and costs);
- (c) prompt payment of all accounts due and payable for the Initial Works;
- (d) the provision of any facilities required in respect of the Initial Works outside the RDR Scheme Area;
- (e) all payments under the contracts and agreements entered into with contractors, advisers and third parties in connection with the Initial Works;
- (f) the health and safety of all persons carrying on the Initial Works;
- (g) ensuring that all persons carrying out the Initial Works comply with all applicable law;
- (h) during the construction of the Initial Works, for ensuring that:
 - (i) a full and complete record is kept of the carrying out of the Initial Works;
 - (ii) a critical path for the completion of the Initial Works is kept and reported against to the PCG;
 - (iii) a record is kept of all contractor's equipment on site; and
 - (iv) a safety record is kept, including statistics and details of any hazardous incidents and activities relating to the site and environmental aspects;
- (i) liaising with contractors carrying out other work for the delivery of water to the RDR Scheme or the distribution of water from that scheme;
- (j) maintaining and operating the JV Scheme in accordance with Best Practice;
- (k) complying with all provisions and conditions of the JV Resource Consents and all applicable Consents; and
- (l) ensuring that the JV Resource Consents are kept within the control of the JV Parties.

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- 5.11 **RDRML right to suspend Works:** Without limiting any other rights RDRML may have, RDRML shall have the right to require that the JV Parties immediately suspend construction of the Initial Works if in RDRML's opinion:
- (a) such action is necessary to abate or reduce the risk to life or property or the operations of the RDR Scheme arising from the carrying out of the Initial Works; or
 - (b) the carrying out of the Initial Works is not in accordance with the Resource Consents, or any Consent in respect of the carrying out of the Initial Works.
- 5.12 **Completion Construction Date:** For the purposes of this Deed, construction of the Initial Works shall be deemed to have been completed on the date on which RDRML, acting reasonably in making its determination concerning completion of construction, notifies the JV Parties that it considers that the Initial Works are substantially complete and operational in a safe manner (*Construction Completion Date*).
- 5.13 **Insurance:** The JV Parties shall obtain (at their cost) insurance in respect of the construction of the Initial Works and for such other matters, and for such sums, as recommended by RDRML's insurance brokers and/or insurers from time to time (*Insurance Policies*). As soon as reasonably practicable after the date on which this Deed becomes unconditional, RDRML shall commission an independent civil engineering peer review of the Plans and the Initial Works (or such part thereof as RDRML may determine) for insurance purposes, the cost and expenses of which shall be borne by the JV Parties. The JV Parties shall fully co-operate in such review. The JV Parties shall ensure that up to date copies of the Insurance Policies are provided to RDRML. A failure by the JV Parties to obtain and maintain the Insurance Policies shall be a Fundamental Default under this Deed.
- 5.14 **Construction Bond:** If requested by RDRML, the JV Parties will, within 10 Business Days of the request, deliver to RDRML an upon demand bond (*Bond*) for the amount of \$500,000. The Bond must be furnished by a bank or insurance company or other surety reasonably acceptable to RDRML and provide for the surety to irrecoverably and unconditionally undertake, as primary obligor, to pay to RDRML any sum or sums which may, from time to time, be demanded by RDRML up to an amount not exceeding in aggregate \$500,000, without enquiring as to whether any circumstances as to payment have arisen. In the event that the Bond is drawn on, the JV Parties will ensure that a replacement or additional Bond is provided within 10 Business Days of the previous Bond being drawn on to ensure that the full sum of \$500,000 is available to RDRML in respect of subsequent matters. The Bond will be valid until the date which is 12 months after the Construction Completion Date. RDRML may call upon payment under the Bond where it believes that any part of the Works have not been properly undertaken or completed which have, will or may cause damage to the RDR Scheme or adversely affect its operation. Any use of the Bond or any remedial work undertaken by RDRML will be without prejudice to its rights in respect of any breach of this Deed.
- 5.15 **Provision of "as built" plans:** The JV Parties shall, not later than 90 days after the Construction Completion Date, provide RDRML with "as built" drawings of the Initial Works, in two full hard copies in A3 size and electronic versions of all drawings relating to the Initial Works in DWG, DWF format or in such other format requested by RDRML.

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- 5.16 Cancellation Right if Construction not Completed:** If construction of the Works is not deemed to have been completed pursuant to clause 5.12 by 1 September 2012, either RDRML or the JV Parties may cancel this Deed by giving written notice to the other and, if so cancelled, this Deed shall, subject to clause 22.1, be of no further force or effect and both parties shall be released from their obligations under this Deed. The cancellation of this Deed in accordance with this clause 5.16 shall not affect a party's accrued rights or obligations at the date of cancellation.

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PART D - LICENCE, OPERATION AND MAINTENANCE

6. GRANT OF LICENCE BY RDRML

6.1 **Rights of JV:** RDRML grants to the JV Parties for the Operational Period, a licence to have the following occur, subject always to the terms of this Deed including clauses 6.7 and 11.1:

- (a) subject to clause 6.4 and subject to the entry into a separate agreement with RDRML to specify the terms upon which water may be introduced into the RDR Scheme (*Deposit Agreement*), to introduce water into the Highbank Head Pond in accordance with the JV Resource Consents. The parties acknowledge that as at the date of this Deed, the JV Parties intend TrustPower to introduce the water into the RDR Scheme on their behalf and accordingly RDRML and TrustPower are to enter into or have entered into, the TrustPower Access and Use of RDR Deed to provide for this, with this agreement being the Deposit Agreement for the purposes of this clause 6.1(a) and clause 11.1(f).
- (b) subject to clause 6.1(c), the RDR Scheme to convey water for the purposes of distributing water introduced into the RDR Scheme by or on behalf of the JV Parties as referred to in clause 6.1(a) to the JV Scheme;
- (c) for the Water Swap to occur; and
- (d) to install and maintain, both in accordance with the Final Plans, at the JV Parties' cost, all monitoring and remote control equipment necessary to monitor water levels and control distribution. Without limiting the foregoing sentence, the JV Parties will install, or ensure that there is installed, Off-take Metering Equipment at each Off-take Point of Supply to determine the volume of water taken by the JV Parties at that Off-take Point of Supply during each Day of an Irrigation Season.

6.2 **Rate of flow of water:** The rate of flow of water which the JV Parties may introduce into the Highbank Head Pond as referred to in clause 6.1(a) shall be:

- (a) during the first four years of the Operational Period, the rate of flow which the JV Parties will advise to RDRML no later than the Construction Completion Date. This rate of flow will not be less than 2 cumecs and not more than 8 cumecs; and
- (b) for the balance of the Operational Period after the first four years, the rate of flow which the JV Parties will advise to RDRML no later than three months prior to the fourth anniversary of the Construction Completion Date. This rate of flow will not be less than 3 cumecs and not more than 8 cumecs.

For the avoidance of doubt, save for the two notices referred to above, the JV Parties have no right to require any increase to the rate of flow during the term of this Deed.

6.3 **Additional Water:** Without prejudice to clause 6.4, if the JV Parties wish to introduce more than 8 cumecs of water into the Highbank Head Pond as provided

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for in clause 6.2, the parties agree to meet in good faith to discuss the terms and condition on which any such water may be introduced. The parties acknowledge that nothing in this clause 6.3 gives rise to any assurance or expectation that an agreement between the parties on the introduction of additional water will be reached.

- 6.4 **Control of Water Flows:** The JV Parties shall ensure that the water introduced by or on behalf of the JV Parties into the Highbank Head Pond will be at a volume, rate of flow and at time periods, and in a manner, agreed with RDRML. A failure by the JV Parties to comply with this clause 6.4 shall be a Fundamental Default under this Deed.
- 6.5 **Notice of proposed maintenance and shut downs:** Prior to each Irrigation Season, RDRML shall give the JV Parties notice of any proposed dates and times during that Irrigation Season when the RDR Scheme will be closed or water flows will be reduced or otherwise affected due to scheduled maintenance, together with a summary of the maintenance to be carried out.
- 6.6 **Specific maintenance requests:** The JV Parties may request RDRML to carry out specific maintenance at the JV Parties' cost on the Works or the Highbank Head Pond reasonably required by the JV Parties. RDRML will endeavour to include that request in the notice referred to in clause 6.5 if RDRML determines, acting reasonably, that this is appropriate. During any period of shut down notified by RDRML to the JV Parties the right of the JV Parties to introduce water into the Highbank Head Pond and take water from the RDR Scheme may be suspended.
- 6.7 **Existing RDRML supply agreement:** The right of the JV Parties to take water from the RDR Scheme under this Deed shall at all times be subject to the rights of each Participant (and any future participant) under any water supply agreement entered into by that Participant and RDRML from time to time in connection with water introduced into the RDR Scheme by or on behalf of RDRML.

