

DATED

2014

## **WATER SUPPLY AGREEMENT**

**Between**

**LYNDHURST WATER SCHEME CO-OPERATIVE LIMITED**

**and**

**[Name of Water User]**

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**ARGYLE WELSH FINNIGAN  
SOLICITORS  
ASHBURTON**

# Water Supply Agreement

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Date:

2014

## Parties

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1. **LYNDHURST WATER SCHEME CO-OPERATIVE LIMITED** at Ashburton ("Company")
2. **[Name of Water User]** of ("Water User")

## Background

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- A. The Water User is the registered proprietor of certain Land serviced by the Scheme owned and controlled by the Company.
- B. The Water User wishes to be supplied water by the Company and the Company has agreed to supply the Water User with water on the terms and conditions set out below.

## It is agreed

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### 1. Definitions

#### 1.1 Definitions:

"**ADC**" and "**Council**" means the Ashburton District Council.

"**Agreement**" means this agreement.

"**Annual Water Charges**" means the costs in each Year of managing, servicing, operating, maintaining, replacing (if required) and carrying out works on the Scheme including all administrative costs.

"**Best Industry Practice**" means in accordance with the practices usually followed as best practice in the operation of water supply schemes;

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

"**Board**" means Directors who number not less than the required quorum as specified in the constitution of the Company acting together as the board of directors of the Company or, if the Company has only one Director, that Director.

"**Company**" means Lyndhurst Water Scheme Co-operative Limited.

"**Connection**" is the place where the Water User's intake connects with the Scheme Supply System.

"**Constitution**" means the Constitution of 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 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;

“**Director**” means a person appointed and continuing in office for the time being, in accordance with the Company’s constitution, as a director of the Company.

“**Easement Area**” means the areas of the Land that are affected by the Scheme and as further described in any easement plan created for the purposes of clause 13.3.

“**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 this Agreement; and
- (b) which is beyond the reasonable control of that party and could not, or the effects of that event or circumstance, or that combination of events or circumstances, could not have been prevented or delayed, overcome or remedied by the exercise by the party of a standard of care and diligence consistent with best industry practice,

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

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

“**Land**” means the Water User’s Land detailed in the Schedule.

“**Loan**” means a loan facility extended to Water Users under which a Water User may borrow moneys from the Ashburton District Council in applying for Ordinary Shares in the Company, such Loan to be repaid as a special rate levied by the Ashburton District Council;

“**Meters**” means a meter at the Connection which meter has an international accreditation endorsement and has pulse output suitable for use with an electronic recording device which will measure rate and volume of water taken within an accuracy of 5%.

“**Resource Consents**” means the resource consent held by the Company under Number CRC136532 and any variation or extension to that consent and any substituted consent by variation, extension or otherwise.

“**Scheme**” means the water supply infrastructure under which water is supplied to Water Users within the Ashburton District.

“**Scheme Supply System**” means pipes, works and any control devices that deliver water to a Connection.

“**Shareholder**” means a person:

- a. Registered in the register as the holder of one or more shares;
- b. Until such time as his, her or its name is entered in the register, a person who has applied to purchase shares in the Company.

“**Shares**” means shares in the Company.

“**Statutory Requirements**” means all requirements to be met by the Company 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;

“**Water Unit**” means the maximum allocation of water that the Water User may be entitled to under the Scheme for each ordinary share.

“**Water Use**” means water that is supplied for educational and community facilities, domestic and stockwater use within the area.

“**Water User’s Works**” means the works to be constructed and maintained by the Water User to take water from the Connection.

“**Year**” will be the period from the 1<sup>st</sup> day of July in one year to the 30<sup>th</sup> June in the following year or such other period as the Company may from time to time determine.

## 1.2 Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise requires:

- a. Singular includes plural and vice versa;
- b. Any gender includes every gender;
- c. A reference to a person includes a corporation, trust, association, partnership, government authority or other legal entity, and where necessary, includes a successor body;
- d. References to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;

- e. 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;
- f. Headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- g. A reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

## 2. **Term**

2.1 This agreement shall continue for the term of the Resource Consent unless:

- a. the Company terminates this agreement for breach by the Water User of the terms of this Agreement; or
- b. the Water User fails to hold shares as required by the Constitution of the Company; or
- c. the Water User breaches the provisions of the Constitution; or
- d. the Water User breaches the provisions of this Agreement.

