
TERMS OF WATER SUPPLY

MHV Water Limited



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MHV WATER LIMITED

Set out below are the terms and conditions on which the Company will supply Water to Shareholders within the irrigation Distribution System of the Company. Each Shareholder receiving Water must:

- Sign an agreement with the Company to be bound by the terms and conditions of supply set out below (the *Short Form Water Agreement* also called the *SFW Agreement*).
- Hold such number of shares in the Company as specified by the Company.
- Ensure the shares in the Company, the SFW Agreement and the property to which Water is provided are held in the same name.

TERMS AND CONDITIONS FOR SUPPLY OF WATER

1 GENERAL PROVISIONS

1.1 Short Form Water Agreement

These Terms are to be read with a SFW Agreement entered into between the Company and a Shareholder. If any conflict shall arise between these Terms and the provisions of a SFW Agreement the terms and provisions of the SFW Agreement shall prevail.

1.2 Defined Terms

The abbreviations and definitions set out in clause 43 shall apply to these Terms.

2 PRECONDITIONS TO SUPPLY OF WATER

2.1 Terms of supply to apply

These Terms come into force when the Shareholder has entered into a SFW Agreement and holds the Specified Shares for the maximum volume of Water to be supplied to the shareholder for irrigation purposes with the Company delivering irrigation water to the Property as specified by the Shareholder and agreed to by the Company, such Water to be delivered to the Shareholder during the Irrigation Season at the Approved Rate (subject to reliability).

2.2 Alteration to Minimum Shares and/or Volumes of Supply

The Company may at any time give notice that is applicable to all Shareholders taking Water from the Company that:

- (a) the Specified Shares required to be held by each Shareholder to obtain Water from a Specified Area at the Approved Rate has been altered; and/or

- (b) a Specified Area has been altered in area; and/or
- (c) the volume of Water available for distribution has been altered.

2.3 **Minimum Shareholding**

The Board may impose in respect of any Specified Area that a minimum number of a class or classes of shares must be held before the Company will deliver any irrigation Water or enter into a supply contract with a land owner in that Specified Area.

3 **HOLDING OF SHARES**

3.1 **Specified Shares to be held**

The supply of Water by the Company to each Shareholder is conditional upon the relevant Shareholder holding the Specified Shares for the Property to be irrigated as set out in the SFW Agreement.

3.2 **Change to Number of Specified Shares**

Subject to the provisions of clause 3.10 the Company may change the number of shares required to be held by a Shareholder as Specified Shares to qualify for the supply of Water or change the volume of Water to be supplied in relation to the number of shares or class of shares held provided the same standard as to the number and specified class of shares to be held shall apply to all Shareholders taking Water from a Specified Area within the Scheme Area. The Company may specify that different classes of shares may have different priority rights to the delivery of Water.

3.3 **Determination of Specified Areas**

The Board may determine that a part of the Scheme Area is designated as a Specified Area and may alter that Specified Area from time to time. As part of that designation the Board may also determine that only the holders of a specified class of shares in the Company can receive a supply of Water within that Specified Area.

3.4 **Class Shares Stapled to Specified Area**

The Board may determine from time to time in respect of a specified class or classes of shares that only receive Water within a Specified Area that no transfer of those shares to a transferee outside that Specified Area will be approved by the Board.

3.5 **Shareholder must hold Specified Shares**

The supply of Water under these Terms is conditional upon the Shareholder continuing to hold the Specified Shares or the number of shares specified under clauses 3.1 and 3.2 to the intent that if the Shareholder shall at any time cease to hold those Specified Shares, or cease to use the Water to irrigate the Property (except as provided for under clause 3.6(d)) then the Company may exercise a number of rights

including suspending the supply of Water, varying that supply or terminating the supply of Water to the Shareholder. If the Company ceases to supply Water to a Property except where a Shareholder requests a suspension of the supply of Water for a specified period, then the Company may surrender those shares at their nominal value as specified in the constitution of the Company.

3.6 **Transfer of Water Right**

The maximum volume of Water to which a Shareholder is entitled at the Approved Rate shall be transferable by the Shareholder only in the circumstances set out below:

(a) **Sale of Property**

Where the Property to which the shares relate is being transferred with the Shares held by the Shareholder relating to the Property by that transferee signing a SFW Agreement and holding the Property and Shares in the same names; or

(b) **Transfer to another Property**

To another property owned or farmed by the Shareholder within the Specified Area to which that class of shares relates with the prior written consent of the Company, which consent may be withheld without giving any reason or be given on such conditions as the Company determines, provided that the property to which the Water is delivered is within the Scheme Area and can be serviced from the relevant Distribution System; or

(c) **Transfer of Shares and Water Rights**

The Shares and the right to Water attached thereto may be transferred to a person or entity that owns or farms a property in a Specified Area serviced by the Distribution System subject to the prior written consent of the Company which consent may be withheld without giving any reason or may be given on such conditions as the Company determines including the entering into of a SFW Agreement.

(d) **Licensing of Water**

A Shareholder may license the right to Water to a person who farms a property within the Specified Area within which the property of that shareholder is situated and which is serviced by the Distribution System (or may be serviced pursuant to clause 3.7) subject to:

- (i) the class of shares held by that Shareholder giving the right to Water within the same Specified Area within which the property of the proposed licensee of Water is situated;

- (ii) the prior written consent of the Company; and
- (iii) that licensee signing such documents as may be required by the Company; and
- (iv) the Shareholder holding that right to Water continuing to be liable to pay all Water Charges and being responsible for compliance by that licensee with all obligations under these Terms; and
- (v) any licensing of that Water being notified to the Company prior to the start of an Irrigation Season or as approved by the Board; and
- (vi) the licensing being for a specified term as notified to and approved by the Company; and
- (vii) the distribution of that Water will comply with and meet the requirements of all Statutory Requirements and any Regulatory Policies; and
- (viii) the licensee complying with the Policies of the Company;
- (ix) such other terms and conditions as the Company considers appropriate.

3.7 Delivery of Water to Property not connected to Distribution System

Where a Shareholder requests the Company to deliver Water to a Property within the Specified Area that is not connected to the Distribution System then the following provisions shall apply:

- (a) the Company may decline or accept such request on such terms and conditions as the Company determines;
- (b) as part of the terms and conditions in giving approval the Company may require the Shareholder making such request to:
 - (i) pay all costs and expenses in installing a Connection Point or other connection and any other infrastructure, race or pipeline, including any Metering Equipment as specified by the Company, from the Distribution System to the relevant Property; and
 - (ii) obtain all easements, consents and approvals (to be registered in favour of the Company) required to install, lay, maintain and replace any structure, race or pipeline; and

- (iii) vest all easements and any new structures including the extended races and pipelines in the Company; and
 - (iv) obtain and implement all electricity and media easements including the installing of all media lines, electricity cables and lines and telemetry needed or required to support the delivery of Water; and
 - (v) pay all charges in connecting the Shareholders Works to the Connection Point for delivery of Water; and
 - (vi) obtain all resource consents, and other statutory and regulatory consents required or necessary to carry out and implement that extension to the Distribution System;
- (c) The consent and approval of the Company may be given subject to such other terms and conditions (including any variation to the requirements of sub-clause 3.7(b)) as the Company considers appropriate.

3.8 Change of Delivery Method for Water

If a shareholder requests the Company to change the manner in which Water is delivered by the Company from open race to piped water, or from piped water to open race, or any other change in the delivery method, the shareholder must seek the prior written approval of the Company to that change. If the change is approved the Board may give that approval on such terms and conditions as it thinks fit.

3.9 Company may charge interest

The Company may issue partly paid shares and may require a Shareholder who takes up partly paid shares to pay interest at such rate as the Board considers is reasonable on any unpaid calls on those partly paid shares. In the event that any calls are not paid on due date Default Interest shall be payable on any unpaid calls from the due date. The Board may impose other terms and conditions on the issue of partly paid shares.

