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Terms and provisions for  
supply of water by  
Opuha Water Limited to Shareholders

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# TERMS OF SUPPLY

These terms and conditions apply to every water agreement entered into between Opuha Water Limited (company number 4776799) and any farmer or other person receiving irrigation water from Opuha Water Limited.

## 1 DEFINITIONS

1.1 In these Terms unless the context otherwise requires:

*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 Timaru;

*Charges* includes all charges payable for both Water Charges and Infrastructure Charges as may be applicable to the Shareholder;

*Commencement Date* means the date on which delivery of Water is requested by the Shareholder or such later date on which the Company can commence the delivery of Water;

*Company* means Opuha Water Limited (company number 4776799) and 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 or water is extracted from the Scheme by a Shareholder and unless otherwise specified means the delivery point from the Distribution System.

*Default Interest* means interest at 6% above the Company's total cost of borrowing (including interest, bank charges, interest rate swaps and other like charges) calculated on the last business day of each calendar month and compounded from the last date in each month. Interest at such rate shall be payable to the Company on and as from the date of default and thereafter on the last business day of each calendar month;

*Distribution System* means the electronic systems, telemetry, races, pipes, valves, gates, ponds and other infrastructure owned by or constructed and installed by the Company to and including the relevant Connection Point and includes where the said infrastructure only services a Specified Area the infrastructure within that Specified Area used to deliver water to Shareholders in that area;

*Excess Water* means any Water to which the Shareholder is entitled and which that Shareholder has not taken as part of that Shareholder's entitlement;

*Farm Environment Plan* means any farm environment plan required to be observed by the Shareholder in respect of the Shareholder's farm practices and management, compliance with environmental or regulatory requirements, as to the use of Water supplied by the Company implemented from time to time:

- (a) by the Company, and provided to the Shareholder; or
- (b) By the Company requiring the Shareholder to provide that plan to the Company for approval.

*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 the Short Form Agreement or these Terms; 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 Short Form Agreement and these terms 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, local authority, 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 Management Practice* means the exercise of that degree of skill, diligence, prudence, foresight and management which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the use of water and farming operations utilising water, the same as or similar to those provided by irrigation companies and farmers using irrigation water under the same or similar circumstances as apply at that time in New Zealand;

*I Shares* means shares of a class as specified by the Company that give the right to access certain specified infrastructure within the Scheme and which require Infrastructure Charges to be paid to the Company by the holder for having access rights to that specified infrastructure;

*Infrastructure Charges* means charges levied from time to time relating to specific infrastructure within the Scheme that services or conveys water to and for certain categories of properties within the Scheme;

*Irrigation Season* means the period beginning on 1 September in any given year and concluding on 31 May in the following year or such other period as the Company may from time to time reasonably determine;

*l/s* means litres per second of water;

*Maximum Supply Rate* means the delivery of 0.41336 litres per second of water for every one share held (or such other rate determined by the Board in respect of any Shareholder or Shareholders from time to time) in the Company based on an application rate equivalent to 25mm of water per hectare per week and with a seasonal cap of 5,625m<sup>3</sup> for each Irrigation Season and with the right of the Board at its discretion to vary the application rate and/or seasonal cap at the request of a Shareholder or such other rate or cap as may be determined by the Board.

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

*Nominal Value* in relation to shares in the Company means for each share \$1.00 per share;

*Property* means the property set out in the Short Form Agreement;

*Regulatory Authority* means any regulatory authority, statutory body, regional or local council or other body that can impose rules, conditions or requirements on the Company;

*Regulatory Policies* means any policies, guidelines, or requirements introduced or imposed by any statutory authority having jurisdiction that is applicable to the taking, storing, use and distribution of water for irrigation;

*Resource Consents and Consents* means the Resource Consents held by the Company together with all renewals, replacements, variations or amendments to the consents and includes where required all conditions relating to those consents and where a Shareholder holds any resource consent that is subject to conditions which are also applicable to the Company or the water provided by the Company the relevant terms of that consent.;

*Scheme* includes the water storage facility at Lake Opuha, the tributaries that feed into the lake, the rivers and streams downstream of the lake and their tributaries and the water distribution infrastructure owned by the Company, that are all associated with the provision of water for irrigation in the Scheme Area.