## 3. **Holding of Shares**

3.1 The supply of Water to the Water User is conditional upon the Water User holding that number of Shares as determined in accordance with the Constitution and by the Board.

3.2 If the Water User does not hold that number of Shares as prescribed under the Constitution for the volume of Water, and the number of Connections, required by that Water User then the Company may give notice requiring the requisite number and class of Shares to be held and if not so held within 20 Business Days after that notice the Company may terminate or restrict the supply of water to that Water User.

3.3 The Board may change the number of shares to be held for the supply of Water and for each Connection, provided the same change is made for all Water Users.

3.4 The Water available under this agreement may only be transferred:

- a. to a purchaser of the Land which has a Connection; and
- b. if that purchaser has purchased the required number of shares as set out in Clauses 4.1 and 4.2; and
- c. that purchaser has entered into a Water Supply Agreement with the Company.

## 4. **Supply of Water**

4.1 The Company will supply water to the Water User each Year for use on the Land in consideration of the payment of the water charges determined in accordance with clause 6.

4.2 The Water User shall only use the volume of Water as set out in Schedule 1 to be supplied by the Company and used on the Property and in distributing the Water on that Property the Water User shall:

- a. only distribute that Water in accordance with Best Industry Practice in compliance with the Resource Consents and the Statutory Requirements;

- b. utilise a system and equipment, and apply and use methodologies as may be prescribed by the Company as being Best Industry Practice from time to time;
  - c. comply with the policy notified to Water Users by the Board relating to Water Use within the Scheme.
- 4.3 The Water User shall not operate any plant, equipment or other works on the Water User's Property in a manner that could affect the distribution of Water by the Company or damage any part of the Scheme Supply System or in a manner that may be detrimental to the Scheme Supply System of the Company
- 4.4 The Water User and the Company shall ensure that all Water Use on the Property to which Water is distributed shall be carried out in accordance with Best Industry Practice and also in accordance with any environmental requirements from time to time applicable to the distribution of Water and which traverses all terms and provisions of Resource Consents, Statutory Requirements, Best Industry Practice and Company policies that may be applicable from time to time.
- 4.5 The Water shall be available at such Connection Point as the Company may from time to time determine and shall be measured by a Meter specified by the Company and maintained by the Company. The Company shall have the right at any time to enter the Property and change the Meter used for measuring and controlling water supplied to the Water User.
- 4.6 The Water User shall not alter or interfere with such metering equipment or allow any person to do so. The Water User shall be responsible for any damage caused to the Meter (fair wear and tear excepted) and shall pay the costs incurred by the Company in replacing the Meter if damaged due to the act or omission of the Water User.
- 4.7 The Water User shall not take from a Connection Point more Water than the Water User's entitlement pursuant to this agreement or otherwise than in accordance with any Resource Consent or Board policy.
- 4.8 The Company shall read the Meter at such intervals as the Company determines and advise the Water User of the volume of water used. The information from the Meter shall be taken to be correct unless there is a manifest error in that information.
- 4.9 The Water User's entitlement to water (i.e. quantity of a Water Unit) will be determined by the Board in their absolute discretion, at the commencement of the Year, taking into account the quantity of water available, and may be reviewed during the Year on the same basis.
- 4.10 If at any time the supply of water exceeds the Water Units to be supplied to Water Users under their agreements, the Water User may contract on a day to day basis with the Company for an additional supply of water in such quantities and for such hours as the Directors may determine in their absolute discretion.
- 4.11 The Water User will not take or attempt to take or allow any person under his control to take or attempt to take any water from the Scheme otherwise than for use on the land and through a Meter, except where the pipe through which the water is conveyed is a garden irrigation pipe installed with approval of the Company, nor otherwise than for residential domestic use and the provision of water for stock or irrigation, except with the written approval of the Company.

## 5. **Interruption To Supply Of Water**

- 5.1 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 clause 6.

### **Planned Interruptions**

- 5.2 Where the Company determines the need for the interruption in accordance with Best Industry Practice to enable any of the following to occur it shall give reasonable notice to all Water Users of that proposed interruption if this is practical in the circumstances:
- a. enable the Company to inspect, effect alterations, maintenance, repairs or additions to any part of the Irrigation Infrastructure; or
  - b. avoid the risk of danger to persons, damage to Property or interference with the regularity or efficiency of the supply of Water; or
  - c. preserve and protect the proper working of the Irrigation Infrastructure; or
  - d. ensure the water is only used for the Water Use.