7. OPERATION, MAINTENANCE AND CONTROL OF WORKS

- 7.1 **Management Services:** With effect from the Construction Completion Date, and without limiting clause 7.2, RDRML shall provide to the JV Parties the following management services in respect of the Works other than the monitoring equipment referred to in clause 6.1(d) and except as noted in clause 7.1(f):
- (a) carrying out all maintenance on the Works as determined by RDRML from time to time;
 - (b) replacing, at the cost of the JV Parties, any part of the Works that, in the opinion of RDRML, requires replacement;
 - (c) providing to the JV Parties a report from time to time on any matters of which RDRML is aware and which in its opinion affect the Works or the RDR Scheme that are relevant to the delivery of water to the JV Parties through the RDR Scheme, and meeting with the JV Parties quarterly or at such other intervals as may be agreed by RDRML and the JV Parties to discuss any such reports;
 - (d) managing the flow of water through the RDR Scheme and providing (for each calendar month during an Irrigation Season) such data and

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information on the flow of water in the RDR Scheme as RDRML and the JV Parties may agree;

- (e) carrying out such other reasonable request that may be made by the JV Parties relating to the management of the Works, provided that the JV Parties agree to meet any costs incurred; and
- (f) ensure that:
 - (i) the Off-take Metering Equipment is operated, maintained and read in accordance with good New Zealand industry practice;
 - (ii) the JV Parties and TrustPower (and any other third party who enters into an agreement with RDRML to introduce water into the RDR Scheme on behalf of the JV Parties) are provided with the data or reports in a form and containing the information reasonably required by each of those persons, from the Off-take Metering Equipment;
 - (iii) the JV Parties and TrustPower (and any other third party who enters into an agreement with RDRML to introduce water into the RDR Scheme on behalf of the JV Parties) are permitted to obtain data directly from the Off-take Metering Equipment and to install a check meter provided that the check meter does not affect the Off-take Metering Equipment; and
 - (iv) the Off-take Metering Equipment is tested in accordance with good New Zealand industry practice if requested by RDRML or the JV Parties. Neither party may require a test of the accuracy of the Off-take Metering Equipment more frequently than once annually. The cost of testing will be borne by the party requesting the test unless the Off-take Metering Equipment is found to be measuring inaccurately, when the cost of the tests will be borne by the JV Parties.

7.2 **Control of Works:** Notwithstanding that title in the Works (and all assets which comprise the Works) may reside with the JV Parties as referred to in clause 12.4, RDRML shall be entitled to deal with the Works as if it were the owner thereof provided that any exercise of this right shall be in a manner consistent with the terms and provisions of this Deed. Without limiting the foregoing sentence, RDRML shall be entitled to operate the Works and may alter, repair, replace, remove, upgrade and maintain the Works as if it were the owner thereof. The JV Parties agree that the JV Parties will have no right to deal with the Works unless the JV Parties have first received the written consent of RDRML to do so and then the JV Parties will comply strictly with the terms of any such consent.

7.3 **Fee:** In consideration for the grant of the licence under clause 6.1 and the services provided under clause 7.1, the JV Parties shall pay the following to RDRML:

- (a) \$250,000, which shall be paid within five Business Days after the Construction Completion Date; and
- (b) 16 payments of an amount determined in accordance with the following formula:

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$$X = \frac{((625,000 \times Y) - 250,000)}{16}$$

where:

X = the relevant sum to be paid; and

Y = the rate of flow of water which the JV Parties may introduce as advised by the JV Parties to RDRML in accordance with clause 6.2(b) (measured in cumecs)

which shall be paid as follows:

- (i) the first such payment will commence on 1 September 2014;
- (ii) each subsequent payment shall be payable on the following 1 September;
- (iii) if this Deed is terminated for any reason prior to the 16th payment under clause 7.3(b) being made by the JV Parties, an amount equal to the aggregate payments which remain outstanding (such amount to be adjusted for CPI in accordance with sub-clause (iv)) shall become a debt immediately due and payable by the JV Parties to RDRML on the date of termination; and
- (iv) each payment referred to in this sub-clause (b) will be adjusted for CPI immediately prior to the relevant date for payment as follows:

$$R = A \times \left(\frac{B}{C} \right)$$

where:

- A = \$X (with X being as defined above) or, where clause 7.3(b)(iii) applies, the aggregate amount outstanding;
- R = the relevant sum resulting from the adjustment;
- B = the CPI number for the quarter ending immediately before the relevant date for payment; and
- C = the CPI number for the quarter ending 30 June 2010,

provided that if $\left(\frac{B}{C} \right)$ is less than one, then $\left(\frac{B}{C} \right)$ shall for the purposes of that calculation be deemed to be equal to one; and

- (c) a percentage of the total annual operating and maintenance costs of the RDR Scheme as set out in RDRML's annual budget for operating and maintenance costs for the relevant financial year (*Annual OPEX Charge*) (which budget shall be advised to the JV Parties by 1 June of each year), in 12 equal instalments payable no later than 5 Business Days prior to the

end of each month, with the relevant percentage being determined as follows:

$$A = 10 + (1.67 \times (B-2))$$

Where: A = the relevant percentage; and

B = the rate of flow of water which the JV Parties may introduce as advised by the JV Parties to RDRML in accordance with clause 6.2(a) or 6.2(b) as applicable, with such volume to be expressed in cumecs.

- (i) If the Construction Completion Date is a date other than 1 June, the Annual Opex Charge payable by the JV Parties for the financial year in which the Completion Construction Date occurred shall be allocated pro-rata in respect of the period from the Construction Completion Date to 31 May of the next following year;
- (ii) If this Deed is terminated with effect from, or expires on, a date other than 1 June, the Annual Opex Charge payable by the JV Parties in respect of the relevant financial year shall be allocated pro-rata in respect of the period from the immediately preceding 1 June to the date of termination or expiry;
- (iii) JV Opex Costs shall not form part of the Annual Opex Charge and shall be paid by the JV Parties to RDRML when requested by RDRML; and
- (iv) classic maintenance costs incurred by or on behalf of RDRML in relation to the Works (including costs relating to greasing, lubricating, minor patching and painting and visual checks) shall not form part of the JV Opex Costs but shall form part of the Annual Opex Charge; and

(d) where the JV Parties will receive a benefit from any capital expenditure incurred by RDRML, a proportion of that capital expenditure commensurate with the benefit to be received by the JV Parties shall be payable by the JV Parties in the following proportions on such date as RDRML advises that payment is due (provided RDRML does not discriminate between the JV Parties and any other person providing any such capital expenditure otherwise than on commercial grounds):

- (i) where the capital expenditure will, in RDRML's opinion, exclusively benefit the JV Parties, the proportion payable by the JV Parties shall be 100%;
- (ii) where the capital expenditure will, in RDRML's opinion, benefit all Participants, the proportion payable by the JV Parties shall be 20%; and
- (iii) where sub-clause (ii) does not apply and the capital expenditure will, in RDRML's opinion, benefit the JV Parties and some but not all Participants, the proportion payable by the JV Parties shall be

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allocated on a pro rata basis according to the proportionate benefit received by the JV Parties.

If a Participant may benefit from any capital expenditure in any capacity other than as a Participant (such as, by way of example, TrustPower Limited reducing costs incurred under the TrustPower Access and Use of RDR Deed), such benefit to that Participant shall be ignored for the purposes of this clause 7.3.

- 7.4 **Adjustment and payment of Fee:** The fee payable under clause 7.3, together with any applicable GST, shall be paid in accordance with clause 7.3 to such account as RDRML shall direct. Within 90 days after the end of each financial year of RDRML, RDRML shall adjust the fee referred to in clause 7.3(c) to reflect the actual operating and maintenance costs incurred by RDRML for that year and to deduct any Excluded Costs and add any JV Opex Costs for that year that have not been paid by the JV Parties prior to the end of the financial year, and provide the JV Parties with a statement setting out the adjustment, the adjusted fee and the amount (if any) to be paid by RDRML or the JV Parties (as the case may be) (*Adjustment Notice*). The Adjustment Notice shall, in the absence of fraud or manifest error, be binding on the parties. Any amounts payable to RDRML pursuant to the Adjustment Notice shall be paid within 10 Business Days of the date of the Adjustment Notice. Any amounts payable to the JV Parties pursuant to the Adjustment Notice shall be paid within 10 Business Days of the date of the Adjustment Notice to such account as the JV Parties shall direct.

- 7.5 **Management of the JV Distribution System:** RDRML acknowledges that the management of all water from the point where it leaves the RDR Scheme shall be the responsibility of the JV Parties. If the JV Parties determine to seek contract management services to manage that part of its distribution system, the JV Parties will give RDRML the first right to provide management services for the part of the JV distribution system that is outside the RDR Scheme and for this purpose the JV Parties will provide a brief of the services required by the JV Parties and give RDRML the first right to provide a contract management service to manage for the JV Parties, the JV Scheme infrastructure, on the terms and conditions set out in that management brief.

8. OBLIGATIONS OF RDRML

- 8.1 **To maintain the RDRML Scheme:** RDRML agrees that it will:

- (a) during the Operational Period, at all times carry out, or arrange through contractors to be carried out, all action and works necessary and required to maintain and operate the RDR Scheme in accordance with any management plan agreed from time to time with the Participants and the JV Parties; and
- (b) seek to keep current all RDRML Resource Consents.

- 8.2 **RDR Scheme Management Meetings:** During the Operational Period, RDRML shall allow a representative of the JV Parties to attend and participate in all meetings convened by RDRML between the Participants and RDRML to discuss the management and maintenance of the RDR Scheme for the purposes of agreeing, if appropriate, a management plan for the RDR Scheme. RDRML will have the final decision on all issues relating to the management and operation of the RDR Scheme. RDRML shall provide the JV Parties with notice of the meeting

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at the same time as it provides notice to the Participants. For the avoidance of doubt, nothing in this clause shall entitle the JV Parties (or any representative) to attend any shareholders meeting of RDRML or any other meeting between the Participants and RDRML or any board meeting of RDRML.

- 8.3 **Insurance:** During the Operational Period RDRML will maintain insurance in respect of the Works as part of RDRML's general insurance of the RDRML Scheme (at such level and for such risks as recommended by RDRML's insurance brokers and/or Insurers) and shall make available copies of such insurance policies to the JV Parties upon request.

- 8.4 **Loss Factor:** RDRML shall, acting reasonably, determine from time to time the Loss Factor which will apply in respect of each Off-take Point of Supply and will advise this to the JV Parties and to TrustPower Limited (and any other third party who enters into an agreement with RDRML to introduce water into the RDR Scheme on behalf of the JV Parties).