*Scheme Area* means the area north and west of Timaru to which the Company distributes irrigation water through existing water distribution networks and those other properties as determined by the Board to which irrigation water can be economically delivered;

*Environmental Management Strategy* is a document prepared by the Company for the management and operation of the Scheme and may include an audited self management environmental programme as may be posted from time to time on the Company's website which is to be observed by the Shareholder;

*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 and where a Shareholder owns the Metering Equipment and where the Company installs meters and/or telemetry excludes that telemetry and those meters;

*Shares* means the Shares in the Company set out in the Short Form Agreement and includes where the context requires both Water Shares and I Shares;

*Short Form Agreement* means the agreement between the Company and the Shareholder under which those parties agree to be bound by the provisions set out in these terms;

*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;

*Specific Infrastructure* is infrastructure owned or controlled by the Company that is utilised to deliver water to farmers or other persons in a Specific Area;

*Specified Area* means an area within the Scheme that is serviced by particular infrastructure that is only available to Shareholders in that 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;

*Stored Water* means any water stored by the Company and available to Shareholders for irrigation or other purposes;

*Terms* means the terms of supply set out in this document as included in an agreement 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 these Terms for irrigation purposes and except where approved by the Board excludes any Water supplied for the right to generate electricity from Water;

*Water Charges* means the aggregate charges fixed under these Terms from time to time as determined from time to time by the Board;

*Water Shares* means the shares issued to the Shareholder giving an entitlement to water at the Maximum Supply Rate during the Irrigation Season or such other share requirement as may be determined by the Company from time to time;

*Year* means each 12 month period commencing on the 1<sup>st</sup> day of July in each year and ending the following 30 June;

1.2 In the construction of this deed, unless the context requires otherwise:

*clauses*: reference to a section, clause, sub-clause, schedule or a party is a reference to that section, clause, sub-clause, schedule or party to this deed unless stated otherwise;

*headings*: headings appear as a matter of convenience and do not affect the construction of this deed;

*inclusion*: referring to anything after the word “including” does not limit what else might be included and any such reference is without limitation to what else might be included;

*joint and several*: any covenant or deed on the part of two or more persons shall bind those persons jointly and severally;

*legislation*: a reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision;

*negative obligations*: a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;

*parties*: a reference to a party to this deed or any other document includes that party's successors and permitted assigns;

*person*: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

*related terms*: where a word or expression is defined in this deed other parts of speech and grammatical forms of that word or expression have corresponding meanings;

*schedules*: the schedules and any annexures to this deed form part of this deed;

*singular, plural and gender*: the singular includes the plural and vice versa, and words importing one gender include the other gender.



## **2 PRECONDITIONS TO SUPPLY OF WATER**

- 2.1 These Terms come into force when the Shareholder has entered into a Short Form Agreement and holds 1 share (or such other number of Shares determined by the Board from time to time) for every 0.41336 litres per second of water being the maximum volume of water to be supplied for irrigation at the Maximum Supply Rate with the Company delivering that water in each Irrigation Season to the Property specified by the Shareholder set out in the Short Form Agreement but subject at all times to the other provisions of these Terms and the availability of water under Resource Consents.
- 2.2 The Company may at any time give notice that is applicable to some or all Shareholders taking water from the Company that:
- (a) the number of Water shares required to be held by each Shareholder to obtain a specified quantity of water has been altered; and/or
  - (b) the volume of Water available for distribution has been altered; and/or
  - (c) the number of Shares required to access infrastructure in a Specified Area has been altered; and/or
  - (d) there is a minimum area of land to which the Company is prepared to deliver Water.

### **2.3 Rostered Water**

The Company may deliver the required volumes of Water on a rostered basis as determined by the Board when Shareholders request the Company to make supply, and the Company makes supply of Water, for irrigation.

### **2.4 Surplus Water**

The Company has had transferred to it certain resource consents for specified areas, within the Scheme Area, where there may be surplus Water available for future irrigation. Where the Board in its discretion determines such surpluses exist the Company will give Shareholders within the specified area a first priority right to use that Water so that a particular area can benefit from that available water before any other shareholder of the Company. This clause 2.4 does not apply to any water available to the Company under resource consent CRC011898B.