### **Unplanned Interruptions**

- 5.3 In situations where the Company does not know of the need for the interruption in advance, the Company may interrupt the supply of Water and shall resume supply as soon as reasonably practical under any reasonable circumstances including without limitation:
- i. faults in the Irrigation Infrastructure caused by equipment failure, accident, storm or similar event; or
  - ii. emergencies; or
  - iii. an event of Force Majeure.
- 5.4 Where the Company interrupts delivery pursuant to clause 6.2 the Company shall give prior written notice to the Water User and the Company shall liaise with the Water User over the timing of the interruption to minimise inconvenience to the Water User. The parties agree that where reasonably practicable planned interruptions shall occur to minimise the impact on Water Users.
- 5.5 Where the Company interrupts supply pursuant to clause 6.3, as soon as it is practicable the Company shall report to the Water User:
- i. the area affected by the interruption;
  - ii. the reasons for the interruption; and
  - iii. the expected duration of the interruption.
- 5.6 In all situations of interruptions the Company shall use reasonable endeavours to minimise the period of interruption.

## 6. **Water Charges**

- 6.1 The Water User will pay the Company an Annual Water Charge to be determined by the Board of the Company from time to time.

- 6.2 The Annual Water Charge will be payable at such time and in such manner as the Board of the Company may from time to time determine and, in the absence of an express Board determination, quarterly in arrears by direct debit.
- 6.3 The Annual Water Charge determined in clause 6.1 will be payable by the Water User to the Company whether or not the Water User takes the water during the Year and notwithstanding that the water may be cut off from the Land pursuant to the provisions of this Agreement. Despite the foregoing, the Board may from time to time, in their absolute discretion, prescribe that water charges will be applied for water used, rather than water entitlement.
- 6.4 In the event of non-payment of any water charges due under this Agreement, then without prejudice to the Company's other rights and remedies, Default Interest will accrue from the date of non-payment to the date the payment is actually made.

## 7. **Water User Obligations**

### 7.1 The Water User will:

- a. Not permit any trees to be planted within the Easement Area.
- b. Promptly remove at the Water User's expense all trees presently growing on the Easement Area which may be identified by the Company as or having the potential to limit the efficient maintenance, flow, and operation, of the water Scheme Supply System;
- c. Trim and promptly remove all trimmings from all other trees presently growing on the Easement Area;
- d. Not interfere with or attempt to alter the Scheme Supply System;
- e. Take reasonable precautions to ensure that no part of the Scheme Supply System on the Easement Area is damaged by stock or other uses of the Easement Area by the Water User;
- f. Not permit any structure or fence to be erected or altered on the Easement Area without the prior written approval of the Company and then only upon and subject to the terms and conditions stipulated by the Company;
- g. Repair and maintain all fences on and along the Easement Area to the satisfaction of the Company;
- h. Not cultivate or excavate the Land within the Easement Area;
- i. Remove all debris on the Easement Area;
- j. Ensure that electric fences erected across the Easement Area have insulated break couplings suitably located to facilitate vehicle access;
- k. Allow the Company ready access at all times to the Easement Area;
- l. Observe and comply with the Company's constitution, and all relevant statutes, and bylaws, and Water Supply Scheme use practice and procedure determined from time to time by the Company.
- m. Ensure that any Lessee or other occupier of the Land complies in all respects with the terms of this Agreement.



## 8. **Company's Obligations**

### 8.1 The Company will:

- a. At its own expense repair and maintain the structure of the Scheme Supply System but excluding access tracks except where the same have been damaged by the Company's operations;
- b. When necessary to do so and at its own expense remove silt and other deleterious material from the Scheme Supply System and dispose of the same in such manner as it decides in its discretion;
- c. Take into account the requirements, both actual and potential, of the Shareholders of the Company, before extending the Scheme to any other person;
- d. Promptly pay and discharge all amounts due to it or obligations imposed on it in relation to the taking of water or the operation of the Scheme.

## 9. **Responsibility of Water User**

9.1 The Water User shall be responsible for all work carried out on the Water User's Land from the Connection Point including the installation of all plant, equipment, pipes, electrical connections and other works to distribute Water on the Water User's Land and for any other works to be carried on that Property for the use of the Water provided by the Company.