9. OBLIGATIONS OF JV

- 9.1 **Maintenance and Compliance by JV:** The JV Parties agree that they will at all times carry out all action and works necessary and required to:

- (a) maintain and operate the JV Scheme (excluding the Works when these are maintained and/or operated by RDRML in accordance with this Deed) in accordance with Best Practice;
- (b) comply with all provisions and conditions of the JV Resource Consents; and
- (c) ensure the JV Resource Consents are kept within the control of the JV Parties.

- 9.2 **Annual work plan from JV:** The JV Parties shall provide to RDRML for approval an annual work plan, by 1 May in each year stating:

- (a) the works to be undertaken on the JV Scheme that relate to the RDR or to an Off-take Point of Supply including any additions to that scheme;
- (b) any increase or change in water volumes for the next Irrigation Season; and
- (c) where water is expected to be delivered for the next Irrigation Season and the relevant volumes.

The JV Parties will not implement that plan unless it has been approved by RDRML.

- 9.3 **Insurance premiums:** The JV Parties will pay to RDRML the cost of all insurance premiums which are attributable to the Works under the terms of the insurance maintained by RDRML pursuant to clause 8.3, when requested by RDRML.

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PART E - CONSENTS

10. ALTERATIONS TO EXISTING CONSENTS, ADDITIONAL CONSENTS

- 10.1 **Application for Consents:** Subject always to ensuring that no aspect of the Fundamental Principles is breached or otherwise infringed, the JV Parties may apply for the Additional Consents in respect of the JV Scheme only on the terms set out in this clause 10.
- 10.2 **Alteration to existing RMA Consents:** Subject to clause 10.3, if either the JV Parties or RDRML wishes to apply for a variation, extension or renewal of any Resource Consents (including once granted, the Additional Consents) which may affect the other party or any rights of the other party, then that party shall:
- (a) give notice to the other of that intent together with full details of the proposed application;
 - (b) consult with the other party in respect of that application taking into account any reasonable objection to or comments on the application by the other party; and
 - (c) act in good faith to resolve any issues arising from the proposed application.
- 10.3 **Variation to Consents:** The JV Parties must not apply for any variation to or renewal or replacement of the JV Resource Consents or the Additional Consents until the JV Parties have fully consulted with RDRML and RDRML is satisfied that the variation, renewal, replacement or the Additional Consent does not infringe any Fundamental Principle. RDRML shall have the right to oppose the variation, renewal, or replacement of any JV Resource Consent or Additional Consent where, in the opinion of RDRML, the rights or future options of RDRML are or may be detrimentally affected or any Fundamental Principle may be infringed.
- 10.4 **No rights in respect of the RDR Scheme and RDR Scheme Rights:** Each party acknowledges and agrees that in respect of any Consents applied for by either party affecting the RDR Scheme or the JV Scheme Area that:
- (a) no Consent shall be applied for or obtained which will give the JV Parties the right to take any action in relation to the RDR Scheme or the RDR Scheme Rights or result in a breach of any Fundamental Principle without the prior written agreement of RDRML; and
 - (b) no Consent shall be applied for or obtained which will give RDRML the right to take any action in relation to the JV Scheme except as set out in this Deed.
- 10.5 **Support for RMA Consents:** Each party will (at the cost of the other party) use all reasonable endeavours to assist the other in obtaining variations, extensions and renewals of the RDRML Resource Consents and the JV Resource Consents subject to and provided that such process will not:
- (a) detrimentally affect the other party's Resource Consents or opportunity to renew those Resource Consents;

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- (b) require the other party to act in a way that could be detrimental to or prejudice the future rights to renew those Resource Consents.
- 10.6 **Basis of support:** Subject to clauses 10.2, 10.3, 10.4 and 10.5, RDRML will support any Applications made in accordance with this Deed and which will, if given effect to, comply with all the terms of this Deed, including all aspects of the Fundamental Principles. RDRML will have the right to oppose any Application or any part of any Application (including on any appeal) and shall have the right to appeal any decision in respect of an Application and make submissions on any Application, if in the opinion of RDRML there is any risk of a breach of the Fundamental Principles.
- 10.7 **Risk:** Any actions taken by the JV Parties in seeking the JV Scheme Rights and undertaking any work in respect of the JV Scheme including design and any physical works, shall be at the sole risk of the JV Parties so that in the event any aspect of the Fundamental Principles is breached or otherwise infringed or this Deed is otherwise breached by the JV Parties, RDRML and each Participant will be under no obligation to the JV Parties.
- 10.8 **JV Consents outside JV Scheme Area:** Subject always to ensuring that no aspect of the Fundamental Principles is breached or otherwise infringed, the JV Parties shall be entitled to apply for any Consents outside the JV Scheme Area without having to refer any matters relating to those Consents to RDRML.
- 10.9 **Disputes on Applications:** Any dispute relating to an Application shall be determined as set out in clause 16.
- 10.10 **Transfer of Consents:** The JV Parties covenant that they will not transfer any Consents relating to the JV Scheme to a third party without the prior written consent of RDRML, such consent not to be unreasonably withheld. Without limiting the rights of RDRML, RDRML will be entitled to withhold its consent to the transfer if that third party does not agree to be bound by the provisions of this Deed in relation to the rights and obligations of the JV Parties. The holding of the JV Consents in a trustee company controlled by the JV Parties will not be in breach of this clause provided that such trustee company enters into a deed on terms acceptable to RDRML covenanting that it will not transfer any Consents relating to the JV Scheme to a third party without the prior written consent of RDRML.
- 10.11 **Compliance by Customers:** During the term of this Deed, the JV Parties shall ensure that all persons whom are supplied with water by the JV Parties enter into an agreement (on which RDRML may rely) under which the party taking a supply of water shall covenant:
- (a) to comply with all JV Resource Consents and, if relevant, the terms of all RDRML Resource Consents;
 - (b) to use all water in accordance with good New Zealand industry practice and only for the purposes permitted by the JV Resource Consents; and
 - (c) to comply with all requirements under any statute, regulation, by-law, or lawful direction given by any Authority having the right or power to take enforcement action against the JV Parties, RDRML or any user of water.

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PART F - GENERAL TERMS

11. SUSPENSION

11.1 Notice of Suspension Event: If at any time during the term of this Deed RDRML considers that:

- (a) the JV Parties have committed a Fundamental Default under this Deed; or
- (b) RDRML reasonably considers that the RDR Scheme Rights are, or are likely to be, varied in any manner as a result of this Deed or any matter or document contemplated by this Deed; or
- (c) RDRML reasonably considers that anything in this Deed would have the effect of requiring a Participant or RDRML to seek any additional Resource Consent or any variation to an existing RDRML Consent or may have the effect of the RDR Scheme Rights being reviewed; or
- (d) RDRML reasonably considers that any aspect of the Fundamental Principles is, or is likely to be, infringed; or
- (e) RDRML reasonably considers that any event has occurred or may occur which would, or would be likely to:
 - (i) give rise to a claim by the JV Parties or RDRML under the Insurance Policies;
 - (ii) result in any of the Insurance Policies, being void, terminated or not being renewed; or
 - (iii) result in any increase in the premiums payable in respect of the Insurance Policies; or
- (f) there is no Deposit Agreement in force with RDRML,

RDRML may provide written notice of this to the JV Parties ("Suspension Event Notice").

11.2 Suspension Event Notice: Upon the JV Parties receiving a Suspension Event Notice:

- (a) the JV Parties must:
 - (i) not proceed with any of the matters contemplated in Part B (*Planning and Consultation*), Part C (*Construction*), Part D (*Licence, Operation and Maintenance*) or Part E (*Consents*); and
 - (ii) where it has commenced construction in respect of, or use of, the RDR Scheme, immediately cease all such construction and use; and
- (b) RDRML may suspend the JV Parties' rights of use of the RDR Scheme and cease providing any services to the JV Parties under this Deed,

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unless, and to the extent that, RDRML advises the JV Parties otherwise.

- 11.3 **Consultation:** Except in respect of a Suspension Event Notice issued by RDRML under clause 11.1(a), in which case clause 17.2 shall apply, the parties shall meet within 5 Business Days of the date of the Suspension Event Notice to discuss the suspension and seek to agree how to proceed. If the parties cannot reach agreement within 10 Business Days of the date of the Suspension Event Notice, the suspension will continue and clause 16 shall apply.
- 11.4 **Fundamental Default:** A failure by the JV Parties to comply with clause 11.2 shall be a Fundamental Default under this Deed.
- 11.5 **Acknowledgement:** RDRML acknowledges that it will not act maliciously or capriciously in exercising its rights under clause 11.2(b).

12. TERM OF DEED

- 12.1 **Initial Term:** Subject to clause 12.2, this Deed shall commence on execution and shall (unless terminated earlier in accordance with any other provision of this Deed) continue for an initial period ending on the day immediately prior to the earlier of:
- (a) the date of expiry or termination of any of the JV Resource Consents; and
 - (b) the date of expiry or termination of any of the RDRML Resource Consents.
- 12.2 **Renewal if Resource Consents renewed:** If a RDRML Resource Consent or a JV Resource Consent expires or is terminated but is immediately renewed or materially replaced in a similar form so that the rights and obligations of the parties pursuant to this Deed can continue to operate as before such expiry or termination, then clause 12.1 shall not operate to terminate this Deed due to the expiry or termination of the relevant RDRML Resource Consent or JV Resource Consent.
- 12.3 **Review:** The parties shall carry out a review of this Deed (including, for the avoidance of doubt, the Annual Opex Charge) every five years to ensure it is meeting and addressing the objectives of the parties. The first review will commence from 1 May 2015 and thereafter at five yearly intervals. The parties will meet in good faith to discuss any issues that have arisen in relation to the application and interpretation of this Deed and discuss in good faith any changes, or additions, required to remedy any such issues that have arisen. A failure to agree any matter will not give rise to a right to invoke clause 16 unless the matter relates to the mechanics (including design features) or operation of the Works or the RDR Scheme and RDRML advises the JV Parties that that will be the consequence of failing to reach agreement, in which case such dispute will be deemed to be a Technical Dispute for the purposes of clause 16.2 and RDRML may refer resolution of that matter to dispute resolution under clause 16.
- 12.4 **Ownership and risk in Works:** The parties agree that ownership and all risk in the assets that comprise the Works shall remain with the JV Parties until termination of this Deed, when all assets that comprise the Works shall become the property of RDRML, unless RDRML advises the JV Parties that it does not wish to acquire title to any particular assets comprising part of the Works. In respect of those assets whose ownership is to transfer to RDRML:

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- (a) the JV Parties shall have no obligation to make good or remedy any changes made to the RDR Scheme in respect of such assets, except as required to meet any statutory or regulatory requirements or if otherwise required by RDRML;
- (b) RDRML shall not make any charge to the JV Parties for any such assets provided that:
 - (i) if the JV Parties continues to utilise those assets then all costs and expenses in maintaining, operating and replacing those assets shall be borne by the JV Parties; and
 - (ii) If RDRML incurs any tax or other charge by reason of the transfer (or vesting) of title, the JV Parties will pay to RDRML the amount of such tax or charge (plus any tax or other amount payable in respect of the monies payable under this sub-clause) upon written demand by RDRML.