3.10 Classes of Shares to be held together

Where the Company has issued Specified Shares that are classified into different classes of shares having different priority rights to access Water, the Company may require a Shareholder to hold a minimum number of a specified class of shares as a condition to the Company supplying Water to that Shareholder. Both classes of shares may be transferred by a Shareholder in the proportions determined by the Board provided the party to whom shares are transferred must hold a minimum number of each such class of shares as specified by the Board.

4 SUPPLY OF WATER

4.1 Volume of Water to be Supplied

Subject to the other provisions contained in these Terms, which provisions shall be paramount, the volume of Water that will be supplied by the Company to the Shareholder is to be at the Approved Rate, delivered to the Property to be irrigated as set out in the SFW Agreement. Different classes of shares may as between them have different priority rights to the delivery of Water.

4.2 Water Only Suitable for Irrigation

The Water to be supplied by the Company to the Shareholder is to be used for irrigation, stock water and other permitted purposes that comply with all conditions of any Resource Consent and such other uses approved by the Board in the Policies posted on the Website of the Company. Any use of the Water for consumption by livestock is at the risk of the Shareholder and no warranties are given by the Company that the quality of the Water will be suitable for livestock.

4.3 Supply of Water Subject to Availability / Conditions

The supply of Water is always subject to the availability of Water from RDRML, the requirement of the Company for the Shareholder to have access to Stored Water, compliance with the Resource Consents, any Farm Environment Plan that has been implemented, the Scheme Management Plan, all Policies, and with all Statutory Requirements. The Company may also restrict or limit in whole or in part the Water made available to a shareholder where Water is required for storage or other purposes beneficial to the Scheme as a whole. The Company will use all reasonable endeavours, but does not guarantee, to provide to the Shareholder the volume of Water as set out in the SFW Agreement during the Irrigation Season. The Company may determine as between Shareholders having different classes of shares the priority right to Water for irrigation purposes during the Irrigation Season and may also restrict Water from being transferred from any Specified Area to another Specified Area.

4.4 Water not Continuously Available

Water will only be available to the Shareholder during such periods as the Company has Water available for supply to the Shareholder and the Company does not guarantee that Water will be supplied at the delivery rate referred to in the SFW Agreement and specified elsewhere in these Terms.

4.5 Water may be Supplied at Intervals

The supply of Water to which the Shareholder is entitled under these Terms is set out in the SFW Agreement and such Water is to be supplied at such intervals as the Company may from time to time determine in accordance with clause 5.

4.6 Water Only Available During Irrigation Season

Water shall only be supplied during the Irrigation Season and no Shareholder shall be entitled to or shall seek the delivery of Water outside the Irrigation Season.

4.7 Volume of Water Available

The Company agrees that subject to availability of Water from the RDR and any Stored Water, and any restrictions that may be placed on that supply of Water, the Company will provide to the Shareholder during each Irrigation Season the volume of Water set out in the SFW Agreement at a delivery rate not exceeding the Approved Rate and subject to any priority rights to receive Water.

4.8 Restrictions and Requirements on Volume of Water Available

The Water to be provided to a Shareholder under clause 4.7 may be subject to restrictions and requirements imposed by the Company on:

- (a) the area within the Scheme where such Water may be used;
- (b) the right to transfer that Water out of a Specified Area;
- (c) the ability to transfer the right to use that Water within a Specified Area;
- (d) priority rights to receive Water.

4.9 Differing Rights to Water

The Company may attach differing rights to receive Water to different classes of shares and also require different charges to be levied against the holders of different classes of shares based on the reliability of the supply of Water and/or the different level of services or infrastructure provided by the Company to different shareholders provided that shareholders having the same rights shall pay the same charges.

4.10 Differing Charges for Differing Services

Within each class of shares held by a shareholder, or in a particular part of the Scheme Area, the Company may determine that different charges may be payable by shareholders arising from the different level of services, or different type of delivery of Water, provided by the Company or different charges may be applicable arising from a change in the method of supply of Water.

4.11 Shareholder Must Comply with Policies

The Company may require the Shareholder to comply with policies, rules and directives relating to the use of the Water (*the Policies*). The initial Policies are contained on the website of the Company and shall be complied with at all times by the Shareholder. The Company may

replace those Policies, rules and directives at any time by giving notice to the Shareholder and placing the new rules, policies and directives on the website of the Company.

5 DELIVERY SYSTEM FOR WATER

5.1 Application of Policies for Water Delivery

The Company shall on a regular basis and from time to time provide to all Shareholders who are entitled to Water from the Scheme Policies relating to the supply of that Water, which Policies must be complied with by all Shareholders, taking into account the following factors:

- (a) the restrictions that may be placed on the supply of that Water due to insufficient Water being available for take from the RDR under the Resource Consents and the requirement for that Water to be equitably distributed to all Shareholders entitled to that Water subject to priority rights to that Water
- (b) the utilisation of Water from ponds established by the Company;
- (c) the utilisation of Water from ponds established by a Shareholder or to which a Shareholder has rights to receive Stored Water;
- (d) any requirements under any Statutory Requirements for restricting the supply of that Water;
- (e) the right to manage the supply of that Water so it is supplied at varying intervals and rates and for varying periods during the Irrigation Season to meet as far as may be practicable the requirements of Shareholders during the Irrigation Season;
- (f) the measurement and management of nutrients on the Property and compliance with any policies, rules and directives on nutrient management;
- (g) the class of shares in the Company held by a Shareholder.

5.2 No Liability for Failure to Supply

The Company shall not be liable to any Shareholder for any failure to deliver Water at any time during an Irrigation Season provided the Company shall use all reasonable endeavours to ensure Water will be supplied if available.

5.3 Water held for Storage by Company

The Company shall have the right, in priority to Shareholders, to take Water for the purposes of storing that Water in storage ponds controlled by the Company. In respect of any Water stored in those ponds the Company:

- (a) shall have a discretion as to how and when that Stored Water is released to Shareholders; and
- (b) may determine those Shareholders who have the first right to utilise that Stored Water for irrigation in priority to any other potential user of that Water;
- (c) may restrict the availability of Water to a specified class of shareholder or to shareholders within a specified area of the Scheme.

5.4 **Fair Allocation of Water**

The Company will at all times seek to act in an equitable manner as between all Shareholders entitled to Water so that they all receive a fair proportion of Water, based on the volume to which they are entitled, the priority rights to that Water, and the relevant class of shares held during each Irrigation Season.

5.5 **Restriction on Supply**

If a Shareholder acts in a way that could prejudice or breach in any manner the Resource Consents, or acts in breach of any Management Plan or the Scheme Management Plan of the Company or RDRML or any rule or plan of ECan then the Company may restrict the supply of Water to that Shareholder from the Distribution System, the RDR or from ponds owned by the Company. This restriction will only apply after the Company has given notice to that Shareholder of the requirement to remedy those breaches and the Shareholder has failed to do so within a period of 30 Business Days after the date of giving that notice or such shorter period as may be required arising from a notice or direction from a regulatory body.

6 **EXCESS WATER**

6.1 **Water Available for Allocation**

For the avoidance of doubt this clause applies to any Water which the Board determines is Water that is not being taken and utilised within the Scheme. That Water, being Excess Water, may only be dealt with by the Company in respect of such period or periods where all Shareholders have received their full allocation of Water including any additional Water to which they may be entitled so that the rights of the Shareholders are not detrimentally affected, but subject always to the provisions of clause 6.2. The Company may enter into arrangements relating to Excess Water by:

- (a) allocating or licensing the right to use that Excess Water on such terms and conditions as the Company considers appropriate;

- (b) establishing a trading platform or system (including policies and guidelines for implementing the same) for trading rights to any Excess Water;
- (c) determining the terms and conditions under which that Excess Water is allocated and/or distributed within the Scheme Area.
- (d) requiring those Shareholders who are allocated Excess Water to pay such charges as the Board determines for the supply of that Water including any Water taken above the weekly allocation of Water at the Approved Rate.