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

9.3 If under any Statutory Requirements the volume of water available to the Water User under any consents, including the Resource Consents, is restricted or limited then the Water User agrees to limit the water taken under all consents to ensure the Statutory Requirements or any other conditions or requirements of any consents (including the Resource Consents) are met and complied with in all respects.

## 10. **Environmental Provisions**

10.1 The Water User acknowledges that the Company must comply with the Resource Management Act 1991, the relevant scheme under the relevant district plan (district plan as defined under the Resource Management Act 1991) and any resource consents granted in favour of the Company in relation to the taking of water and that to ensure compliance with the same may or will from time to time prescribe or proscribe certain practices in writing to the Water User and the Water User agrees to comply with and be bound by such prescriptions or proscriptions.

10.2 Notwithstanding anything to the contrary contained or implied in this Agreement, the Water User acknowledges that the supply of water under this Agreement is expressly subject to and conditional upon the restrictions and limitations placed on the Company by any resource consents granted in favour of the Company and the requirements of the relevant district plan or other rules created by a territorial authority (territorial authority as defined under the Resource Management Act 1991).

## 11. Acquisition or disposition of interests in land

- 11.1 If the Water User sells or subdivides any of the Water User's Land capable of being supplied with water under this Agreement (the "said Land") then:
- a. The Water User must surrender the shares in the Company held by that Water User at the nominal value of those shares; if required to do so by the Company;
  - b. The Water User must have taken up the ACD Loan in order to fund part of its payment for shares, the water user must discharge its obligations under the loan by payment to ADC of the unpaid loan balance including interest in full;
  - c. The Company will be under no obligation to pay for any costs relating to any works required to be made to ensure the continuity of water supply following a change in the ownership in the said Land or any part thereof;
  - d. If the Water User is subdividing the land held by that Water User, the rights and obligations under this Agreement will be fairly apportioned by the Company so that as a result of the subdivision, each owner of the said Land will jointly and severally bear the obligations of this Agreement and share the benefit of the Water Unit (that sharing to be determined amongst themselves) ;
  - e. The Water User shall ensure that appropriate provisions will be made for the granting of all requisite water easements and other rights upon subdivision;
  - f. The Water User will ensure that the Water User's intending purchaser will become a Shareholder in the Company and will enter into the Company's then current water supply agreement;
  - g. The intending purchaser or purchasers will pay and discharge all the Company's costs and charges related to the granting of the Company's consent to the dealings and all legal costs and disbursements relating to the discharge of any caveats and costs associated with the intending purchaser entering into the Company's then current Agreement. The entering into by the intending purchaser of a new Agreement will be a condition precedent to the supply of water and to the transfer of the share.
- 11.2 If the Water User intends to lease or part with possession of the said Land or any part thereof other than by sale then the Water User will ensure that the lessee or occupier of the said Land or any part thereof will comply in all respects with the terms of this Agreement and will indemnify and hold the Company harmless from any breach of this Agreement by the lessee or occupier.
- 11.3 If the Water User should acquire or lease land other than the Land and wishes to use water from the Scheme Supply System for the benefit of that other land (in accordance with this Agreement, but not otherwise) then the Water User must notify the Company in writing and may then use the water as aforesaid until the Board in its discretion otherwise directs. This shall not impose any obligation on the Company in respect of the other land or the supply of water thereto nor any additional obligation in respect of the Land.

## 12. Company's Rights and Powers

- 12.1 The Company will have the right at any time and from time to time without being deemed to commit a trespass to enter upon the Land and thereon to lay construct maintain repair and reconstruct the Scheme Supply System and all other works which the Company deems necessary for the supply of water to the Land and other Lands within the area

served by the Company and to gauge or otherwise determine the quantity of water used by the Water User or other occupier and to view the condition of the Scheme Supply System. In exercising its rights under this Clause, the Company will cause as little interruption as possible to the Land and the carrying on by the Water User of his farming or other operations.

- 12.2 The Company will have the following rights powers and easements (which the Water User acknowledges and grants) over, along and through the Land namely:
- a. the right to locate, relocate and maintain on the Land equipment and structures pertaining to the Scheme Supply System for the purposes of operating and maintaining the Scheme;
  - b. the right to convey water (as defined by the easement registered against the Land) and all such incidental and ancillary rights as will be necessary for the purposes of operating and maintaining the Scheme including the right to inspect, clean repair maintain and renew all equipment on over along or through the Land;
  - c. all other rights and powers which the Company has duly resolved are reasonably necessary for the proper and efficient operation and management of the said Scheme.

and the Water User undertakes not to hinder or restrict the Company in the obtaining and/or exercise of any of the aforementioned rights powers and easements.