In respect of those assets whose ownership is not to transfer to RDRML, the JV Parties shall, at the JV Parties' own expense, remove those assets from the RDR Scheme and make good and reinstate the RDR Scheme and any other improvements affected by the removal of those assets to the condition and standard immediately prior to the removal to the satisfaction of RDRML provided that RDRML shall be entitled, if it so elects, to carry out such removal and reinstatement on behalf of and at the cost of the JV Parties.

- 12.5 **JV Parties entitlement to cancel prior to expiry of Term:** The JV Parties may cancel this Deed at any time by giving RDRML not less than 20 Business Days notice in writing. The cancellation of this Deed in accordance with this clause 12.5 shall not affect a party's accrued rights or obligations at the date of cancellation.

13. OBLIGATIONS OF JV

- 13.1 **Compliance by JV:** The JV Parties agree that the JV Parties will at all times carry out all action and works necessary and required to ensure the Fundamental Principles are not breached.

14. REPRESENTATIONS AND WARRANTIES

- 14.1 **Mutual representations and warranties:** Each party represents and warrants to the other parties that it:

- (a) is of full legal capacity and is duly incorporated under the laws of New Zealand;
- (b) has obtained all necessary corporate resolutions and approvals required for it to enter into this Deed and perform its obligations under this Deed;
- (c) is able to perform its duties and discharge its responsibilities under this Deed; and

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- (d) it is not aware of anything which will, or might reasonably be expected to, prevent or impair it from performing all of its obligations under this Deed, in the manner and at the times contemplated by this Deed.

14.2 **Reliance:** The parties acknowledge to the others that the representations contained in this clause 14 are made in circumstances such that they are intended to be relied on by the persons to whom they are made.

15. FORCE MAJEURE

15.1 **Notice of Force Majeure Event:** If either RDRML is, or the JV Parties are, affected by a Force Majeure Event, then within five days after the occurrence of the Force Majeure Event the relevant party must notify the other of the Force Majeure Event and provide details of:

- (a) the obligations affected;
- (b) the action that the affected party has taken and proposes to take to remedy the situation;
- (c) the affected party's estimate of the time during which it will be unable to carry out the affected obligations due to the Force Majeure Event;
- (d) the affected party's estimate of the costs it will incur to remedy the situation; and
- (e) all insurance policies upon which the affected party will be able to rely in making good damage caused by the Force Majeure Event.

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

15.3 **Failure to Pay Money or Lack of Finance:**

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

15.4 **Affected Party's Obligations:** Despite clause 15.2, the party affected by the Force Majeure Event must:

- (a) use reasonable efforts (including the expenditure of reasonable sums of money) to mitigate the effect upon its performance of this Deed and to fulfil its obligations under this Deed (but without prejudice to the other party's right to terminate this Deed) but nothing in this clause 15 obliges a party to settle a strike, lock out, boycott or other industrial dispute on terms it considers, acting reasonably, to be unacceptable;
- (b) keep the other party informed (not less than weekly) of the steps being taken to mitigate the effect upon its performance of this Deed, and an estimate of the continued duration of the delay;

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- (c) when the period for which its obligations are affected by a Force Majeure Event ceases, recommence performance of all of its affected obligations under this Deed the subject of its original notice under clause 15.1; and
 - (d) upon recommencement of the performance of the affected obligations, not again invoke the provisions of this clause 15 in regard to the same Force Majeure Event unless the further effect of that Force Majeure Event could not reasonably have been foreseen.
- 15.5 **No Default:** Subject to clause 15.6, where a party has validly issued a notice under clause 15.1, that party will not be in default of its obligations under this Deed to the extent that any failure or delay in the observance or performance of those obligations by that party is caused by the relevant Force Majeure Event specified in such a notice.
- 15.6 **Exclusion for breach of Fundamental Principle:** The foregoing provisions of this clause 15 shall not apply to excuse the JV Parties from any breach of a Fundamental Principle or complying with clause 11.2 of this Deed and RDRML may exercise all its rights in respect of such breach or non-compliance.

16. DISPUTE RESOLUTION

- 16.1 **Disputes generally:** Any dispute, controversy or claim arising out of or relating to this Deed or the breach, termination or claimed invalidity of this Deed (but expressly excluding any dispute the subject of clause 16.2) (*Dispute*) must be dealt with in the following manner:
- (a) the party claiming the Dispute must:
 - (i) give a written notice of the Dispute to the other party; and
 - (ii) seek to convene a meeting of representatives of the parties (and TrustPower where clause 16.6 applies) to discuss the Dispute with the aim of resolving it; and
 - (b) if such meeting does not take place or fails to resolve the Dispute within 10 Business Days of the written notice of the Dispute having been received, the parties must attempt to resolve the Dispute by negotiation between the chief executive officers (or equivalent) of each party (and TrustPower, where clause 16.6 applies), who shall seek to resolve the Dispute within 10 Business Days of the Dispute being referred to them. The failure to resolve a Dispute referred to the chief executive officers shall not prejudice or derogate any other right or remedy available to a party for a breach of this Deed and each party shall be entitled to pursue to any remedies that may be available to it in respect of the Dispute.
- 16.2 **Technical Disputes:** Any dispute or controversy as between the parties arising out of or relating to:
- (a) the compliance by a third party contractor in carrying out any Works; or
 - (b) the mechanics of the construction of the Works or the JV Scheme, including earth works, design features and construction methods,

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(*Technical Dispute*) must be dealt with in the following manner:

- (c) first, the party claiming the Technical Dispute must:
 - (i) give a written notice of the Technical Dispute to the other party; and
 - (ii) seek to convene a meeting of representatives of the parties to discuss the Technical Dispute with the aim of resolving it;
- (d) if such meeting does not take place or fails to resolve the Technical Dispute within 10 Business Days of the written notice of the Technical Dispute having been received, the parties must attempt to resolve the Technical Dispute by negotiation between the chief executive officers of each party, who shall be authorised to resolve the Technical Dispute; and
- (e) if such negotiations do not take place or fail to resolve the Technical Dispute within 20 Business Days of the written notice of the Technical Dispute having been received, either party may refer the Technical Dispute to the President for the time being of the New Zealand Law Society (or his or her nominee) who shall be requested to appoint a professional with expertise in matters similar to the Technical Dispute (*Expert*) who shall act as an expert and shall, following discussions with the parties (which they must make themselves available for at the reasonable request of the Expert), determine the matter within 20 Business Days of his or her appointment. The determination of the Expert (including as to costs) shall be final and binding upon the parties.

16.3 **Interlocutory or urgent relief:** This clause 16 does not prevent any party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

16.4 **Continuing obligations:** The parties agree that whilst any Dispute or Technical Dispute is continuing they will, subject always to clause 11, continue to perform their obligations under this Deed.

16.5 **News Media:** The parties agree that pending final resolution of any Dispute or Technical Dispute, neither of them will make any press release, public announcement or statement concerning the subject matter of the same to any person (save as expressly authorised herein or as required by law).

16.6 **Disputes concerning a Loss Factor:** Where a Dispute relates to a Loss Factor and/or the loss of water (for example, by evaporation or seepage) from the RDR Scheme then, so long as TrustPower is a party to the Deposit Agreement:

- (a) RDRML shall notify TrustPower of the Dispute immediately following receipt of notice of the Dispute given under clause 16.1(a); and
- (b) the parties agree that, if TrustPower so elects, TrustPower shall be entitled to participate in meetings and discussions between the parties concerning the Dispute.

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17. DEFAULT CONSEQUENCES

17.1 Default Procedures: If there is a default in the performance of any obligations pursuant to this Deed (other than a Fundamental Default) then the following provisions shall apply:

- (a) details of that default, including whether such default is considered by the non-defaulting party to be capable of remedy, shall be provided by the non-defaulting party to the defaulting party (*Default Notice*);
- (b) the parties shall meet within 10 Business Days of the date of the Default Notice to discuss and seek to agree the amount of compensation to be paid by the defaulting party and the period for such payment and, if the default is capable of remedy, how the default is to be remedied, and the period within which such default must be remedied;
- (c) if the parties cannot reach agreement on the terms and conditions of compensation (and, if applicable, remedy) within 10 Business Days of the meeting referred to in clause 17.1(b), then, provided RDRML is the non-defaulting party, RDRML may issue a Suspension Event Notice, in which case clause 11.2 shall apply. In all other events a party will then be entitled to pursue such remedies as are then available to it.