6.2 No Allocation of Excess Water if Existing Rights Not Maintained

Where, due to the mechanical failure or other inability to deliver Water in respect of the Scheme, or any part of the Scheme, the Shareholder fails to receive an equitable quantity of available Water then that shortfall shall be made up before Excess Water is made available to other Shareholders.

6.3 Direction of Company to Allocate Excess Water

The allocation of Water under clause 6.1 is entirely at the discretion of the Company and there shall be no right of the Shareholder to demand the supply of any Excess Water. The Company shall use reasonable endeavours to act in an equitable manner when allocating Excess Water.

6.4 Emergency Supply of Water

In the event that there is an intervening event outside the control of the Shareholders which creates a shortage of Water and where the Shareholders affected by that shortage can be supplied with Water that may be otherwise not available under the protocols then the Board may determine that Water shall be made available to any part or parts of the Scheme to ensure that all Shareholders are treated equitably and the Shareholders who would otherwise receive no Water, or an inadequate supply of Water, can receive some Water.

7 STORED WATER

7.1 Policies on Stored Water on Farm

The Company may from time to time set policies and guidelines on the requirements for any holders of a specified class or classes of shares to hold Stored Water. Those policies and guidelines shall be placed on the website of the Company and bind each class of shareholder who are required to hold Stored Water as specified in the policies and guidelines of the Company. A breach of those policies is also a breach on these terms and conditions. The storage capacity of all storage ponds must comply with the requirements of the Company. Water storage as determined by the Company must be available and completed as at a

date specified by the Company and contain storage capacity as specified by the Company.

7.2 Certificate on Storage Available to Shareholder

For the purposes of determining compliance with any policy of the Company on storage, the Company may require a Shareholder to provide to the Company a report or certificate from an appropriately qualified person certifying the volume of any on farm storage facilities constructed on the Property and that such storage volume is being fully utilised. Failure to provide such a certificate within 30 Business Days from a request by the Company shall be a breach of these Terms.

7.3 Losses of Water / Seepage

Every Shareholder who receives Water from the Company may suffer losses in the volume of Water supplied due to leakage and seepage that may occur during the conveyance of Water and this may result in the Shareholder receiving less Water than the contracted Water volumes. The Company will from time to time notify shareholders of the expected losses in volume arising from the above matters.

8 OBLIGATIONS RELATING TO WATER

8.1 Rules on Utilisation of Water

The Shareholder acknowledges that in respect of any Water released to the Shareholders' Property that the Shareholder shall:

- (a) only use and distribute that Water in accordance with Good Management Practice in compliance of the Resource Consents and the requirements of any statutory body;
- (b) utilise a system and equipment, and apply and use methodologies, as may be prescribed by the Company as being Good Management Practice from time to time;
- (c) comply with any Management Plan approved by the Company under clause 9 and the Scheme Management Plan;
- (d) comply with all policies notified to Shareholders under clauses 4.10 and/or 5.1;
- (e) comply with the requirements in clause 10.

8.2 Shareholder Cannot Operate to Affect Water Distribution

The Shareholder shall not operate any plant, equipment or other works on the Shareholder's Property in a manner that could affect the distribution of Water by the Company, damage any part of the Scheme or the Distribution System or in a manner that may be detrimental to the Scheme or the Distribution System.

8.3 Good Management Practice in Using Water

The Shareholder and the Company shall each respectively ensure that all irrigation on the Property to which Water is distributed shall be carried out in accordance with Good Management Practice and also in accordance with any Farm Environment Plan and related environmental requirements from time to time applicable to the distribution of Water and which matters shall traverse all terms and provisions of Resource Consents, Statutory Requirements, Good Management Practice and company policies including the Scheme Management Plan that may be applicable from time to time.

9 BREACH OF FARM ENVIRONMENT PLAN OR SCHEME MANAGEMENT PLAN

9.1 Farm Environment Plan

If required by the Company each Shareholder who has the right to receive Water from the Company shall prepare and implement a Farm Environment Plan for irrigated land use to demonstrate how the Shareholder is actively managing the use of the Water to achieve high standards of environmental and nutrient management and manage on the Property production from irrigation. That plan shall include such matters as the Company may require from time to time and shall be provided within a time period specified by the Company.

9.2 Compliance with Regulatory Framework

Each Shareholder shall also in addition to the requirements of any approved Farm Environment Plan comply with all other industry quality assurance programmes, codes of practices, Policies, specific Regulatory Policies and legal requirements, and all other requirements to ensure Good Management Practice is maintained in respect of the sustainable farm management and the use and application of Water on the Shareholder's Property.

9.3 Compliance with Scheme Management Plan

The Company may publish on its website a Scheme Management Plan for management of the irrigation Scheme. The Company will at all times be responsible for the enforcement of any applicable Scheme Management Plan and, to the extent required, the Shareholder will comply with the terms and provisions of the Scheme Management Plan. The Shareholder acknowledges that the Scheme Management Plan is an essential element for the continuity of the Resource Consents held by the Company and must be complied with in all material respects.

9.4 Regulatory Authority Requirements

Each Shareholder shall comply with and meet the requirements of any Regulatory Authority to provide such Farm Environment Plan, farm operating plan or other plans as determined by that Regulatory Authority and in accordance with the requirements of that Regulatory Authority.

9.5 **Audit**

The Company may implement an audited self management plan under which each Shareholder shall:

- (a) carry out an audit of the farm practices and environmental management for the relevant Property; and
- (b) provide such information, questionnaires and reports to the Company as reasonably required by the Company; and
- (c) be subject to such external audit as determined by the Company to audit the Shareholder's compliance with all Regulatory Policies; and
- (d) comply with any requirements of the RDRML in respect of farm and water management policies or plans required and imposed by RDRML on all Shareholders taking Water conveyed by the RDR.

9.6 **Compliance with Regulatory Policies**

In distributing Water on to the Property, the Shareholder will observe and comply with any Regulatory Policies or Policies of the Company as to maximum volume of Water that can be distributed on each hectare of land for a specified period. That volume of Water may be altered from time to time.

9.7 **Notice of Breach - Termination**

In the event that the Shareholder breaches any of these Terms or the SFW Agreement or any of the provisions contained in the Farm Environment Plan (if applicable) or the Scheme Management Plan or fails to provide information under clauses 9.1, 9.5 and 10 then the Company may give notice of breach to the Shareholder as set out in clause 23 and if necessary terminate these Terms and the SFW Agreement as set out in clause 20.

10 **FARM ENVIRONMENTAL COVENANTS**

Every Shareholder must meet the environmental objectives, targets and performance as required and notified from time to time by the Company to all Shareholders. This shall include all Shareholders:

- (a) Providing to the Company, within 20 Business Days after a notice of request from the Company, a farm nutrient budget using Overseer or such other system as designated by the Company and using protocols notified by the Company.
- (b) Complying with any notice given by the Company to a Shareholder to implement a plan and programme to reduce nutrient losses including farm management charges.

- (c) Complying with the terms, provisions and requirements of environmental policies and audited self management policies including on farm management practices required by any of the Company, ECan and RDRML.

11 **MANAGEMENT OF THE SUPPLY OF WATER**

11.1 **Notification of Availability of Water**

For the purpose of giving any notice to the Shareholder of the volume of Water which is available from the Company to the Shareholder the Company shall have the right to post on the website of the Company at such intervals as the Company may determine, or provide that information by other electronic means, the volumes of Water which are likely to be available for any specified period in a Specified Area and any restrictions on the availability of Water due to reliability of supply or other factors. If during that period the volume of Water available shall change then a further notification shall be made on the website of the Company. Postings of the amount of Water available on the website of the Company shall be deemed sufficient notice to the Shareholder.