## **3 HOLDING OF SHARES**

- 3.1 The supply of Water by the Company to the Shareholder is conditional upon the Shareholder holding one share (or such other number of Shares determined by the Board in respect of any Shareholder or Shareholders

from time to time) for every 0.41336 l/s of Water to be supplied at the Maximum Supply Rate for a property within the Scheme Area (as approved by the Board) to be irrigated together with a specified number of I Shares where that Shareholder wishes to access, use and obtain the benefit of Specific Infrastructure, or such other number of shares as specified by the Board as provided for in clause 3.2.

- 3.2 The Company may change the number and classes of shares required to be held by a Shareholder to qualify for the supply of Water or to access Specific Infrastructure provided the same standard as to the number of shares to be held shall apply to all Shareholders taking water from any specified part of, or area within, the Scheme Area.
- 3.3 The supply of Water under these Terms is conditional upon the Shareholder continuing to hold the Shares as set out in the Short Form Agreement or specified under clause 3.2 to the intent that if the Shareholder shall at any time cease to hold those Shares, or cease to use the Water to irrigate an approved Property, except as provided for under clause 3.4(d), then the Company may exercise a number of rights including suspending the supply of water, preventing access to Specific Infrastructure, 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 in the supply of water for a specified period, then the Company may surrender those shares at their Nominal Value.
- 3.4 The volume of Water to which a Shareholder is entitled shall be transferable by the Shareholder only in the circumstances set out below:
- (a) Sale of Property**  
Where the shares and the Water rights attached to those shares relate to a specified approved Property the Board may require that the Water continues to be supplied to that Property as a precondition to the transfer of the shares.
- (b) Transfer to another Property**  
Where shares are being transferred to a transferee who wishes to use the Water relating to those shares on a property that is not currently irrigated using that Water then the Board may refuse to transfer the usage of that Water except to a property approved by the Board and on such conditions as the Board may reasonably impose and provided further that the property to which the Water is delivered is within the Scheme Area or a Specified Area and can be economically serviced from the 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 the Scheme Area or any other person or entity approved by the Board subject to:

- (i) 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 Short Form Agreement; and
- (ii) the Distribution System having the capacity and capability of delivering that water to the property in the Scheme Area as requested by the proposed transferee of shares; and
- (iii) where there is Specific Infrastructure for the delivery of water within a Specified Area that both the Water Shares and I Shares are transferred together and in the same proportions so that the Shareholder has the right to receive water through the specific infrastructure;

**(d) Licensing of Water**

A Shareholder may license the right to Water to a person who farms a property within the Scheme Area which is serviced by a Distribution System (or may be serviced pursuant to clause 3.5) subject to:

- (i) the prior written consent of the Company; and
- (ii) that licensee signing such documents as may be required by the Company; and
- (iii) the Shareholder holding that right to Water continuing to be liable to pay all Charges and being responsible for compliance by that licensee with all obligations under these Terms; and
- (iv) 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
- (v) such other terms and conditions as the Company considers appropriate;
- (vi) the licensing is 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;
- (viii) the Distribution System having the capacity and capability of delivering that Water to the farm of that licensed person.

### **3.5 Delivery to Property not Connected**

Where a Shareholder requests the Company to deliver Water to a Property within the Scheme Area that is not connected to a 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 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 lines, water meters, 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.
  - (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 3.5(b)) as the Company considers appropriate.

### **3.6 All Assets Owned by Company**

Where under clause 3.5 the Company is required to upgrade any part of the Distribution System then notwithstanding that the Shareholder may be required to meet the cost of upgrading the Distribution System all rights to, and property in, the upgrade, up to the Shareholder's side of the Connection Point, shall be the property of the Company.

## **4 SUPPLY OF WATER**

### **4.1 Volume of Water to be Supplied**

The volume of Water that will be supplied by the Company to the Shareholder is at a delivery rate not exceeding 0.41336 l/s of Water for every one Water Share held (or such other rate determined by the Board in respect of any Shareholder or Shareholders from time to time) with that Water to be delivered to the Property to be irrigated by the Shareholder. The total volume of Water that can be taken per share for each Irrigation Season shall not exceed 5625 m<sup>3</sup> (or such other cap as determined by the Board in respect of any Shareholder or Shareholders from time to time) provided that with the prior approval of the Board the times or periods within which that Water may be taken may be varied. Otherwise the rate for taking water shall be based on an equivalent rate of 25mm per hectare per week (or such other equivalent rate determined by the Board in respect of any Shareholder or Shareholders from time to time) with an annual volume cap as aforesaid.