17.2 Fundamental Default: If there is a Fundamental Default under this Deed, then

- (a) details of that default, including whether such default is considered by the non-defaulting party to be capable of remedy, shall be provided by the non-defaulting party to the defaulting party (*Fundamental Default Notice*);
- (b) the parties shall meet within 5 Business Days of the date of the Fundamental Default Notice to discuss and seek to agree the amount of compensation to be paid by the defaulting party and the period for such payment and, if the Fundamental Default is capable of remedy, how the Fundamental Default is to be remedied and the period within which such Fundamental Default must be remedied;
- (c) if the parties cannot reach agreement on the terms and conditions of compensation (and, if applicable, remedy) within 5 Business Days of the meeting referred to in clause 17.2(b), the non-defaulting party may by notice to the defaulting party, terminate this Deed with immediate effect; and
- (d) if the terms and conditions of compensation (and, if applicable, a remedy) are agreed by the parties pursuant to clause 17.2(b) and the defaulting party fails to comply with those terms and conditions, the non-defaulting party may by notice to the defaulting party terminate this Deed with immediate effect.

17.3 Default Interest: If either party does not pay any amount payable under this Deed on the due date for payment (*Due Date*) that party shall pay to the other party interest (both before and after judgment) on that amount. That interest:

- (a) shall be paid at the Default Rate;

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- (b) shall be paid by instalments at intervals of ten Business Days from the Due Date; and
- (c) shall be calculated on a daily basis from and including the Due Date until the unpaid amount is paid in full.

The right of a party to require payment of interest under this clause does not limit any other right or remedy of that party.

- 17.4 **Acknowledgement:** RDRML acknowledges that it will not act maliciously or capriciously in exercising any termination right it may have under this Deed.

18. INDEMNITY

- 18.1 **Indemnity:** Without limiting any other rights of RDRML and each Participant under this Deed, the JV Parties shall indemnify and keep indemnified RDRML and each Participant against all Losses which they may at any time incur or sustain, in connection with, or arising in any way from, directly or indirectly:

- (a) any breach or non-compliance with this Deed by the JV Parties; or
- (b) any aspect of the Fundamental Principles being infringed; or
- (c) the construction, operation or maintenance of the Works or any other aspect of the Works, including, without limitation, arising due to any accident, damage or breach of the canal embankments during the construction and commissioning period; or
- (d) the ongoing operation of the Works; or
- (e) any Contaminants introduced into the RDR Scheme by the introduction of water by or on behalf of the JV Parties into the RDR Scheme.

- 18.2 **No duty of care:** RDRML shall not have any 'duty of care' nor shall it otherwise be liable to the JV Parties for any event or circumstance that may impact upon the Works or the JV Scheme, including without limitation:

- (a) a failure of any of RDRML's civil or mechanical structures due to seismic activity, flood or explosion;
- (b) RDRML's normal operation and maintenance of the RDR Scheme;
- (c) any suspension of construction of the Works, or use of the RDR Scheme, pursuant to clause 5.11 or clause 11.2; or
- (d) any suspension of operation of the RDR Scheme in connection with a Force Majeure Event or where RDRML reasonably considers such suspension is required to avoid breaching any applicable law.

- 18.3 **Limitation of Liability of RDRML:** RDRML shall not be liable to the JV Parties for any Losses which may be sustained or incurred by the JV Parties (including as a result of a claim by a customer of the JV Parties) unless such Losses were due to RDRML's breach of this Deed arising from RDRML's gross negligence or wilful default, in which case RDRML's liability shall be limited as set out in clauses 18.2,

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18.4 and 18.5, and will be further limited to making good any physical damage to the property of the JV Parties to the maximum amount specified in clause 18.5.

- 18.4 **Consequential loss:** Neither party nor any of its directors, officers, employees or agents shall in any circumstances whatsoever be liable to the other party, in contract or tort (including for negligence), for:

- (a) any indirect loss, consequential loss, loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
- (b) any loss resulting from the liability of the other party to any person.

- 18.5 **Limitation of RDRML:** Any claims for Losses arising from breach of this Deed by RDRML must be lodged with RDRML within six months of an event's occurrence. The maximum total liability of RDRML to the JV Parties under this Deed in respect of all events or circumstances of breach occurring in one financial year shall not exceed the fee paid to RDRML by the JV Parties pursuant to clause 7.3 in respect of that financial year. A series of breaches arising from the same event or circumstance shall be accepted by the JV Parties as being a single event or circumstance of breach.

- 18.6 **Benefit:** The benefit of this clause 18 shall extend to the directors, officers, employees and agents of RDRML and may be enforced by those persons pursuant to the Contracts (Privity) Act 1982.

- 18.7 **Contracts with customers:** The JV Parties will ensure that every agreement between it and its customers contains a clear and unambiguous clause that excludes the liability of RDRML to that customer including excluding liability in tort. Such a clause will be expressed to be intended to be for the benefit of, and enforceable by, RDRML pursuant to the Contracts (Privity) Act 1982.

- 18.8 **Limitation of the JV Parties:** The collective maximum aggregate liability of the JV Parties for a claim by RDRML or any other party having rights against the JV Parties under this Deed:

- (a) for Losses arising from a breach of this Deed; or
- (b) pursuant to the indemnity in clause 18.1, at law or otherwise,

will not exceed \$12,500,000 in respect of each such event or circumstance of breach or claim under the indemnity, at law or otherwise. A series of breaches arising from the same event or circumstance shall be accepted by RDRML and any other party having rights against the JV Parties under this Deed as being a single event or circumstance of breach.

19. ASSIGNMENT

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

- 19.2 **The JV Parties may not assign:** Except as provided by clause 19.3, the JV Parties may not assign or transfer any of their rights or obligations under this Deed without the prior written consent of RDRML which consent shall not be unreasonably withheld. RDRML will not be unreasonably withholding its consent where the JV

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

- 19.3 **Custodian Company:** The JV Parties may hold their rights under this Deed through a custodian company and subject to the JV Parties guaranteeing all obligations of that custodian company (in a form satisfactory to RDRML) under this Deed (and without releasing the JV Parties from performing their obligations under this Deed) RDRML will consent to an assignment to that custodian company. Clause 19.2 will accordingly also apply to the custodian company upon that assignment. In addition, if the custodian company holds as custodian for any person other than the JV Parties solely, this shall be a deemed assignment by the custodian company in breach of clause 19.2.

- 19.4 **RDRML may assign:** RDRML may assign or transfer this Deed to any person who may acquire the RDR Scheme.

20. **NO PARTNERSHIP OR AGENCY**

- 20.1 **No Partnership:** Nothing in this Deed (or any of the arrangements contemplated hereby) shall be deemed to constitute a partnership between the parties nor, save as may be expressly set out herein, constitute either party the agent of the other party for any purpose.

- 20.2 **No Agency or Authority:** No party shall have any authority or power to bind, commit, act for, or represent or hold itself out as having authority to act as agent for, or in any way bind or commit or act for, the other party.

21. **NOTICES**

- 21.1 **Form:** Any notice, election, consent, approval, determination, waiver or other communication to be given under this Deed must be in writing addressed to the recipient at the address or facsimile number from time to time notified by that party in writing to the other party. Until a change is so notified, the address or facsimile number of each party are those set out under the name of that party below:

- 21.2 **RDRML:**

PO Box 61
18 Kermode Street
Ashburton
Facsimile: (03) 307 8321
Attention: Chief Executive Officer

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

360 Barkers Road
RD12

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Rakaia
Facsimile: 03 302 8411
Attention: John Wright

- 21.3 **Delivery:** Delivery may be effected by hand or by facsimile. A notice or other communication will be deemed to have been received:

- (a) In the case of hand delivery, at the time of actual delivery to the recipient's address; and
- (b) in the case of delivery by facsimile, at the time of transmission specified in a transmission report from the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

If a notice or other communication is received or deemed to have been received after 5 pm on a Business Day, or on a day which is not a Business Day in that place, it will be deemed not to have been received until 9 am on the next Business Day in that place.

22. GENERAL

- 22.1 **Consequences of termination:** The termination of this Deed shall not affect a party's accrued rights or obligations at the date of termination. If this Deed is cancelled or expires, the following clauses shall survive such cancellation or expiry:

- (a) clauses 7.3 and 7.4 (until such time as the JV Parties or RDRML, as the case may be, has discharged its obligation to pay all amounts payable by it under clause 7.3 and 7.4 in respect of the period prior to the date of cancellation or expiry);
- (b) clauses 12.4(b), 17.3, 18, 21, 22.1 and 22.12; and
- (c) those other provisions of this Deed which are incidental to, and required in order to give effect to the clauses referred to in sub-clause (a) and (b).

- 22.2 **Entire Agreement:** In respect of the period from the date of this Deed up to but excluding the Working Deed Termination Date (defined in clause 22.3 below), this Deed and the Working Deed shall constitute the entire understanding and agreement of the parties relating to the matters specified therein and supersede and extinguish all prior agreements and understandings between the parties relating to those matters, and in the event that there is an inconsistency or conflict between this Deed and the Working Deed, the Working Deed shall prevail. In respect of the period from and including the Working Deed Termination Date, this Deed shall constitute the entire understanding and agreement of the parties relating to the matters specified in this Deed and shall supersede and extinguish all prior agreements and understandings between the parties relating to those matters. Nothing in this clause affects the operation of the Costs Deed.

- 22.3 **Termination of Working Deed:** The parties agree that the Working Deed shall be deemed to be cancelled with immediate effect on the date on which this Deed becomes unconditional (*Working Deed Termination Date*) without the need for further action by either party. The cancellation of the Working Deed in accordance with this clause 22.3 shall not affect a party's accrued rights and obligations thereunder at the date of cancellation.

