

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

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

**Grantor**

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**Grantee****AMURI IRRIGATION COMPANY LIMITED****Grant of Easement or *Profit à prendre* or Creation of Covenant**

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

**Schedule A***Continue in additional Annexure**Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown reference (plan)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right to convey water			In gross
Right to convey electricity, telecommunications and computer media			In gross
Right to generate electricity			In gross
Right to locate, site and store a pumping station			In gross

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

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

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

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

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

[the provisions set out in Annexure Schedule B ]

**Covenant provisions**

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

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

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

~~[Annexure Schedule \_\_\_\_\_]~~

## Form L

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### Annexure Schedule B

*Insert instrument type*

<b>Easement</b>
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#### 1. INTERPRETATION

1.1 In this Easement Instrument unless context otherwise requires:

**"Easement Instrument"** means this Easement Instrument.

**"Easement Facility"** in relation to:

- (a) a right to convey water, means water races, pipes, conduits, pumps, pump sheds, storage tanks, water purifying equipment, meters, farm turn-outs, headraces, bridges, siphons, dams, galleries, buffer/pressure break ponds, pumps, water meters, control valves, control gates and cabinets, hydropower plants, generators, turbines, gravel pits, pen stocks, power/transmission lines, monitoring equipment, measuring devices, other equipment suitable for that purpose and/or the ability to discharge or dispose of water (whether above or under the ground), and anything in replacement or substitution.
- (b) a right to convey electricity, telecommunications and computer media, means wires, cables (containing wire or other media conducting materials), poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution.
- (c) a right to generate electricity, means hydropower plants, generators, turbines, gravel pits, pen stocks, power/transmission lines, monitoring equipment, measuring devices, other equipment suitable for that purpose and/or the ability to discharge or dispose of water (whether above or under the ground), and anything in replacement or substitution.
- (d) a right to locate, site and store a pumping station means the right to construct and leave remaining on the Easement Land a pump shed, pump infrastructure, other equipment suitable for that purpose (whether above or under the ground), any related infrastructure and anything in replacement or substitution.

**"Easement Land"** means the specified easement area relating to each Easement Facility as recorded in Schedule A.

**"Servient Land"** means the Servient Tenement as recorded in Schedule A.

- 1.2 In the interpretation of this Easement Instrument:
- (a) words importing the singular or plural number shall be deemed to include the plural and singular number respectively;
  - (b) headings are inserted only as a matter of convenience and in no way define, limit or describe the scope or intent of the clauses of this Easement Instrument nor in any way affect this Easement Instrument;
  - (c) references to any party include that party's executors, administrators, and assigns or, being a company, its successors and assigns;
  - (d) all covenants on the part of the Grantor shall be deemed to be covenants by each of the registered proprietors included in the term "Grantor" and shall jointly and severally bind each of the registered proprietors and their respective executors, administrators, successors and assigns;
  - (e) any obligation not to do something includes an obligation not to suffer, permit or cause that thing to be done;
  - (f) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes.

## 2. **GRANT OF RIGHTS, POWERS AND PRIVILEGES**

### **Right to convey water in gross**

- 2.1 The Grantee (to the exclusion of the Grantor and any other party) shall have the full free uninterrupted and unrestricted right, liberty and licence at all times hereafter to:
- (a) take and convey water for any purpose and in any quantity capable of being safely conveyed from time to time in a free and unimpeded flow through the Easement Facility and over or through the Easement Land; and
  - (b) maintain, alter, upgrade, replace, clean, inspect or repair the Easement Facility as the Grantee may from time to time think fit.

### **Right to convey electricity, telecommunications and computer media in gross**

- 2.2 The Grantee (to the exclusion of the Grantor and any other party) shall have the full free uninterrupted and unrestricted right, liberty and licence at all times hereafter to:
- (a) lead and convey electricity and electric impulses without interruption or impediment (except during periods of necessary repair or replacement) through the Easement Facility and through the Easement Land; and
  - (b) lay, make, construct, maintain, alter, clean, inspect or repair the Easement Facility as the Grantee shall from time to time think fit.

The rights at this clause 2.2 are at all times limited to that which is necessary to enable the effective operation of the any of the rights set out in clauses 2.1, 2.3 and 2.4 of this Easement Instrument.