11.2 **Process for Delivery of Water**

The Shareholder acknowledges and accepts in respect of the supply of Water by the Company that:

- (a) It is the obligation of the Shareholder to determine from the Company the volume of Water available, whether any restrictions apply, and if any Excess Water is available.
- (b) different classes of shares have different priority rights to access Water for irrigation and storage and no shareholder will object to or challenge the manner in which Water is allocated by the Company;
- (c) the Water may not be potable and may not be suitable for consumption by stock or for any purpose except irrigation;
- (d) requests for the delivery of Water by the Company shall be undertaken in accordance with such procedures as the Company may establish and maintain from time to time and post on the Company's website;
- (e) if during the Irrigation Season the availability of Water to the Company for distribution to Shareholders is diminished or must be suspended in any way then the Company shall make Water available to the Shareholders only insofar as it is practicable for it to do so and in an equitable manner between all Shareholders entitled to that Water. If the Company has to reduce supply then

it shall be entitled to do so in such manner and in such shares and proportions as in its sole discretion the Company may determine;

- (f) that if under any resource consents relating to the Property there is a restriction as to the volume of Water per day that can be applied per hectare on that Property or any other like restriction then if the Shareholder has more than one supply of water for irrigation and breaches any such restriction the Company may reduce the volume of Water delivered to the Shareholder or cease supplying Water until that restriction is met.
- (g) For each different class of shares Water may only be available in a Specified Area or may only be available at a lower rate of reliability and a lesser priority to other classes of shares.

11.3 No Compensation if Water Not Available

The Shareholder shall have no right of action against the Company nor any entitlement for damages or compensation of any nature whatsoever in any of the following circumstances:

- (a) a failure by the Company to supply Water in terms of these Terms and the SFW agreement; or
- (b) as a result of any reduction in the supply of Water; or
- (c) if there shall be any matter relating to the quantity or quality of Water supplied to the Shareholder; or
- (d) if there shall be any contaminants or toxins in the Water supplied by the Company; or
- (e) any failure of RDRML to deliver Water into the Distribution System;
- (f) any other loss or damage suffered by a Shareholder including any loss of value or profits.

11.4 Connection and Metering

The Water shall be available at such Connection Point as the Company may from time to time determine and shall be measured by the Metering Equipment specified by the Company and maintained by the Company. The Company shall have the right at any time to enter the Property and maintain and change the device used for measuring and controlling Water supplied to the Shareholder.

11.5 Not to Interfere with Metering Equipment

The Shareholder shall not alter or interfere with the Metering Equipment or allow any person to do so. The Shareholder shall be responsible for

any damage caused to the Metering Equipment (fair wear and tear excepted) and shall pay the costs in replacing the Metering Equipment if damaged due to the act or omission of the Shareholder, and as required by the Company.

11.6 Limited on Water Take

The Shareholder shall not take from a Connection Point more Water than the Shareholder's entitlement pursuant to the SFW Agreement (including any Excess Water allocated to that Shareholder) or otherwise than in accordance with any Resource Consent, Management Plan or Scheme Management Plan including the right to any Water stored by the Company for release.

11.7 Reading from Meters

The Company shall read the Metering Equipment, or the information available from telemetry, at such intervals as the Company determines and advise the Shareholder of the volume of Water used. The information from the metering or telemetry equipment shall be taken to be correct unless there is a manifest error in that information.

11.8 Right to restrict Water takes

The Company may introduce policies or determine rules and requirements in considering whether or not to give an approval to a direct take of Water from a race or canal. The Board in considering any application for a direct take may:

- (a) require the building of a buffer pond;
- (b) require covenants that if the race or canal is piped for any infrastructure used for that direct take to be changed at the cost of the shareholder;
- (c) require electronic metering for that take;
- (d) impose such other terms, conditions and requirements as the Board considers are appropriate.

12 INTERRUPTION TO SUPPLY OF WATER

12.1 Planned and Unplanned Interruptions

The Company may interrupt or reduce the supply of Water at any time the Company reasonably considers it necessary to do so for planned and unplanned interruptions in accordance with this clause.

Planned Interruptions

- (a) In situations where the Company determines the need for the interruption in accordance with Good Industry Practice to:

- (i) enable the Company to inspect, and to effect alterations, maintenance, repairs or additions to any part of the Irrigation Infrastructure; or
- (ii) avoid the risk of danger to persons, damage to Property or interference with the regularity or efficiency of the supply of Water; or
- (iii) preserve and protect the proper working of the Distribution System.

Unplanned Interruptions

- (b) In situations where the Company does not know of the need for the interruption in advance, including without limitation:
 - (i) faults in the Distribution System caused by equipment failure, accident, storm or similar event; or
 - (ii) wilful or reckless damage to the Distribution System; or
 - (iii) emergencies; or
 - (iv) an event of Force Majeure.

12.2 Notice of Interruption

Where the Company interrupts delivery pursuant to clause 12.1(a) the Company shall give prior written notice to the Shareholder and the Company shall liaise with the Shareholder over the timing of the interruption to minimise inconvenience to the Shareholder. The parties agree that where reasonably practicable planned interruptions shall occur outside of the Irrigation Season.

12.3 Notice After Event if Interruption Not Planned

Where the Company interrupts supply pursuant to clause 12.1(b), as soon as it is practicable the Company shall report to the Shareholder:

- (a) the area affected by the interruption;
- (b) the reasons for the interruption; and
- (c) the expected duration of the interruption.

12.4 Company to minimise period of interruption

In all situations of interruptions the Company shall use reasonable endeavours to minimise the period of interruption.

13 **RESPONSIBILITIES OF SHAREHOLDER**

13.1 **Shareholder must Install on Farm Works**

The Shareholder shall be responsible for installing and maintaining all of the Shareholder's Works as may be required by the Shareholder to take and distribute Water beyond the Connection Point.

13.2 **Connection Point / Metering / Company Property**

The Shareholder acknowledges that:

- (a) the Connection Point on each Shareholder's Property shall be the property of, and owned by, the Company; and
- (b) the Metering Equipment on the Property shall be owned by the Company.
- (c) If the Shareholder installs any metering equipment then the Company shall be entitled to all data from that metering equipment and to check that equipment and test that it is accurate from time to time. If it is found to be inaccurate an adjustment in Water Charges may be made by the Company.

13.3 **Shareholder responsible for upkeep**

The Shareholder shall be responsible for maintaining, keeping clear, and managing all races and pipelines within the Property of the Shareholder. The Shareholder, to the satisfaction of the Company, shall mark the position of all underground pipelines to ensure they are not damaged and shall not carry out earthworks that could cause any damage to races or pipelines. Any such work shall be carried out as specified by the Company and shall be subject to the approval of the Company which shall have rights of access to the Property to ensure the obligations under this clause are being met.

13.4 **Backflow**

The Company may require the Shareholder to install, at the cost of the Shareholder, plant and equipment to prevent or control among other matters backflow, pressure relief, measurement of Water and such other matters reasonably required by the Company.

13.5 **Shareholder to obtain easements and rights**

Where Water is made available to the Shareholder away from the Property boundary the Shareholder shall be responsible at the Shareholder's cost for arranging all pipes, connections and other equipment to deliver Water to and over the Property or to and over any adjacent Property to that point of supply and for obtaining any easements or rights necessary for the delivery of such Water.

13.6 Notice to be given of Sale

If the Property shall be sold the Shareholder shall ensure that at the same time:

- (a) notice of that sale is given to the Company;
- (b) the Shares shall be transferred to the Purchaser of the Property;
- (c) the Purchaser shall be required to enter into a new SFW Agreement with the Company in the form then applicable;

The Company may withhold the supply of Water if the Shareholder sells the Shares, or the Property, without at the same time complying with the foregoing provisions.