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- 22.4 **Further Assurance:** Each party to this Deed shall sign, execute and do all deeds, schedules, acts documents and things as may reasonably be required by the other party to effectively carry out and give effect to the terms and intentions of this Deed.
- 22.5 **Delay and Waiver:** No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one party in respect of any breach of any other party's obligations under this Deed is to:
- (a) operate as a waiver of or prevent the subsequent enforcement of that obligation; or
 - (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.
- 22.6 **Invalidity and Severance:** If any of the provisions of this Deed is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired. The parties shall nevertheless negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be void or unenforceable.
- 22.7 **Costs and Costs Deed:** Without prejudice to the terms of the Costs Deed, the JV Parties will bear the costs of, and incidental to, the negotiation, preparation and execution of both parties of this Deed and any assignment proposed to be entered into pursuant to clause 19.3. The parties agree that the Costs Deed shall cease to apply upon the Construction Completion Date (save for any costs and charges payable under the Costs Deed prior to the Construction Completion Date) without the need for further action by either party. This shall not affect a party's accrued rights and obligations pursuant to the Costs Deed at the date of cancellation.
- 22.8 **Amendment:** No amendment to or variation of this Deed will be effective unless it is in writing and signed by all parties.
- 22.9 **Two or more Counterparts:** This Deed may be executed in two or more counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 22.10 **Facsimile:** This Deed may be executed by facsimile copies signed by the parties provided that forthwith after transmission of the executed Deed each party will forward to the others the original executed copies for the purposes of forming the counterparts referred to in clause 22.9. Notwithstanding the foregoing, facsimile copies of the executed Deed will constitute sufficient evidence that an original of the Deed has been executed.
- 22.11 **PDF File:** This Deed may be executed by copies signed by the parties and then scanned into a portable document formatted electronic file (*PDF file*) provided that forthwith after transmission of the executed Deed as a PDF file each party will forward to the others the original executed copies for the purposes of forming the counterparts referred to in clause 22.9. Notwithstanding the foregoing, PDF file copies of the executed Deed will constitute sufficient evidence that an original of the Deed has been executed.
- 22.12 **Announcements:** Neither party shall make any public announcement or statement purporting to represent the joint position of the parties, the other party's position, the

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discussions or deliberations of the PCG, or any decision of the PCG without the prior written consent of the other party. Each party is, however, free to make any announcements in respect of its own position. Nothing in this Deed shall prevent the disclosure of this Deed or its terms where such disclosure is required by law including any disclosure made in a prospectus or investment statement in accordance with the Securities Act 1978.

- 22.13 **Act in Good Faith:** RDRML and the JV Parties shall each act in good faith to perform their respective obligations under this Deed. The JV Parties acknowledge that RDRML will not be acting in bad faith should it not agree or consent to any matter pursuant to this Deed if it believes (in its absolute discretion) that such matter may detrimentally affect the RDR Scheme or the RDR Scheme Rights, or infringe or otherwise be inconsistent with any aspect of the Fundamental Principles, either presently or at some future time.
- 22.14 **Intellectual Property:** All Intellectual property owned or developed by a party shall remain the property of that party.
- 22.15 **Third Parties:** This Deed gives rights to each Participant and the directors, officers, employees and agents of RDRML, and to TrustPower under clause 16.6, and may be enforced by each of them under the Contracts (Privity) Act 1982 but otherwise shall not give any rights to any third party or impose on any party any obligations to any third party.
- 22.16 **New Zealand Law:** This Deed is to be governed by and construed in accordance with the laws of New Zealand.
- 22.17 **Submission to Jurisdiction:** Each of the parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of New Zealand, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Deed.
- 22.18 **GST excluded:** All sums payable under this Deed are exclusive of GST. If GST is applicable to any sum payable under this Deed, GST shall be added to such sum, and shall be payable by the party that is obliged to pay such sum contemporaneously with payment of such sum.
- 22.19 **Delivery of Deed:** For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this deed will be delivered by each of the parties (each a "Delivering Party") immediately on the earlier of:
- (a) physical delivery of an original of this deed, executed by the relevant Delivering Party, into the custody of another party or another party's solicitors; or
 - (b) transmission by the relevant Delivering Party or its solicitors (or any other person authorised by the relevant Delivering Party) of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the relevant Delivering Party, to another party or another party's solicitors.

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ACCESS TO INFRASTRUCTURE DEED

PART G - DEFINITIONS AND INTERPRETATION

23. DEFINITIONS AND INTERPRETATION

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

Additional Consents means the following consents under the RMA:

- (a) variation to the BCIL use consent no CRC990088.1 to cover a wider area including the Ashburton Lyndhurst Irrigation Society's scheme area (as more fully described in application CRC083620 – change of conditions of resource consent)
- (b) variation to the BCIL use consent no CRC990088.1 to irrigate the area shown as Area 8 in Schedule 3 (as more fully described in application CRC083620 – change of conditions of resource consent); and
- (c) consent to discharge water from the Highbank power station penstock into the RDR Scheme;

Additional Works means any alterations, additions, replacement or upgrades to the Initial Works relating to the introduction, monitoring and taking of water from the RDR Scheme;

Adjustment Notice has the meaning given in clause 7.4;

Application means an application for a Consent in connection with the JV Scheme;

Authority means the government, any department or agency of the government, any statutory or regulatory agency or authority, and any local government entity;

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

Best Practice means the most effective, economical and safe methods and practices customarily used in activities similar to the activities being undertaken as part of the relevant operation and acknowledged to be best practice and that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in a similar operation or activity under similar circumstances and conditions in New Zealand;

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

Bond has the meaning ascribed to that term in clause 5.14;

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

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

Construction Completion Date has the meaning ascribed to that term in clause 5.12;

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

Costs Deed means the deed between the parties relating to, amongst other things, the reimbursement of costs incurred by RDRML in connection with considering the matters set out in the Background to this Deed dated 3 October 2008;

CPI means the Consumer Price Index (All Groups) for New Zealand as calculated by Statistics New Zealand and published quarterly or such replacement index as is reasonably nominated by RDRML if the Consumer Price Index (All Groups) ceases to exist;

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

Declarations means the declarations described in paragraph G of the Background;

Default Notice has the meaning given in clause 17.1;

Default Rate means the Bill Rate plus a margin of 3% per annum;

Deposit Agreement means an agreement referred to in clause 8.1(a);

Excluded Costs means, in respect of a financial year of RDRML:

- (a) any costs incurred by RDRML in respect of taking any legal action against the JV Parties under the terms of this Deed;
- (b) any cost incurred by RDRML in varying or renewing the RDRML Resource Consents except to the extent that such variation or renewal is directly connected to the requirements of the JV Parties, or the JV Parties' use of the RDR Scheme;
- (c) costs of capital for carrying out any works or improvements in respect of the RDR Scheme that do not provide a benefit to the JV Parties;

Expert has the meaning given in clause 16.2;

Final Plans has the meaning given in clause 4.3(c);

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

- (a) that causes or results in preventing or delaying a party from performing any of its obligations in this Deed; and

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- (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 Best Practice,

which occurs after the date of this Deed and, provided that the event or circumstance or combination of events or circumstances meets the foregoing criteria, includes:

- (a) an act of god;
- (b) strike or lockout, act of public enemy, war (whether declared or undeclared), blockade, revolution, riot, insurrection, malicious damage, civil commotion;
- (c) lightning, landslide, cyclone, storm, flood, fire, earthquake, explosion, tidal wave, epidemic;
- (d) action, inaction, demand, restraint, restriction, requirement, prevention, frustration or hindrance by any Authority;
- (e) order of the Court;
- (f) embargo, unavailability or shortage of essential equipment, or other materials, goods, labour or services, lack of transportation or communication;
- (g) any breakage of equipment, machinery, lines or pipes, freezing, or delivery equipment, catering, washout subsidence or cave in; or
- (h) restraint on access to property;

Fundamental Default means a breach of any of clauses 3.1, 3.2, 4.3, 5.1, 5.13, 6.4, 7.3, 7.4, 9.3 11.2, 12.4 and 18.7;

Fundamental Default Notice has the meaning given in clause 17.2;

Fundamental Principles means the principles set out in clause 3.2;

GST means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985, and any penalties, additional tax or interest payable in respect of goods and services tax;

Highbank Head Pond means that part of the RDR Scheme as exists between the Methven Check gate and Highbank Power Station;

Initial Works means the initial works approved by RDRML under clause 4 and carried out by the JV Parties in accordance with clause 5;

Insurance Policies means the insurance policies referred to in clauses 5.13 and 8.3;

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

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

JV Parties means BCIL and EAL;

JV Opex Costs means, in respect of a financial year of RDRML, any substantial operating and maintenance costs incurred by or on behalf of RDRML in respect of, or attributable to, the Works (including non-classic maintenance costs) and the costs referred to in clauses 6.6, 7.1(a) and 7.1(b) and 9.3 and any other costs which RDRML and the JV Parties may agree for time to time constitute JV Opex Costs but shall exclude those costs referred to in clause 7.3(b)(iv);

JV Resource Consents has the meaning given in paragraph C of the Background and includes any additions to those consents and variations to existing consents;

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

JV Scheme Area means the area shown as the Areas 5, 7 and 8 in Schedule 3;

JV Scheme Rights means the rights (including the JV Resource Consents) held by the JV Parties at any time in relation to the JV Scheme, as varied, added to, renewed and replaced from time to time;

JV Representative has the meaning given in clause 5.5;

law includes all applicable Consents, statutes, regulations, local authority requirements, district plans and district rules and *lawful* shall be construed accordingly;

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

Losses means all costs, losses, liabilities (including legal and other professional expenses on a full indemnity basis and GST and similar taxes), claims, demands, damages, fines and penalties;

Manager has the meaning given in clause 5.4;

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

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

Operational Period means the period starting on the Construction Completion Date and ending on the date which is the earlier of the date on which this Deed expires and the date on which this Deed is terminated in accordance with its terms;

Handwritten signatures and initials:
JRM
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Participants means the shareholders of RDRML, from time to time, who are supplied water from the RDR Scheme and *Participant* means any one of such shareholders;