### **Right to generate electricity in gross**

- 2.3 The Grantee (to the exclusion of the Grantor and any other party) shall have the full free uninterrupted and unrestricted right, liberty and licence at all times hereafter to:
- (a) install, operate and generate electricity through the Easement Facility from time to time upon, over, under or about the Easement Land and via the Easement Facility;
  - (b) to take in such quantities as the Grantee shall determine any water from time to time situated upon, under or about the Easement Land; and
  - (c) via any of the Easement Facility to convey, take and discharge water, in such quantities as the Grantee shall determine, either from, through or to the Easement Land or any other land.

### **Right to locate, site and store a pumping station in gross**

- 2.4 The Grantee (to the exclusion of the Grantor and any other party) shall have the free uninterrupted and unrestricted right, liberty and licence at all times hereafter to:
- (a) install the Easement Facility on or through the Easement Land; and
  - (b) make, construct, maintain, alter, clean, inspect or repair the Easement Facility as the Grantee shall from time to time think fit.

### **Fencing**

- 2.5 In respect of any Easement Facility or Easement Land the Grantee may make, construct, maintain, alter, upgrade, replace or repair any fencing the Grantee may reasonably require.
- 2.6 The Grantee may, where the Grantee reasonably requires, mark with pegs, signage or otherwise, the location of any Easement Facility.

## **3. EASEMENT FACILITY TO BE PROPERTY OF GRANTEE**

- 3.1 Each Easement Facility (as the case may be) and any other structures, plant or equipment erected or installed by the Grantee on the Easement Land shall be the property of the Grantee.

## **4. GRANTEE'S RIGHTS AND OBLIGATIONS**

- 4.1 In respect of any Easement Facility or Easement Land the Grantee and its directors, employees, contractors, servants, agents or invitees may:
- (a) undertake installation, excavation, works, operation, inspection, investigation, maintenance or repair of any Easement Facility;

- (b) survey, excavate and undertake such works required to install any new Easement Facility and other works (including, without limitation investigations for bores/test pits) which the Grantee deems necessary;
- (c) upgrade, modify, investigate, inspect, maintain, clean, renew, repair, extend, reconstruct, remove, enlarge or replace any aspect of any Easement Facility;
- (d) upgrade, alter, relocate or remove any improvement on the Servient Land (including, without limitation, farm roads, tracks, carpark, access way, culvert, ford, bridge, irrigation works, water race, fence, gate or conveyance owned by the Grantor on the Servient Land);
- (e) construct, locate, upgrade, alter or relocate or remove any temporary structure, (including, without limitation, any building or other structure, road, carpark, track, access way, culvert, ford, bridge, irrigation work, water race, fence, gate or conveyance owned or constructed by the Grantee on the Easement Land) on the Servient Land;
- (f) remove any improvement constructed by the Grantee on the Servient Land;
- (g) in consultation with the Grantor, move or reconstruct (either above ground or underground) any cable, line or pipe located in, on, over or under the Servient Land and where the Grantor is not the sole owner of the cable, line or pipe, the Grantor will, where it has the capacity and capability to do so (at the Grantee's cost), grant to the owner of the cable, line or pipe any easement reasonably required by that owner for the relocated or reconstructed cable line or pipe;
- (h) gauge, inspect, investigate or otherwise determine the quantity of water used by the Grantor or other occupier of the Servient Land;
- (i) carry out any maintenance, testing or other work required in order to comply with the Grantee's duties under the Health and Safety at Work Act 2015;
- (j) take such measures as the Grantee reasonably thinks necessary for the safety of persons and property;
- (k) take such measures as the Grantee reasonably thinks necessary to ensure the proper and efficient performance or exercise of any rights pursuant to this Easement Instrument; and
- (l) generally do and perform such acts and things in or upon the Easement Land as the Grantee reasonably thinks necessary, for or in relation to any aspect of this Easement Instrument.