- 12.3 The Company will further have the right (which the Water User hereby grants) over that part of the Land on which there is an Scheme Supply System or Connection, in favour of the Company or nominee at the expense of the Company, of a formal registered easement in gross being a "right to convey water" as defined in the 4<sup>th</sup> Schedule of the Land Transfer Regulations 2002 where an easement does not already exist and all such incidental and ancillary rights as prudently ought to be incorporated therein and in the formal grant of like easements in favour of the Company affecting other Lands within the area to be served by the Company.

## 13. **Default**

### **Events of Default**

- 13.1 The Company may terminate the Agreement forthwith by giving written notice to the Water User and the Water User will be in default of this Agreement if one or more of the following events occur:
- a. The Water User fails to make any payment due to the Company under this Agreement.
  - b. The Water User fails to contest within two (2) weeks of service any petition of bankruptcy or for winding up.
  - c. Any execution, levy or distress is levied against the Water User or the assets of the Water User's business.
  - d. Any receiver, manager or other custodian (either temporary or permanent) is appointed with respect to the Water User or in respect of all or any part of the Water User's business.
  - e. The Water User purports to assign or charge his rights or interest under this Agreement without complying with the provisions of this Agreement.

- f. The Water User makes any composition with or enters into any arrangement with his creditors.
- g. The Water User fails to comply with any condition, provision or covenant of this Agreement and such default remains un-remedied for a period of seven (7) days from the date of receiving notice from the Company in writing recording the default and requiring the Water User to remedy the same.

#### 14. Remedies

14.1 If the Water User commits an Event of Default then the Company may:

- a. Without payment of any compensation to the Water User or any other person immediately cut off the supply of water to the Land in such a manner as the Company thinks fit and secure the control device (if applicable) and thereafter no person will be entitled to be supplied with any further water to the Land from the Company until such time as such breach has been made good to the satisfaction on the Company.
- b. Cancel the Agreement by giving fourteen (14) days written notice to the Water User.
- c. In accordance with any constitution of the Company, forfeit the share held by the Water User in the capital of the Company.

14.2 If the Water User fails to carry out any work or make good any damage in accordance with any notice given by or on behalf of the Company within a reasonable time after receipt of such notice then the Company will be entitled to enter upon the Land and carry out all or any of the required work or repairs as the Company will think fit and will be entitled to recover the costs thereof from the Water User together with interest thereon at the rate normally charged by the Company's bank on commercial overdrafts. Where the Company in its discretion considers urgent action is required, it will not be obliged to give the Water User any notice before it carries out the required work or repairs.

#### 15. Contract Review

15.1 The Company may at any time review the terms and conditions of this Agreement to take account of changes in legislation, water consents and/or irrigation practice and to amend the Agreement accordingly.

15.2 The Water User will become bound by the amendment on receiving written notice of the change or alternatively at the discretion of the Company will be required to enter into a new Agreement and pay all the Company costs in respect of that Agreement.

#### 16. Limitation of Liability

16.1 If the supply of water provided for under this agreement is reduced or stopped, for any reason whatsoever, including, without limiting the generality of the foregoing, water shortage, regulatory reasons or any other reason outside the control of the Company, then such reduction, stoppage or failure to supply will in no way give any right to any claim in compensation or other remedy against the Company.

16.2 The Company will be under no liability to the Water User (whether in contract, tort or otherwise) for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising out of the supply of or failure to supply the services under this Agreement.

- 16.3 The Company will be under no liability to the Water User (whether in contract, tort or otherwise) for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising out of the quality of the water supplied under this Agreement.
- 16.4 If, notwithstanding clause 10.1 and 10.2, the Company is found to be liable to the Water User in any circumstances then the maximum amount the Company will be liable for to the Water User under this agreement or in any other way whatsoever, is an amount equal to the lesser of:
- a. Last Year's water charges;
  - b. The actual loss or damage suffered.
- 16.5 The Water User will keep the Company indemnified against all costs, claims, demands, expenses, losses and liabilities of whatsoever nature, including without limiting the generality of the foregoing, claims for consequential loss (including loss of profits) which may be made against the Company and which the Company may sustain, pay or incur as a result of or in connection with the supply of services under this Agreement, except where such costs, claims, demands, expenses, losses and liabilities arise as a result of a negligent act or omission of the Company or its agents, servant or contractors.

