

DATED

30 June

2017

PARTIES

ELECTRICITY ASHBURTON LIMITED

BARRHILL CHERTSEY IRRIGATION LIMITED

AGREEMENT RELATING TO TERMINATION OF PREFERRED INCOME RIGHT



THIS AGREEMENT made the

30th

day of

June

2017

PARTIES

- (1) **ELECTRICITY ASHBURTON LIMITED (EA)**
- (2) **BARRHILL CHERTSEY IRRIGATION LIMITED (BCI)**

BACKGROUND

- A EA and BCI each have a 50% Participating Interest in the Joint Venture, and each own 50% of the Shares.
- B EA intends to sell to BCI, and BCI intends to purchase from EA, all of EA's Participating Interest and Shares in the Joint Venture such that the interest in the assets and rights pertaining to the Joint Venture vest in the Purchaser absolutely and following the vesting of assets and rights in the Purchaser the Joint Venture is formally dissolved.
- C Prior to any sale and purchase as contemplated by Background B above, EA has agreed to terminate the Preferred Income Right on the terms and conditions set out in this Agreement

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions apply in this Agreement, unless inconsistent with the context or otherwise specified:

Agreement means this *Agreement relating to termination of Preferred Income Right* document;

Completion means the performance by the parties of the obligations assumed by them under clause 4;

Completion Date means 29 September 2017;

Consideration means \$17,588,988 plus GST (if any);

EA's Interest means EA's 50% Participating Interest in the Joint Venture and the Shares.

Joint Venture has the meaning given to that term in the JVA;

JVA means the joint venture agreement between EA and BCI, dated 23 December 2009;

Participating Interest has the meaning given to that term in the JVA;

Preferred Income Right means the annual income right payable to EA by the Joint Venture pursuant to clause 12.1(a) of the JVA;

Sale Agreement means the sale agreement between EA and BCI dated on or about the date of this Agreement and which relates to the sale by EA to BCI of EA's Interest;

Shares means 50 shares in Water Utilities Ashburton Limited and 4,000 shares in Irrigo Centre Limited.

1.2 In the construction and interpretation of this Agreement unless inconsistent with the context or otherwise specified:

- (a) references to Background, clauses and Schedules are references to Background, clauses and Schedules of this Agreement;
- (b) references to statutes or statutory provisions include those statutes or statutory provisions as amended, extended, consolidated, re-enacted or replaced from time to time and any orders, regulations, instruments or other subordinated legislation made under them (except to the extent that any amendment enacted after the date of this Agreement would increase or extend the liability of any party);
- (c) words importing the singular number include the plural and vice versa, references to any gender include every gender and references to persons include corporations and unincorporated bodies of persons;
- (d) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (e) references to "dollars" and "\$" are references to New Zealand dollars;
- (f) references to "written" and "in writing" include any means of permanent visible representation; and
- (g) references to any document include all modifications and replacement documents from time to time.

2 TERMINATION OF PREFERRED INCOME RIGHT

2.1 EA agrees to terminate the Preferred Income Right on and subject to the terms of this Agreement.

3 CONSIDERATION

3.1 In consideration for EA agreeing to terminate the Preferred Income Right, BCI agrees to pay to EA the sum of \$17,588,988 plus GST (if any).

4 COMPLETION

4.1 On the Completion Date, immediately prior to completion occurring under the Sale Agreement:

- (a) the Preferred Income Right shall be terminated and EA shall have no further rights to and in respect of the Preferred Income Right, other than amounts due to EA under the Sale Agreement in respect of the Preferred Income Right for the period from 1 July 2017 to the Completion Date;
- (b) BCI shall pay to EA the Consideration in cleared funds available for immediate disbursement.

5 CONDITIONS AND RELATED MATTERS

5.1 This Agreement is conditional on the conditions in the Sale Agreement being satisfied or waived in accordance with the terms of the Sale Agreement so that the Sale Agreement becomes unconditional.