4.2 For the purpose of performing any duty or in the exercise of any rights pursuant to this Easement Instrument the Grantee and its directors, employees, contractors, servants, agents or invitees may:

- (a) enter the Servient Land:
    - (i) by the most practicable route from the nearest public road across any part of the Servient Land; or
    - (ii) for the purpose of gaining access to any nearby land (including land not owned by the Grantor);
  - (b) remain on the Servient Land for a reasonable time;
  - (c) bring on to the Servient Land such materials, tools, equipment, machinery, vehicles or other things as may be necessary;
  - (d) leave any vehicle or equipment on the Servient Land for a reasonable time;
  - (e) sink and make trenches and shafts on any Easement Land;
  - (f) remove any trees or other vegetation from the Easement Land as the Grantee thinks necessary;
  - (g) excavate any clay, gravel, shingle, stones, and earth from any Easement Land as may reasonably be required in respect of any Easement Facility; and
  - (h) place any material of any nature excavated or removed from the Easement Land on to the Servient Land as may reasonably be required in respect of any works on any Easement Facility.
- 4.3 Following disruption of the Easement Land the Grantee will repair and level (to a reasonable contour, as determined in the Grantee's sole discretion) the Easement Land. The Grantee may (to be determined in its sole discretion) provide a contribution to the Grantor for the cost of re-sowing the Easement Land.
- 4.4 The Grantee will provide the Grantor with reasonable notice (being not less than five working days except that no notice will be required in the event that it is not possible or practical (determined in the Grantee's sole discretion) of the Grantee's intention to exercise any rights under this Easement Instrument.
- 4.5 The Grantee shall at all times when entering the Servient Land give due consideration to the Grantor's farming operation with a view to minimising disruption and shall further comply with its obligations (and ensure that the Grantee's workers (as defined in the Health and Safety at Work Act 2015) comply with their obligations) under the Health and Safety at Work Act 2015.

## 5. GRANTOR'S OBLIGATIONS

- 5.1 The Grantor and the Grantor's directors, employees, contractors, servants, agents, tenants or invitees will not:
- (a) erect in or over the Easement Facility any bridge, culvert or crossing;
  - (b) without the prior written consent of the Grantee:

- (i) erect any structure or improvement on the Easement Land;
- (ii) excavate the Easement Land;
- (iii) plant trees on or permit any tree roots or noxious plants to grow on or within the Easement Land;
- (iv) do, permit or suffer to be done anything which may in any way injure, damage, alter, obstruct or interfere with the operation of any Easement Facility;
- (v) permit any utilities or other services to be located within or pass over or through the Easement Land; or
- (vi) grant any further rights over the Easement Land.

5.2 The Grantor will:

- (a) following construction of any Easement Facility promptly remove (at the Grantor's expense) all trees growing beside or on the Easement Land which may be identified by the Grantee as limiting or having the potential to limit the efficient maintenance, flow or operation of any Easement Facility;
- (b) repair and maintain all fences on the Easement Land;
- (c) maintain any drainage works on the Servient Land carrying surplus irrigation or flood water to such a standard as will permit the proper functioning of the Easement Facility;
- (d) provide the Grantee with copies of keys to any locks fitted to any gates which the Grantee may need to enter through in order to exercise any rights under this Easement Instrument.

**Damage**

- 5.3 The Grantor will be liable for any costs incurred by the Grantee in the repair of any damage to any Easement Facility to the extent that such damage was caused by the Grantor (or its directors, employees, contractors, servants, agents, tenants or invitees) through any act or omission including, without limitation, damage caused by stock, machinery, posts or otherwise.

**6. HEALTH AND SAFETY**

6.1 The Grantor agrees to:

- (a) consult, cooperate and coordinate activities with the Grantee so far as is reasonably practicable;
- (b) ensure its directors, employees, contractors, servants, agents, tenants or invitees comply with all reasonable health and safety directions given by the Grantee;
- (c) comply with all obligations imposed on the Grantor and its workers (as defined in the Health and Safety at Work Act 2015) under the



Health and Safety at Work Act 2015 and at law as owner of the Servient Land in relation to the health and safety of persons on or in the vicinity of the Servient Land;

- (d) produce a health and safety management plan for the Servient Land when required by the Grantee;
- (e) provide a register of all known hazards in respect of the Servient Land when required by the Grantee and immediately advise the Grantee should the Grantor become aware of any new hazards;
- (f) allow the Grantee from time to time, if it considers there is an emergency involving health and safety, to temporarily exclude entry by all persons to the Easement Land.