13.7 Subdivision / Transfer of Property

If part of the Property, and rights to Water, are to be transferred the Shareholder must agree with the Company the basis for a new SFW Agreement to be executed, the class of Shares to be held and the Water to be supplied to the parts of the Property affected by such sale and the costs of installing a further Water Connection. The Company may withhold the supply of Water until Shares are held by, and a SFW Agreement is entered into, with the Purchaser of part of the Property and the rights under these Terms have been reviewed to take into account the transfer of part of the Property. If the continuity of the supply of Water becomes uneconomic the Company may refuse to consent to the transfer of any rights to Water.

13.8 Limit of Water Take arising from regulatory issues

If under any Statutory Requirements or to comply with any Regulatory Authority the volume of Water available to the Shareholder for irrigation under any consents, including the Resource Consents, is restricted or limited then the Shareholder agrees to limit the Water taken under all consents to ensure the Statutory Requirements or any other conditions or requirements under any consents (including the Resource Consents) or required by a Regulatory Authority are met and complied with in all respects.

13.9 Water only suitable to be used for irrigation

The Shareholder shall only use the Water for irrigation on the Land, stockwater and dairy shed purposes and will not use the Water for any other purpose (including as potable water, for generation of electricity or any other purpose) except with the prior written consent of the Company which consent may be arbitrarily withheld.

14 WATER CHARGES

14.1 Fixing of Water Charges

The Company shall in each year for each Irrigation Season determine and fix Water Charges at such figures as the Company shall in its sole discretion determine, having regard to the amounts required to fund its funding and operational requirements for that year which Water Charges shall be charged to, invoiced and paid by the Shareholder monthly or at such other time or times as the Company may require. The charges shall include all charges payable by the Company for the fixed costs relating to the Distribution System, including the costs for access to, conveying Water through and maintaining the RDR, any contributions required by RDRML, any interest and other charges payable to a lender, and to cover all administration costs of the Company and may include such other charges as are reasonable.

Different charges may apply:

- (a) to different classes of shares; and/or
- (b) arising from different methods or types of delivery; and/or
- (c) to different services or rights being provided; and/or
- (d) arising from Shareholders obtaining benefits or rights specified by a shareholder and agreed to by the Board.

14.2 Difference between Standard Charges and Special Charges

The Water Charges shall be separated out into:

- (a) Different Standard Charges for the holders of different classes of shares or applicable to holders of shares who own proportions within different Specified Areas.
- (b) Such Standard Charges shall be determined for each Year and advised to all Shareholders and applicable from 31 May in each year. The Standard Charge shall be payable by each class of Shareholders in proportion to their shareholding;
- (c) A Special Charge that shall be payable as determined by the Board and may be a charge payable by all Shareholders, or a specified class of Shareholders, or by a specified group of shareholders in such manner and proportions as the Board determines is equitable.

The decision by the Board on the allocation and recovery of the Water Charges from each class or group of shareholders shall be final and binding on the Shareholder and all shareholders of the Company.

14.3 Annual Review of Water Charges

All Water Charges may be reviewed annually and may increase by such sum as the Company shall determine having regard to:

- (a) the annual cost of the Scheme including financing and debt repayments; and
- (b) any necessary capital works required in respect of infrastructure within the Scheme; and
- (c) external factors such as interest rates, contract charges for use of other facilities or similar charges;
- (d) a review of all operating expenses including contributions to RDRML.

14.4 Payment – Direct Debit

All Water Charges shall be payable by direct debit from the bank account specified by the Shareholder and the parties will sign all forms necessary to enable Water Charges to be paid by this method.

14.5 Excess Water Charges

Charges for Excess Water shall be on such basis as the Company shall determine from time to time.

14.6 Power Generation Fees

The Company may determine fees payable by a Shareholder for utilising the Water within the Scheme for generating mechanical or electrical power from turbines or such other use as may be approved by the Board. All fees for the same type of approved use shall be consistent for all Shareholders holding the same class of shares or being within a specified category of shareholders as determined by the Company.

14.7 Interest on Unpaid Charges

If the Shareholder does not make payment of Water Charges on due date then, (provided written demand has been made) the Company shall be entitled to charge the Shareholder interest on any amount outstanding from due date until payment in full at the Default Interest rate. Such sum may be recovered as a liquidated debt due by the Shareholder to the Company.

14.8 Charges not affected by Water shortage

The Shareholder acknowledges that the Water Charges shall be payable by the Shareholder notwithstanding that:

- (a) The Shareholder may not have consumed any Water during the relevant period for charging the Shareholder; or

- (b) The Company may have been unable to supply Water or the required volume of Water to the Shareholder for all or part of the relevant period for charging the Shareholder (provided that such non-supply was not due to the wilful default of the Company).

14.9 **GST**

All charges shall be on a plus GST basis.

15 **STORAGE CHARGES**

15.1 **Stored Water**

The Company and the Shareholder may enter into a commitment for the Shareholder to have the right, for a specified period, to take Stored Water and for the Company to release Stored Water subject to Water being available for that purpose under a Storage Agreement.

15.2 **Company to request release of Stored Water**

The parties agree that subject to the Company having the ability under a Storage Agreement to request the release of Water for delivery to Shareholders the Company shall request the release of that Water where it is economical to do so.

15.3 **Process for Requesting Delivery of Stored Water**

The Company shall notify on the Company's website a policy and process under which a Shareholder, who has entered into an agreement with the Company to receive Stored Water, may request the delivery of Stored Water to that Shareholder. If the Shareholder requests the delivery of Stored Water the Company shall release Stored Water provided the aggregate volume requested justifies that release.

15.4 **No Right to Excess Stored Water**

A Shareholder shall not be entitled to require the release of Stored Water in excess of the volume of Water at the maximum flow rate per hectare based on the combined release of Stored Water and Water distributed from the RDR and for which the Shareholder has contracted with the Company for the right to Stored Water.

15.5 **Terms and Conditions for Stored Water**

The Company shall post on its website the terms and conditions relating to the delivery of Stored Water and the charges payable by a Shareholder being fixed annual charges, charges relating to volume and for delivery, or a combination of such charges. Such Stored Water will only be delivered where the Company has the right to request the release of Stored Water under a Storage Agreement and the supply to the Shareholder is as contracted with the Company and requested by the Shareholder.

15.6 Payment of Storage Charges

The Shareholder shall pay Storage Charges to the Company in addition to the other charges payable under this agreement based on the total volume of Stored Water contracted to be delivered by the Company to all shareholders at the start of each season and the proportion of that Water which is contracted to be delivered to the relevant Shareholder.

15.7 Notification of Stored Water Requirements

Each Shareholder requiring Stored Water to be set aside and allocated to that Shareholder shall sign a form as set out in the Schedule to the SFW Agreement committing to the volume of Stored Water for the period set out in that form.

16 SPECIFIC CHARGES

In addition to the standard charges payable under clauses 14 and 15 when a Shareholder requests the delivery of Stored Water the relevant Shareholder shall pay such additional release charges as may be determined by the Company.

17 ADJUSTMENTS TO CHARGES

The Company may vary any Charges payable by shareholders to effect an equitable pass through of any increase or decrease in the prices charged to the Company in respect of any of the components of the Water Charges (including without limitation charges relating to the supply of electricity necessary to operate the Scheme) where any increase or decrease in prices may occur.

18 EASEMENTS

18.1 Access to Property

Subject to the provisions of clause 22 the Shareholder gives to the Company the rights for its employees, contractors, invitees, and other persons authorised by the Company to access the Property of the Shareholder to:

- (a) lay, renew, maintain or alter any pipes, races, structures, lines or other facilities or structures necessary to implement the irrigation scheme of the Company;
- (b) ensure the Company can maintain a continuous distribution of Water throughout the Scheme to all Shareholders of the Company.