Plans has the meaning given in clause 4.3(c);

Programme has the meaning given in clause 4.3;

PCG means the project control group to supervise the Works established pursuant to clause 5.5;

Preliminary Designs has the meaning given in clause 4.1;

Pumping Deed means the deed between the JV Parties and TrustPower Limited relating to the pumping of water by TrustPower Limited from the Rakaia River into the RDR Scheme dated on or about the date of this Deed;

RDRML Representative has the meaning given in clause 5.5;

RDRML Resource Consents has the meaning given in paragraph B of the Background;

RDR Scheme means the Rangitata diversion race and all improvements and works used, or proposed to be used, for or in association with that race taking water from the Rangitata River and the south branch of the Ashburton River and supplying that water to stockwater and irrigation schemes, and hydroelectric generation stations, in the RDR Scheme Area and shall exclude the Works except where, and to the extent that, any assets comprising the Works are transferred to RDRML pursuant to clause 12.4, in which case such assets shall comprise part of the RDR Scheme;

RDR Scheme Area means the areas shown as 1, 2 and 4 on the plan annexed to this Deed as Schedule 3;

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

- (a) the water used in the operation of the RDR Scheme; and
- (b) the construction and maintenance and operation of the RDR Scheme,

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

Resource Consent means a resource consent under the RMA;

RMA means the Resource Management Act 1991;

TrustPower means TrustPower Limited, a duly incorporated company having its registered office at Truman Lane, RD 5, Tauranga 3175;

TrustPower Access and Use of RDR Deed means the deed dated on or about the date of this Deed between RDRML and TrustPower which provides for, amongst other things, TrustPower pumping water into the RDR Scheme for the benefit of the JV Parties;

Water Swap has the meaning given in paragraph D(b) of the Background;

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Working Deed means the deed between BCIL and RDRML setting out the framework for discussions between them in respect of, amongst other things, BCIL's use of the RDR Scheme dated 23 January 2009; and

Works means the Initial Works and the Additional Works and any additional works, improvements, replacements, variations and upgrades thereto but, for the avoidance of doubt, does not include works relating to the JV Parties' distribution system not affecting the RDR Scheme.

23.2 Interpretation: In the construction of this Deed, unless the context requires otherwise:

- (a) *clauses*: reference to a Part, section, clause, sub-clause, Schedule or a party is a reference to that part, section, clause, sub-clause, schedule or party to this Deed unless stated otherwise;
- (b) *headings*: headings appear as a matter of convenience and do not affect the construction of this Deed;
- (c) *inclusion*: referring to anything after the word "including" does not limit what else might be included and any such reference is without limitation to what else might be included;
- (d) *joint and several*: any covenant or Deed on the part of two or more persons shall bind those persons jointly and severally;
- (e) *legislation*: a reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision;
- (f) *negative obligations*: a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;
- (g) *no contra proferentem construction*: the rule of construction known as the contra proferentem rule does not apply to this Deed;
- (h) *parties*: a reference to a party to this Deed or any other document includes that party's successors and permitted assigns and in respect of the JV Parties, references in this Deed to "party" mean the JV Parties as one party;
- (i) *person*: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;
- (j) *related terms*: where a word or expression is defined in this Deed other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (k) *schedules*: the schedules to this Deed form part of this Deed; and
- (l) *singular, plural and gender*: the singular includes the plural and vice versa, and words importing one gender include the other genders.

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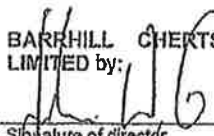
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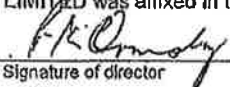
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BARRHILL CHERTSEY IRRIGATION
LIMITED by:

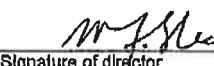

Signature of director
John Alexander Wright
Name of director

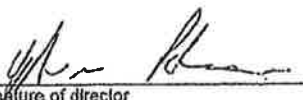

Signature of director
Roger Anthony Bonifant
Name of director

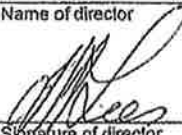
THE COMMON SEAL OF RANGITATA
DIVERSION RACE MANAGEMENT
LIMITED was affixed in the presence of:


Signature of director
Peter Kevin Ormsby
Name of director


Signature of director
Michael Beder O'Malley
Name of director


Signature of director
MARK FRANCIS SLEG
Name of director

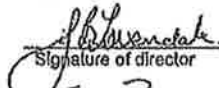

Signature of director
JOHN VAN ROOYEN
Name of director


Signature of director
IAN ALEXANDER LEES
Name of director


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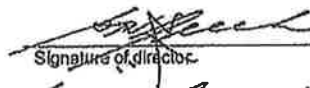
ELECTRICITY ASHBURTON LIMITED

by:



Signature of director
JOHN BRUCE TAVERDALE

Name of director



Signature of director
GARY RICHARD LEACH

Name of director


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B
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SCHEDULE 1
EXISTING RESOURCE CONSENTS OF THE RDR SCHEME

g/h/ P/O
16/1 Jan
MS.
B.

<u>CRC011237</u>	Take Surface Water, Dam Surface Water
<u>CRC011239</u>	Construct/Remove a Structure, Works to Divert Water, Deposition of Material
<u>CRC011240</u>	Discharge of Water- Pure
<u>CRC011241</u>	Discharge of Contaminated Water
<u>CRC011242</u>	Works for Maintenance/Protection, Works to Divert Water, Excavate Material
<u>CRC011243</u>	Works to Divert Water, Works for Maintenance/Protection
<u>CRC011244</u>	Discharge of Water- Pure
<u>CRC011245</u>	Take Surface Water, Dam Surface Water
<u>CRC011246</u>	Discharge of Water- Pure
<u>CRC011247</u>	Discharge of Contaminated Water
<u>CRC011248</u>	Discharge of Contaminated Water
<u>CRC011249</u>	Discharge of Contaminated Water
<u>CRC011251</u>	Works for Maintenance/Protection, Works to Divert Water, Deposition of Material
<u>CRC011262</u>	Take Surface Water
<u>CRC011263</u>	Works for Maintenance/Protection
<u>CRC011264</u>	Discharge of Contaminated Water
<u>CRC011265</u>	Discharge of Contaminated Water
<u>CRC011450</u>	Divert Surface Water
<u>CRC051179</u>	Divert Surface Water
<u>CRC051180</u>	Discharge of Water- Pure
<u>CRC070275</u>	Construct/Remove a Structure
<u>CRC080840</u>	Discharge of Water- Pure

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 [Initials] [Initials] [Initials]

<u>CRC080926</u>	Dam Surface Water
<u>CRC082583</u>	Divert Surface Water
<u>CRC961754.1</u>	Deposition of Material, Excavate Material, Construct/Remove a Structure, Clear Vegetation
<u>CRC961755</u>	Take Surface Water
<u>CRC961756</u>	Discharge of De-Watering Water
<u>CRC992194</u>	Discharge of Contaminated Water

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SCHEDULE 2

JV RESOURCE CONSENTS

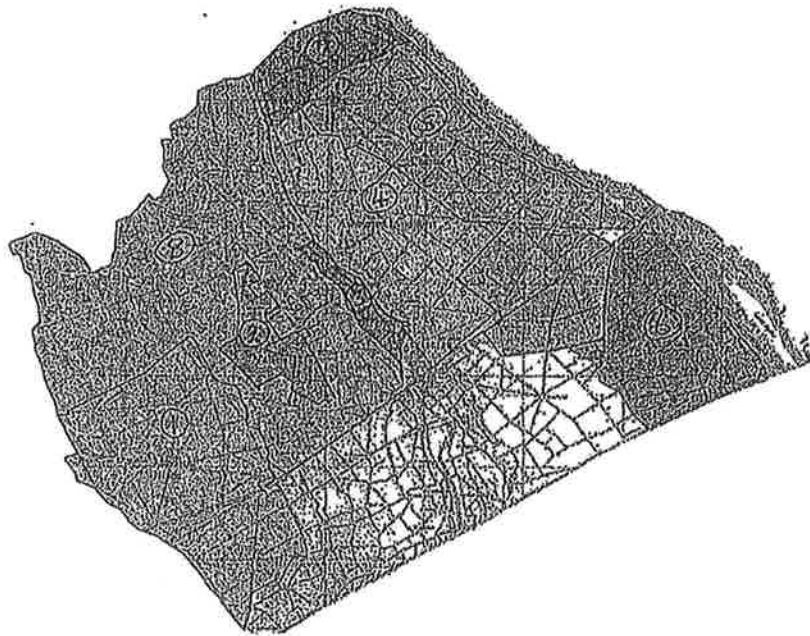
Consent No:	Permit To:
CRC990088	Take up to 17 cubic metres per second of water and to divert up to 40 cubic metres per second of water from the Rakala River, at or about map references NZMS 260 K36:057-393 and NZMS K36:050-393 respectively, for the purpose of irrigation of up to 40,000 hectares and electricity generation.
CRC990089	Discharge up to 80 cubic metres per second of water and sediment to the Rakala, at or about map reference NZMS 260 K36:058-394.
CRC000132	Discharge up to 17 cubic metres per second, and up to seven cubic metres per second of bywash water into the Rakala River, at or about map reference NZMS 260 L36:152-283 and NZMS L36:200-240, respectively.
CRC990133	Disturb the bed of the Rakala River to maintain existing river bank protection and facilitate the diversion of water to an intake structure and discharge of water and sediment between map references NZMS 260 K36:030-400 and NZMS 260 K36:068-387.
CRC000134	Disturb the bed of the Rakala River to facilitate the discharge of water and to form discharge channels, at or about map references NZMS 260 L36:152-283 and NZMS 260 L36:200-240.
CRC000133	Place an intake structure on, and disturb the bed of the Rakala River, at or about map reference NZMS 260 K36:050-393.