## 7. GENERAL PROVISIONS

### Exercise of rights

- 7.1 Nothing contained or implied in this Easement Instrument shall be construed so as to:
- (a) compel the Grantee to exercise all or any of the rights granted by this Easement Instrument at any time and the Grantee may commence, discontinue or resume the exercise of all or any such rights at will;
  - (b) abrogate, limit, restrict or abridge any of the rights, powers or remedies vested in the Grantee by statute.

### Applicable provisions

- 7.2 The following provisions are applicable to the easements granted by this Easement Instrument:
- (a) the rights, powers and privileges conferred on the Grantee by this Easement Instrument are in substitution for the definition of "Easement Facility" and the rights and powers set out in clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 Schedule 4 of the Land Transfer Regulations 2002 but the remaining provisions of the Land Transfer Regulations 2002 shall apply to this Easement Instrument;
  - (b) where there is a conflict between the provisions of the Fourth Schedule of the Land Transfer Regulations 2002 and the provisions of this Easement Instrument, the provisions of this Easement Instrument will prevail.

### Assignment

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

**Further assurances**

- 7.4 The Grantor shall do all things and sign all documents necessary to discharge its obligations under this Easement Instrument.

**No determination**

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

**8. INDEMNITY**

- 8.1 The Grantor indemnifies the Grantee against all claims, actions, losses (excluding loss of profits or indirect or consequential loss) and expenses of any nature which the Grantee may suffer or incur or for which the Grantee may become liable in respect of or arising out of or in conjunction with any breach by the Grantor of any of its obligations set out in this Easement Instrument.

**9. DEFAULT**

- 9.1 If the Grantor does not meet the obligations specified or implied in this Easement Instrument:

- (a) the Grantee may serve on the Grantor written notice requiring the Grantor to meet a specific obligation and stating that, after the expiration of five working days (or other period as may be reasonable in the circumstances) from service of the notice of default, the Grantee may meet the obligation;
- (b) if, at the expiry of the five working day period (or other period as may be reasonable in the circumstances), the Grantor has not met the obligation, the Grantee may:
  - (i) meet the obligation; and
  - (ii) for that purpose, enter the Servient Tenement;
- (c) the Grantor is liable to pay the Grantee's costs of preparing and serving the default notice and all costs incurred in meeting the obligation together with interest thereon at the rate normally charged by the Grantor's then current bank on commercial overdrafts;
- (d) the Grantee may recover from the Grantor, as a liquidated debt, any money payable under this clause.

- 9.2 Nothing in this clause will prevent the Grantee from remedying any issue which requires immediate attention.

**10. DISPUTE RESOLUTION**

- 10.1 Without limiting clause 9, if either party has any dispute with the other in connection with this Easement Instrument:

- (a) that party will promptly give full written particulars of the dispute to the other party;
  - (b) the parties will promptly meet together and in good faith try and resolve the dispute.
- 10.2 If the dispute is not resolved within ten working days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 10.3 A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings. The mediation will be conducted by a LEADR New Zealand Incorporated panel mediator chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.
- 10.4 If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator. The single arbitrator will be chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee. The arbitration will be conducted in accordance with the Arbitration Act 1996.
- 10.5 The parties must always act in good faith and co-operate with each other to promptly resolve any dispute.
- 10.6 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.
- 10.7 The parties must continue to comply with their obligations under this Easement Instrument during the dispute resolution process.
- 10.8 Nothing in this clause 10 shall preclude a party from taking immediate steps to seek equitable relief before a New Zealand Court.
- 10.9 For the avoidance of doubt this clause 10 does not limit the Grantee's rights under clause 9.

## 11. **COSTS**

- 11.1 The Grantor and Grantee will each bear their own costs arising from legal advice relating to this Easement Instrument.
- 11.2 The Grantee will bear the Grantor's reasonable legal costs for the preparation and registration of this Easement Instrument.
- 11.3 Subject to clause 9 the Grantee and Grantor will each bear their own costs associated with the obligations set out in this Easement Instrument.