## 17. **Power of Attorney**

The Water User hereby irrevocably appoints the Directors for the time being of the Company severally to be the Attorney of the Water User to do and execute anything which the Water User covenants or agrees to do or execute under this agreement and generally to do all such things as may be in the sole discretion of the Company necessary or desirable in order to protect fully the interests of the Company.

## 18. **Delegation**

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

## 19. **Exclusion of Partnership and Agency**

- 19.1 Nothing in this Agreement will create, or constitute or be deemed to create or constitute a partnership between the Parties or any of them and the Company not to constitute or create or be deemed to create or constitute a Party as an agent of any other Party for any purpose whatsoever.
- 19.2 No Party will have any authority or power whatsoever to bind or commit, act or represent or hold itself out as having authority to act as an agent, or in any way bind or commit the other Party or Parties to any obligations. The rights, duties, obligations and liabilities of the Parties will be several and not joint or collective.

## 20. **Arbitration on Matters of Interpretation**

- 20.1 In the event of any disagreement or dispute as to the wording or interpretation of this Agreement the matter will be resolved by Arbitration "On the Papers" pursuant to the Arbitration Act 1996. The Parties will agree an independent commercial lawyer to act as Arbitrator and in the absence of agreement within ten (10) working days of either Party

giving notice of invoking this clause, then a commercial lawyer chosen by the President for the time being of the New Zealand Law Society or his or her nominee.

- 20.2 Both parties will make submissions to the Arbitrator in writing within ten (10) working days of his/her appointment who will in response prepare and circulate a draft determination within a further ten (10) working days. On receipt of the draft determination, both Parties will make further submissions within five (5) working days prior to the Arbitrator giving his or her final determination (within a further five (5) working days) which will be binding.

## 21. **Force Majeure**

- 21.1 If either party is unable to carry out any of its obligations under the agreement because of any event or circumstance of Force Majeure, the 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:

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;

- a. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
  - b. 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;
  - c. the non-performing party uses all reasonable efforts to remedy its inability to perform as quickly as possible.
- 21.2 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 the Agreement, the parties agree to negotiate in good faith as to how this agreement may be mitigated 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 22.

## 22. **Consumer Guarantees Act 1993**

The Water User 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.

## 23. **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.

24. **Governing Law**

This Agreement will be governed by and interpreted according to the laws of New Zealand. Each Party irrevocably submits itself to the jurisdiction of the Courts of New Zealand over any proceedings arising out of, or relating to this Agreement.

25. **No Waiver**

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

26. **Assignment**

The Water User will not be at liberty to assign, transfer, mortgage or charge the Water User's interest in this Agreement without the consent of the Company.

27. **Notices**

27.1 All demands, consents and notices authorised or required to be made under this Agreement will be in writing and may be given to, or served upon a Party by:

- a. Being left at the Party's address as notified by that party; or
- b. By facsimile, to the recipient Party's facsimile number as notified by that party;

27.2 The notified addresses and facsimile numbers of the Parties are as set out in the Schedule hereto:

28. **Variation**

No modification or alteration of, or addition to any of the provisions of this Agreement will be made unless agreed to by the Parties in writing.

29. **Costs**

The Water User will pay the Company's costs in relation to the preparation of finalisation of this Agreement.

30. **Further Assurances**

The Water User will do all things and sign all documents necessary to discharge his obligations under this Agreement.

31. **Severance**

If any provision or part of a provision of these terms and conditions will not be enforceable, then that provision or part provision will be deemed to be deleted and the rest of these terms and conditions will remain in full force and effect.

**SIGNED** by

)

**LYNDHURST WATER SCHEME  
CO-OPERATIVE LIMITED**

in the presence of:

)

)

)X \_\_\_\_\_

Director

)X \_\_\_\_\_

Director/Authorised Person

Witness: .....

Occupation: .....

Address: .....

[Witness required only if deed signed **other than** by two directors]

**SIGNED** by [*Name of Water User*]

)

in the presence of:

)X \_\_\_\_\_

Witness: .....

Occupation: .....

Address: .....



**SCHEDULE**

**The Water User:** \_\_\_\_\_

**The Land:**

*Put in area, description, title reference*

**Address of Water User:**

**Facsimile No:**

**Address of Company:**

**Facsimile No:**

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