- 5.2 If the Sale Agreement is cancelled, avoided or terminated, then this Agreement will automatically terminate.
- 5.3 In the event that Completion occurs under this Agreement but completion does not subsequently occur under the Sale Agreement, then the parties shall do all things reasonably necessary to put themselves in the position they would have been in prior to Completion occurring and as if Completion had not occurred. Without limiting the preceding sentence, in such circumstances the Preferred Income Right will be deemed not to have terminated and EA shall return to BCI the Consideration paid under this Agreement.

6 COSTS

Each party shall pay the costs and expenses incurred by that party in relation to the negotiation, preparation and implementation of this Agreement.

7 PENALTY INTEREST

In the event of late payment of any sum due under this Agreement, the defaulting party shall pay interest to the non-defaulting party at the rate of 14% per annum calculated from the due date for payment down to the actual date of payment on a daily basis. The defaulting party shall also meet all costs of and incidental of enforcement of this Agreement including costs payable on a solicitor / client basis. This clause is without prejudice to any other rights of the non-defaulting party.

8 GST

- 8.1 In this clause 8, a word or expression defined in the Goods and Services Tax Act 1985 has the meaning given to it in that Act.
- 8.2 The Consideration payable for EA agreeing to terminate the Preferred Income Right is plus GST (if any). If the supply under this Agreement is chargeable with GST, then BCI shall pay to EA the amount of GST chargeable in respect of that supply (being the Consideration multiplied by the prevailing rate of GST) at the same time and in the same manner as the Consideration.
- 8.3 BCI will not be required to pay any GST to EA in respect of a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.
- 8.4 If the Consideration is chargeable with GST, the parties will request the Commissioner's approval to transfer the GST input credit due to BCI to EA such that the Consideration paid in cash will be the net amount.
- 8.5 If confirmation of the transfer of the GST amount is not received from the Commissioner by two working days prior to EA's due date to pay such amount to the Commissioner and the Commissioner is of the view that the Consideration is chargeable with GST, then BCI shall pay such amounts immediately in cleared funds to EA.

9 GENERAL

- 9.1 None of the rights or obligations of either party under this Agreement may be assigned or transferred without the prior written consent of the other party.
- 9.2 This Agreement is binding on and shall apply for the benefit of the parties' personal representatives, successors in title and permitted assigns.

- 9.3 This Agreement and the documents referred to in it constitute the entire agreement between the parties relating to the termination of the Preferred Income Right, and supersede all previous agreements between the parties relating to such sale and purchase.
- 9.4 Any variation or waiver of any terms of this Agreement shall not be binding unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.
- 9.5 If any provision of this Agreement, or any part of a provision of this Agreement, is found to be illegal, invalid or unenforceable the remaining provisions, or the remainder of the provision concerned, shall continue in effect.
- 9.6 A failure or delay in enforcing compliance with any term of this Agreement shall not be a waiver of that or any other term of this Agreement.
- 9.7 All obligations of the parties shall continue in full force and effect after Completion, except for any obligations then already fully performed.
- 9.8 This Agreement may be executed in any number of counterparts and all the counterparts when taken together will constitute one agreement. Each party may enter into this Agreement by executing a counterpart. The parties acknowledge that this Agreement may be executed by an exchange of facsimile and/or scanned and emailed PDF copies and execution of this Agreement by that means is valid and sufficient execution.
- 9.9 Each party shall execute such further documents and perform and do such further acts and things following Completion as the other party may reasonably request in writing in order to carry the provisions of this Agreement into full effect.

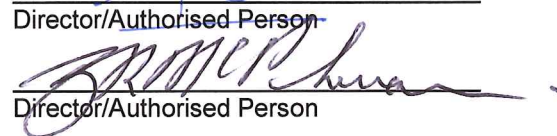
EXECUTED as an Agreement

SIGNED by
ELECTRICITY ASHBURTON LIMITED

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Director/Authorised Person



Director/Authorised Person

SIGNED by
BARRHILL CHERTSEY IRRIGATION LIMITED

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Director/Authorised Person



Director/Authorised Person