18.2 Grant of Easements

The Shareholder agrees to grant such easements in gross over the Shareholder's Property as the Company may reasonably require in relation to the laying of races, canals, pipes, concrete structures, underground or overhead electricity lines, telemetry, communications and the installation of plant, equipment and measuring devices relating to the Distribution System including any repairs, extension or renewal

thereof as needed for the Scheme from time to time. Such easements shall be granted with no compensation payable to the Shareholder. The Company will prepare at its cost any easements and survey plans necessary for those easements and the Shareholder will ensure the owner of the Property promptly executes and facilitates registration of those easements. The Shareholder will bear any costs incurred by the Shareholder in relation to the registration of those easements.

18.3 Authority to Sign Easements

If the Shareholder shall fail to sign any easement or documents reasonably required by the Company pursuant to these Terms then after giving 10 business days notice of its intention to do so any two directors of the Company may sign those easements or documents on behalf of the Shareholder and the Shareholder hereby irrevocably appoints each director of the Company as the attorney of the Shareholder for those purposes.

18.4 Parties to act reasonably

The Company will give notice to the Shareholder of the requirement to obtain any easements and consult with the Shareholder in respect thereof. The Company will only exercise its power under this clause to obtain such easements as may be reasonably required for the effective operation of the Scheme and will take into account the reasonable requirements of any Shareholder in exercising the said rights.

19 ELECTRICITY LINES

The parties acknowledge that it will be necessary to upgrade and to construct and maintain new electricity lines and/or underground cables to enable the Company to establish, extend and operate the Scheme. The Shareholder will not unreasonably withhold consent to such electricity cables and lines and, where necessary, will grant the persons nominated by the Company reasonable access to the Shareholder's land for the purpose of building and operating such electricity cables and lines and creating any necessary easements. The Company will install such lines and cables to work in with the farming operation of the Shareholder and to create minimal interference for those operations and the Shareholder shall grant any required easements as set out in clause 18.

20 CESSATION OF SUPPLY

The Company may terminate the SFW Agreement and these Terms as from the date on which RDRML cannot provide Water to the Company arising from the Resource Consents held by RDRML (*RMA Consents*) having expired without any renewal thereof. If the RMA Consents held by RDRML or the Company are not renewed or extended so that Water can continue to be delivered on the terms and conditions of the SFW Agreement and these Terms then the SFW Agreement may be terminated by the Company together with the Terms.

21 **RIGHT OF ENTRY**

21.1 **Right to Inspect**

The Company and its servants, agents, employees, contractors and workmen, shall have the right at any time from time to time without being deemed to commit a trespass and without payment of compensation for damages to enter upon the land of the Shareholder or any land connected or associated with the Shareholder for all or any of the following purposes:

- (a) To gauge or otherwise determine the quantity of Water used by the Shareholder; and
- (b) To view the condition of canals, structures, pipes, works telemetry, and Metering Equipment at the Connection Points; and
- (c) To obtain information, samples, or readings relating to the land and/or farming activities on the Property; and
- (d) To carry out inspections, maintenance and replacement of any infrastructure; and
- (e) To construct any electricity cables, lines or connections or other easement works as permitted by easements to which the Company is entitled under these Terms.

21.2 **Shareholder not to impede access to Distribution System**

The Shareholder shall ensure that access to any part of the Distribution System and the Shareholder's Works used in the control and management of the Water conveyed for the Scheme is kept accessible and available for the Company to carry out any future structures, works or developments on the Shareholder's land. The Shareholder will ensure that no work carried out by the Shareholder will impede, restrict, limit or otherwise in any way inhibit or impair access or adversely affect such Distribution System or the Shareholder's Works.

22 **ACCESS TO SHAREHOLDER'S WORKS**

22.1 **Access by Company to Shareholder Property**

The Shareholder also agrees to provide the Company at all reasonable times with safe and unobstructed access to any part of the Shareholder's Works:

- (a) to install, replace, modify, repair or maintain equipment and associated fittings and any other pipes or equipment forming or to form part of the Shareholder's Works; and
- (b) examine, read or test any metering equipment, whether measuring supply under these Terms or the SFW Agreement; and

- (c) to protect or prevent danger or damage to persons or Property; and
- (d) to ascertain and remedy the cause of any interference to the supply of Water; and
- (e) to disconnect or reconnect the supply of Water; and
- (f) any other purpose reasonably connected to the supply of Water by the Company to the Shareholder; and
- (g) to take soil or other samples.

22.2 Due Care in Accessing Property

In exercising its rights of access the Company shall use all reasonable endeavours to ensure that:

- (a) where practicable the Shareholder is given reasonable notice of intention to, and the purpose for which right of access will be exercised; and
- (b) as little interference to the Shareholder's farming requirements as practicable occurs in carrying out such works; and
- (c) Good Management Practice is complied with.

23 BREACH OF AGREEMENT

23.1 Breach by Shareholder

In the event of the Shareholder committing any breach of these Terms or the SFW Agreement and such breach continues for 20 Business Days after written notice from the Company requiring such breach to be remedied (or such shorter period as may be required arising from a notice or requirement from any regulatory body), the Company may without payment of any damages or compensation to the Shareholder or any other person:

- (a) reduce the supply of Water to the Shareholder either permanently or until such time as such breaches have been made good provided that the Shareholder shall nevertheless remain liable to continue paying the Water Charges and any call on Partly Paid Shares in accordance with these Terms and the SFW Agreement.
- (b) stop the supply of Water to the Shareholder either permanently or until such time as all breaches have been made good provided that the Shareholder shall nevertheless remain liable to continue paying the Water Charges and any call on Partly Paid Shares in accordance with these Terms.

- (c) after the breach has continued for 60 Business Days forfeit the Shareholder's Shares in the Company.

23.2 **Calculation Date for Interest**

The liability of the Shareholder for interest on any Water Charges and any other payments not paid on due date shall be calculated to the end of each month and shall be payable by the 20th day (or the nearest Business Day thereto) in the next month.

24 **TERMINATION**

24.1 **Right to Terminate Agreement**

The Company shall be entitled at any time immediately to terminate the SFW Agreement and these Terms if the Shareholder ceases to be a shareholder in the Company or ceases in the opinion of the directors of the Company to be associated or connected with Shares in the capital of the Company sufficient to warrant supply in terms of the Constitution of the Company but the Shareholder shall remain liable for payment of all monies owing and for any antecedent breach of these Terms or the SFW Agreement up to the date of termination thereof and for payment of all Water Charges until such liability is taken over by another Shareholder or Shareholders.

24.2 **Notice of Termination if Water Taken Without Authority**

The Company shall be entitled at any time to immediately terminate these Terms and the SFW Agreement by notice given to the Shareholder if the Shareholder takes Excess Water without prior authorisation from the Company, but the Shareholder shall remain liable for all monies owing and for any antecedent breach these Terms and the SFW Agreement up to the date of termination of these Terms and the SFW Agreement.

24.3 **Immediate Right to Terminate – Metering Interference**

The Company shall be entitled to immediately terminate these Terms and the SFW Agreement if the Shareholder interferes with the Metering Equipment without the consent of the Company or fails to take reasonable care of the Metering Equipment.

24.4 **Right to Terminate if Calls Not Paid**

In the event the Shareholder has failed to pay a call due on any Share allotted to the Shareholder in the Company in accordance with any demand made for such outstanding amount as shall be due on such Shares, such demand remaining unsatisfied for not less than 30 Business Days after being due and payable, the Company may immediately terminate these Terms and the SFW Agreement but the Shareholder shall remain liable for all monies owing and for any antecedent breach of these Terms and the SFW Agreement up to the date of termination of these Terms and the SFW Agreement and for payment of all Water

Charges on a continuing basis until such liability is taken over by another Shareholder or Shareholders.

24.5 Right to Terminate if Water Charges Not Paid

In the event that a Shareholder fails to pay Water Charges on the due date for payment and that default continues for 30 business days then the Company may by giving 20 business days notice to that effect cancel these Terms and the SFW agreement and terminate the supply of Water but reserving the right to recover all Water Charges and interest thereon.