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SCHEDULE 3

PLAN SHOWING RDR SCHEME AREA, JV SCHEME AREA
AND NON-IRRIGATED AREA



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RDR
JV
Non-IRRIGATED
Mrs. B
etc.

RANGITATA DIVERSION RACE MANAGEMENT LIMITED

BARRHILL CHERTSEY IRRIGATION LIMITED

ELECTRICITY ASHBURTON LIMITED

**DEED OF VARIATION TO THE ACCESS TO
INFRASTRUCTURE DEED**

RUSSELL McVEAGH

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- Top right: "Raw." followed by a large flourish.
- Middle right: "BY" followed by a flourish.
- Bottom right: "h2" followed by a flourish.
- Bottom left: "Pym4L" followed by a flourish.

PARTIES

Rangitata Diversion Race Management Limited ("RDRML")

Barrhill Chertsey Irrigation Limited ("BCIL")

Electricity Ashburton Limited ("EAL")

INTRODUCTION

- A. RDRML and the JV Parties are parties to an access to infrastructure deed dated 4 December 2009 ("**Access to Infrastructure Deed**") which sets out the commercial agreements under which the JV Parties may use the RDR Scheme for the purposes set out in paragraph D of the Background of the Access to Infrastructure Deed.
- B. Pursuant to clause 22.8 of the Access to Infrastructure Deed, the Access to Infrastructure Deed may be amended at any time by means of a deed executed by RDRML and the JV Parties.
- C. RDRML and the JV Parties have agreed that new additional Off-take Points of Supply may be constructed by the JV Parties. Accordingly, RDRML and the JV Parties have agreed to enter into this deed to effect the variations set out below.

AGREEMENT

1. INTERPRETATION

- 1.1 Capitalised terms defined in the Access to Infrastructure Deed shall, unless expressly defined otherwise, have the same meaning in this deed.
- 1.2 RDRML and the JV Parties agree that the works set out in an Agreement for Additional Works shall be Additional Works as defined in, and for the purpose of, the Access to Infrastructure Deed, as amended by this deed.
- 1.3 References to "this Deed" in the Access to Infrastructure Deed shall be references to the Access to Infrastructure Deed, as amended by this deed.

2. VARIATIONS

- 2.1 The Access to Infrastructure Deed shall, with effect on and from the date of this deed, be amended as follows:
 - (a) The Background section is amended by inserting a new limb (d) to paragraph D as follows:
 - (d) New additional Off-take Points of Supply may be constructed by the JV Parties from time to time by the entry into an Agreement for Additional Works in respect of each new additional Off-take Point of Supply.

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- (b) Clause 4.2 is amended by deleting the words "clause 4.1" and replacing them with the words "clauses 4.1 and 4.10".
- (c) A new clause 4.10 is inserted as follows:
- 4.10 **Submit all designs to RDRML:** As soon as reasonably practicable after the date of the applicable Agreement for Additional Works, the JV Parties must submit to RDRML for its approval all of the designs, plans, specifications and other documents to construct and implement the Additional Works to which that Agreement for Additional Works relates.
- (d) Clause 5.16 is amended by deleting the words "the Works" and replacing them with the words "the Initial Works".
- (e) A new clause 5.17 is inserted as follows:
- 5.17 **Cancellation Right:** If construction of the Additional Works to which an Agreement for Additional Works relates is not deemed to have been completed pursuant to clause 5.12 by the date that is 90 days after the planned completion date for the Additional Works specified in the Agreement for Additional Works, either RDRML or the JV Parties may cancel the Agreement for Additional Works by giving written notice to the other and, if so cancelled, the Agreement for Additional Works shall, subject to clause 22.1, be of no further force or effect and both parties shall be released from their obligations under the Agreement for Additional Works. The cancellation of the Agreement for Additional Works in accordance with this clause 5.17 shall not affect a party's accrued rights or obligations at the date of cancellation.
- (f) A new clause 5.18 is inserted as follows:
- 5.18 **Reinstatement Right:** If an Agreement for Additional Works is cancelled or terminated by either party prior to completion of the Additional Works to which that Agreement for Additional Works relates pursuant to clause 5.12, RDRML shall have the right to:
- a. arrange for those Additional Works to be completed by others to the satisfaction of RDRML; or
 - b. remove the assets that comprise the Additional Works from the RDR Scheme and make good and reinstate the RDR Scheme to the satisfaction of RDRML,
- and all costs and charges incurred by RDRML in so doing are payable on demand by the JV Parties to RDRML, or may be deducted by RDRML from any moneys due to the JV Parties.
- (g) Clause 7.2 is amended by deleting all references to "Works" and replacing them with the words "Initial Works".
- (h) A new clause 7.2A is inserted as follows:

Handwritten signatures and initials:
 RDRML
 16/1
 JSD
 ASD

7.2A **Control of Additional Works:** Title in the Additional Works to which an Agreement for Additional Works relates (and the assets which comprise those Additional Works) shall be split between the parties as more particularly set out in clause 12.4A. Notwithstanding that title in part of the Additional Works may reside with the JV Parties, to the extent that RDRML does not have title in the Additional Works, it shall be entitled to deal with the Additional Works as if it were the owner thereof provided that any exercise of this right shall be in a manner consistent with the terms and provisions of this Deed. Without limiting the foregoing sentence, RDRML shall be entitled to operate the Additional Works and may alter, repair, replace, remove, upgrade and maintain the Additional Works as if it were the owner thereof. The JV Parties agree that the JV Parties will have no right to deal with the Additional Works unless the JV Parties have first received the written consent of RDRML to do so and then the JV Parties will comply strictly with the terms of any such consent.

(i) Clause 12.4 is amended by deleting all references to "Works" and replacing them with the words "Initial Works".

(j) A new clause 12.4A is inserted as follows:

12.4A **Ownership and risk in Additional Works:** The parties agree that ownership and all risk in the assets that comprise the Additional Works to which an Agreement for Additional Works relates shall remain with the JV Parties until completion of those Additional Works pursuant to clause 5.12. Following completion of those Additional Works, the assets that comprise those Additional Works and:

- a. are located within (or on) the land comprising the RDR Scheme Area that is owned by RDRML shall (unless RDRML has otherwise notified the JV Parties), in consideration of the promises contained herein, transfer to RDRML and become the property of RDRML;
- b. are located within (or on) the land comprising the RDR Scheme Area that is owned by RDRML and in respect of which RDRML has notified the JV Parties in accordance with clause 12.4Aa, shall remain with the JV Parties; and
- c. are located within the JV Scheme Area shall remain with the JV Parties.

In respect of those assets whose ownership is to transfer to RDRML:

- a. the JV Parties shall have no obligation to make good or remedy any changes made to the RDR Scheme in respect of such assets, except as required to meet any statutory or regulatory requirements or if otherwise required by RDRML; and
- b. RDRML shall not make any charge to the JV Parties for any such assets provided that:

- i. if the JV Parties continues to utilise those assets then all costs and expenses in maintaining, operating and replacing those assets shall be borne by the JV Parties; and
- ii. if RDRML incurs any tax or other charge by reason of the transfer (or vesting) of title, the JV Parties will pay to RDRML the amount of such tax or charge (plus any tax or other amount payable in respect of the monies payable under this sub-clause) upon written demand by RDRML.

(k) Clause 23.1 is amended by inserting the following definition:

Agreement for Additional Works means an agreement signed by RDRML and the JV Parties, in the form attached to the Deed of Variation, whereby RDRML authorises the construction by the JV Parties of the additional works more particularly described in the Agreement for Additional Works;

Deed of Variation means the deed of variation dated November 2013 which amended this Deed with effect on and from the date of the Deed of Variation;

3. CONFIRMATION

- 3.1 The provisions of the Access to Infrastructure Deed, as amended by this deed, are hereby ratified and confirmed and shall remain in full force and effect.
- 3.2 RDRML and the JV Parties agree and confirm that the construction of new additional Off-take Points of Supply shall be treated as Additional Works as such term is defined in, and for the purpose of, the Access to Infrastructure Deed.

4. WARRANTY

- 4.1 The JV Parties warrant to RDRML that:
 - (a) the representations and warranties given pursuant to clause 14 of the Access to Infrastructure Deed are true and shall be repeated on the date of this deed; and
 - (b) no Consent is required in addition to the RDRML Consents, the JV Consents and the Additional Consents, to implement the matters referred to in this deed.

5. ACKNOWLEDGEMENTS

- 5.1 RDRML and the JV Parties acknowledge that:
 - (a) the requirements in clauses 4 and 5 of the Access to Infrastructure Deed are for the benefit and protection of RDRML; and

- (b) RDRML may waive any or all of those requirements at any time by giving written notice to the JV Parties.

6. COSTS

- 6.1 The JV Parties will bear the costs of, and incidental to, the negotiation, preparation and execution by both parties of this deed.

7. COUNTERPARTS

- 7.1 This deed may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. Any party may enter into this deed by signing any such counterpart.

8. NEW ZEALAND LAW

- 8.1 This deed is to be governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

EXECUTED AS A DEED


**BARRHILL CHERTSEY IRRIGATION
LIMITED** by:



Signature of director

Robert McDowell

Name of director

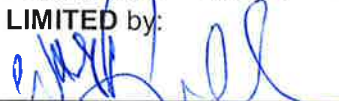


Signature of director

Roger Anthony Bonifant

Name of director

**DIVERSION RACE MANAGEMENT
LIMITED** by:



Signature of director

Mark Dewhurst

Name of director

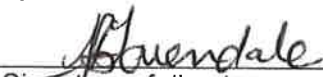


Signature of director

RICHARD DAVID Wilson

Name of director

ELECTRICITY ASHBURTON LIMITED
by:



Signature of director

John Bruce Taverdale

Name of director



Signature of director

Philip John McKenry

Name of director