24.6 Company not Liable if Agreement Terminated

In the event of the Company terminating these Terms and the SFW Agreement for any reason then the Company shall not be liable to the Shareholder for any costs, damages, claims or compensation of any kind or nature whatsoever nor shall the Shareholder have any right of action against the Company.

25 ASSIGNMENT

25.1 No Right of Shareholder to Assign

The Shareholder shall not assign transfer mortgage or charge the Shareholder's interest under the SFW Agreement and these Terms without the prior written approval of the Board (which consent shall not be unreasonably withheld). No such consent will be granted where there is any actual or contingent breach of these Terms or the SFW Agreement or payment or liability outstanding and due to be met by the Shareholder, until such breach or default is remedied and no such consent to transfer will be provided unless the transferee qualifies as a shareholder according to the requirements contained in the constitution of the Company holds the required shares in the Company and has executed a SFW Agreement.

25.2 Change of Trustees – Assignment

If there is a change of trustees of a trust who are parties to the SFW Agreement and these Terms then the rights are assignable to the new trustees provided there is no change to the property to which Water is being delivered.

26 ASSIGNMENT BY THE COMPANY

26.1 Company May Assign

The Company may at any time assign and transfer the benefit of the SFW Agreement and these Terms. Thereupon that assignee shall be required to comply with the obligations of the Company under the SFW Agreement and these Terms. The Company may assign by way of mortgage the benefit of any payments due and payable under the SFW Agreement and these Terms to any financier (including a bank) which has lent moneys to the Company.

26.2 Assignee to Have Benefit of Agreement

If any assignment occurs under clause 26.1 all references in the SFW Agreement and these Terms to the '*Company*' shall thereafter be interpreted and construed as if that reference was to the relevant assignee of that benefit.

27 BENEFIT OF TERMS AND SFW AGREEMENT FOR RDRML

The Shareholder agrees that the benefit of the SFW Agreement and these Terms relating to compliance with Resource Consents is also held for the benefit of RDRML pursuant to the Contracts (Privity) Act 1982 and may be enforced by RDRML against the Shareholder independently of the Company.

28 NON-WAIVER

The failure of either party to insist in any one or more instances upon a strict performance of any of these Terms or the SFW Agreement or the waiver by either party of any term or right hereunder or any default by the other party shall not be deemed or construed as a waiver by such party of any such term, right or default in the future.

29 FORCE MAJEURE

29.1 Suspension due to Force Majeure event

If either party is unable to carry out any of its obligations under these Terms or the SFW Agreement because of any event or circumstance of Force Majeure, these Terms and the SFW Agreement shall remain in effect but except as otherwise provided, both parties' obligations, (other than obligations as to payment of Water charges), shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:

- (a) the non-performing party gives the other party prompt notice describing the circumstance of Force Majeure including the nature of the occurrence and its expected duration and, where reasonably practicable, continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (c) no obligations of either party that accrued before the Force Majeure caused the suspension of performance are excused as a result of the Force Majeure;
- (d) the non-performing party uses all reasonable efforts to remedy its inability to perform as quickly as possible.

29.2 Variation or Termination due to Force Majeure

If the event or circumstance of Force Majeure is of such magnitude or will be of such duration that it is either impracticable or unreasonable for either party to resume its obligations under these Terms and the SFW Agreement, the parties agree to negotiate in good faith as to how these Terms and the SFW Agreement may be varied or terminated having regard to the financial obligations then remaining or continuing that need to be met, utilising if necessary the Dispute Resolution procedures set out in clause 30.

30 DISPUTE RESOLUTION

30.1 Negotiation

The Shareholder and the Company shall actively and in good faith negotiate to achieve the speedy resolution of any dispute or difference which may arise between them concerning any matter arising under this Agreement.

30.2 Mediation

Every dispute or difference that is not resolved by discussion between the Shareholder and the Company may be referred by either party to mediation.

30.3 Engaging Mediator

If a dispute has been referred to mediation then the parties shall endeavour to agree on a mediator and shall submit the matter in dispute to the mediator. The mediator shall discuss the matter with the parties and endeavour to resolve it by agreement between the parties. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The parties shall each bear the party's own costs in the mediation, and shall each pay half the costs of the mediator.

30.4 Arbitration

The matter in dispute shall be referred to arbitration if:

- (a) the parties have been unable to agree upon a mediator within 10 Business Days of the dispute being referred to mediation; or
- (b) mediation has taken place and no agreement has been reached.

30.5 Appointment of Arbitrator

The dispute or difference shall be referred to a sole arbitrator for resolution if the Shareholder and the Company agree on one, or if they cannot agree on the appointment of an arbitrator within 10 Business Days, an arbitrator will be appointed by the President for the time being of the Canterbury Branch of the New Zealand Law Society at the request of either or both of them.

30.6 Mediation not to be referred to in arbitration

Where the matter has previously been referred to mediation, the mediator shall not be called by either party as a witness, and no reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute, during any subsequent arbitration on the matter in dispute.

30.7 Arbitration Act to apply

The Arbitration Act 1996 will apply in the case of any difference or dispute referred to an arbitrator in accordance with this clause and the decision of the arbitrator will be final and binding on the parties.

31 VARIATION/REPLACEMENT TO AGREEMENT

The Company reserves the right to vary or replace these Terms or the SFW Agreement by introducing alterations to or a new agreement that will apply to all Shareholders taking Water from the Distribution System. Any such variation or replacement to these Terms and the SFW Agreement shall be carried out in the following manner:

31.1 The Company shall post a notice of the variation or new agreement on the website of the Company;

31.2 A copy of the variation or new agreement, or summary thereto, shall be sent by post or email to the last known address, or email address, of the Shareholder;

31.3 The variation or new agreement shall come into effect 20 Business Days after sub-clauses 31.1 and 31.2 have been complied with by the Company or such later date as specified by the Company.

31.4 Any notice given as required by clause 35 shall be effective notice of the change of these Terms.

There shall be no requirement for the Shareholder to execute a new agreement or variation to the Terms or SFW Agreement and notice as set out in clause 31.1 above shall be sufficient to create a variation to these Terms, and a new binding agreement between the Shareholder and the Company.

32 REORGANISATION OF RESOURCE CONSENTS

In the event that the manner in which Water is delivered into the RDR or the Distribution System is materially changed then the Company may restructure and alter the provisions of these Terms or the SFW Agreement to give effect to any such change. The Company will consult with all Shareholders prior to making any such change.

33 **RDRML EXCLUSION OF LIABILITY**

The Shareholder agrees and covenants that RDRML shall have no liability or any duty of care to the Shareholder whatsoever and the Shareholder waives all liability and rights of action against RDRML. The parties acknowledge and agree that this clause 32 confers benefits on, and is enforceable by, RDRML for the purposes of the Contracts (Privity) Act 1982.

34 **RDRML/RESOURCE CONSENTS**

The Shareholder agrees and covenants that no action will be taken and no omission made that might or could detrimentally affect the resource consents held by RDRML at any time.

35 **NOTICES**

35.1 **Modes of delivery**

Any notice or communications which the Company gives to all Shareholders concerning any matter relating to this agreement may be given by email and posting that matter on the website of the Company. Notices to a Shareholder by the Company on a matter affecting a specific Shareholder may be:

- (a) delivered by hand to the designated address of that Shareholder or the Company; or
- (b) sent by post to that address; or
- (c) sent by facsimile to that Shareholder; or
- (d) sent by email.

35.2 **Effective delivery by hand**

A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.

35.3 **Effective delivery by post**

A notice or other communication delivered by pre-paid post will be deemed to have been received on the 3rd Business Day after posting.

35.4 **Effective delivery by facsimile**

A notice or other communication sent by facsimile will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission.

35.5 Effective delivery by email

A notice or other communication sent by email will be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the email is sent after 5.00pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of transmission. Any notice given by email as required by the Electronic Transactions Act 2002 shall be effective notice.

35.6 Designated Address

A designated address of a Shareholder shall be deemed to be the last address, facsimile number or email address provided by that Shareholder to the Company.

36 CONSUMER GUARANTEES ACT 1993

Water is being supplied to the Shareholder for the purposes of a business and the Shareholder agrees, pursuant to section 43(2) of the Consumer Guarantees Act 1993 to exclude the application of that Act for the benefit of the Company.

37 SEVERABILITY

Should any part or portion of these Terms or the SFW Agreement be held invalid, the remainder of the Agreement shall continue in force and effect as if the invalid provision had been deleted provided however that the parties to the SFW Agreement shall negotiate in good faith a valid and enforceable provision and replacement of the invalid provision to achieve as near as reasonably practicable the same effect as the deleted provision.

38 DELEGATION

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

39 COSTS

Each party shall bear its own costs relating to these Terms and the SFW Agreement. If a Shareholder shall seek any changes to these Terms or the SFW Agreement the costs of the Company in considering those changes shall be paid by the Shareholder and recoverable from the Shareholder. Each new party agrees to pay all reasonable costs incurred in becoming a party to these Terms and the SFW Agreement.

40 ENTIRE AGREEMENT

The SFW Agreement and these Terms embody the entire agreement between the parties in respect of the supply of Water and no representation or statement, whether written or oral, other than those expressly embodied in these Terms or the SFW Agreement shall be binding upon the Shareholder or the Company unless accepted by that party in writing.

41 **CONFLICT WITH POLICIES**

If there shall be any conflict between these Terms and the terms and provisions of any Policies the terms and conditions contained in these Terms shall prevail.

42 **GOVERNING LAW**

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

43 **DEFINITIONS USED IN THESE TERMS AND CONDITIONS**

Approved Rate means the delivery of Water at 1 litre per second of Water for every 100 shares held for such period and at such times as specified by the Company or such other rate as may be determined by the Board for all Shareholders taking Water from the Scheme.

Board means the Board of Directors of the Company;

Business Day means any day of the week other than Saturday, Sunday or statutory holidays on which banks are open for business in Ashburton;

Company includes the Company acting through the Board;

Connection Point means each point designated by the Company where the Distribution System connects to the Shareholder's Works and unless otherwise specified means the turnout from the Distribution System.

Contract Area means that area of the Property as specified in the SFW Agreement that is to be irrigated with Water supplied to the Shareholder by the Company.

Default Interest means interest at the highest rate which the Company may be paying on facilities entered into between the Company and its bankers and where such facilities do not exist the rate which the Company would pay on bank overdraft, in both cases together with a margin of 4% per annum. The appropriate interest rate shall be determined on and as from the date of default and thereafter on the last business day of each calendar month by reference to the appropriate rate on that date determined as aforesaid;

Distribution System means the electronic systems, telemetry, turnouts, races, pipes, pumps, valves, gates, ponds and other infrastructure constructed and installed by the Company to and including the relevant Connection Point;

ECan means Canterbury Regional Council (Environment Canterbury);

Excess Water means any Water that is available within a Specified Area and that is not taken by Shareholders within that Specified Area as part of that Shareholder's entitlement or otherwise utilised within the Scheme;

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 under these Terms or the SFW Agreement; and
- (b) which is beyond the reasonable control of that party and could not, or the effects of which, 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 Good Management Practice,

which occurs after the date of the SFW Agreement 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 or freezing;
- (d) action, inaction, demand, restraint, restriction, requirement, prevention, frustration or hindrance by any Governmental Agency or other competent 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 plant, equipment, machinery, lines or pipes, or, washout, subsidence or cave in or water pressure stoppages; or
- (h) restraint on access to property;

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight, economic and environmental management which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of services, the same as or similar to those provided under the same or similar circumstances as apply at that time in New Zealand;

Good Management Practice for the purposes of using Water for irrigation and other ancillary purposes shall be as specified by ECan in the Land and Water

Regional Plan, or if that purpose is not specified, as determined by the Board in a policy document;

Irrigation Season means the period beginning on 10 September in any given year and concluding on 9 May in the following year or such other period as the Company may from time to time reasonably determine;

Farm Environment Plan means a plan provided to the Company by each Shareholder and which includes an Overseer™ nutrient budget required to be observed by the Shareholder in respect of the Shareholder's farm practices and management, compliant with environmental or regulatory requirements and the policies of the Company as to the use of Water supplied by the Company as implemented from time to time:

(a) by the Company, and provided to the Shareholder; or

(b) by the Company requiring the Shareholder to provide an updated plan to the Company for approval.

Metering Equipment means the metering equipment including any electronic telemetry at the Shareholder's Connection Point for the purpose of measuring the total quantity of Water supplied by the Company to the Shareholder's Connection Point;

Policies means any policy or directive of the Company as determined by the Board and notified to the Shareholders or placed on the website of the Company;

Property means the property set out in the SFW Agreement;

RDR means the Rangitata Diversion Race;

RDRML means Rangitata Diversion Race Management Limited;

Regulatory Policies means any policies, guidelines, or requirements introduced or imposed by any statutory authority having jurisdiction that is applicable to the distribution of Water for irrigation;

Resource Consents means the Resource Consents held by RDRML and/or the Company together with all renewals, replacements, variations or amendments to the consents and includes where required all conditions relating to those consents;

Scheme includes the Distribution System and the right to use Water provided by RDRML from the RDR;

Scheme Area means the area within which the Company has the right to distribute irrigation Water as posted from time to time on the website of the Company;

Scheme Management Plan is a plan prepared by the Company for the management and operation of the Scheme as posted from time to time on the Company's website and to be observed by the Shareholder;

SFW Agreement means a short form water agreement entered into between the Shareholder and the Company in such form as specified by the Board;

Shareholder's Works means the works to be constructed by the Shareholder that connect at the Connection Point to the Distribution System to enable the Shareholder to take Water from the Distribution System;

Shares means the Shares in the Company set out in the SFW Agreement;

Special Charges means any charges which the Board determines should be paid by all shareholders or by any group of shareholders relating to the Scheme including any charge payable on particular shares, or payable by a specified group of shareholders;

Specified Area means an area within the Scheme Area as specified by the Board and such Specified Area may be altered from time to time by the Board;

Specified Shares means that number and class or classes of shares which the Shareholder is required to hold, and as specified by the Board, to obtain Water at the Approved Rate within a Specified Area of the Scheme Area;

Statutory Requirements means all requirements to be met by the Company and the Shareholder in relation to the Resource Consents or under any other regulations, by-laws, directions or plans introduced by any local authority, regional council, Government department or other statutory body;

Standard Charges means the costs and expenses of the Company in operating, maintaining, servicing and managing the Distribution System which charges are payable in proportion to each Shareholder's shareholding or as otherwise determined by the Board;

Storage Agreement means every agreement entered into by the Company under which water is stored by or for the Company for release to a Shareholder at such times as normal run of the river water flows would not otherwise be available to the Company for extraction;

Storage Charges means the charges payable to the Company or any other entity by the Shareholder for storing and releasing Water for use by a Shareholder;

Stored Water means Water which has been stored for the Company and which can be released for delivery to Shareholders as determined by the Company;

Terms means these Terms to supply irrigation Water by the Company to the Shareholder and includes any variations and replacement to these terms that may be applicable from time to time;

Water means any Water supplied under the SFW Agreement and these Terms for irrigation purposes and except where approved by the Board excludes any Water supplied for stock or other purposes or right to generate electricity from Water;

Water Charges means the aggregate charges fixed under these Terms from time to time including any Standard Charges and Special Charges as determined from time to time by the Board;

Year means each 12 month period commencing on the 1st day of June in each year and ending the following 31 May.