### **4.2 Water to be used for complying purpose**

The water to be supplied by the Company to the Shareholder is to be used for irrigation purposes and such other purposes that comply with all conditions of any Resource Consent and any further purposes which are approved by the Board in any relevant policy statement posted on the Website of the Company. Water for purposes other than irrigation may be taken during each Year as determined by the Board.

### **4.3 Provision of Water Subject to Conditions**

The supply of Water is always subject to the availability of Water under the Resource Consents, compliance with the Resource Consents, any Farm Environment Plan that has been implemented, the requirement of a Shareholder to provide to the Company a Farm Environment Plan, the Environmental Management Strategy and with all Statutory Requirements. 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 Short Form Agreement during the Irrigation Season. The Company will give all Shareholders the priority right to Water which the Company is entitled to take for irrigation purposes during the Irrigation Season from the Stored Water.

#### **4.4 Entitlement to volume in Short Form Agreement**

The supply of Water to which the Shareholder is entitled under these Terms is set out in the Short Form 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.

#### **4.5 Water only available in Irrigation Season**

Except where approved by the Board 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, except as approved by the Board.

#### **4.6 Water may not be available**

The Company agrees that subject to availability of Water from the 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 Short Form Agreement subject to any restrictions on the volume of Water that can be supplied under the Resource Consents. The Company does not guarantee that Water will be supplied at the delivery rate referred to in the Short Form Agreement and specified elsewhere in these Terms.

#### **4.7 No assurance on water pressure**

If water can be delivered under pressure the Company will use reasonable endeavours to deliver water under pressure but the Company shall have no liability in the event that certain levels of pressure are not attained or cannot be consistently maintained.

### **5 DELIVERY SYSTEM FOR WATER**

#### **5.1 Policies on 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 a policy relating to the ordering of water from the Company, how the infrastructure of the Company on each Property must be protected and other rules on the processes relating to the ordering, delivery and 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 Stored Water under the Resource Consents and the requirement for that Water to be equitably distributed to all farmers and other persons entitled to that Water over each Irrigation Season;
- (b) the utilisation of water from ponds established by the Company;

- (c) any requirements under any Statutory Requirements for restricting the supply of that Water;
- (d) 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 farmers during the Irrigation Season.

**5.2 No liability for failure to deliver water**

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 Company has right to store water**

The Company shall have the right, in priority to Shareholders, to take water for the purposes of storing that water in Lake Opuha or 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) the Company shall ensure that all Shareholders have the first right to utilise that stored water that is available for irrigation in priority to any other user of that water;

**5.4 Storage Ponds must be approved**

The Shareholder will not create any storage ponds to store water taken under these Terms except as approved by the Company.

**5.5 Water to be fairly distributed**

The Company will at all times seek to act in an equitable manner as between all farmers and other persons entitled to Water so that they all receive a fair proportion of Water, based on the volume to which they are entitled, during each Irrigation Season.

**5.6 Right to suspend supply**

If the Shareholder acts in a way that could prejudice or breach in any manner the Resource Consents held by the Company, or acts in breach of any Farm Environment Plan or the Environmental Management Strategy of the Company then the Company may restrict or suspend the supply of Water to that Shareholder from the Distribution System, the Stored Water or from ponds owned by the Company. This restriction or suspension will only apply after the Company has given reasonable notice to that Shareholder of the requirement to remedy those breaches and the Shareholder has failed to do so.

## **6 EXCESS WATER**

### **6.1 Board can manage excess water**

For the avoidance of doubt this clause applies to any Water which the Board determines is Water to which a Shareholder is entitled that is not being taken and utilised by that Shareholder and this excess water has been ascertained on a consistent basis from records taken over a number of years. That water being Excess Water may be dealt with by the Company provided that the right of the Shareholder to take a full allocation of Water under these Terms is not detrimentally affected but subject 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 Maximum Supply Rate.

### **6.2 Shortfall can be caught up**

Where, due to the mechanical failure or other inability to deliver water in respect of the Scheme, a 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 Excess Water Allocation at Board Discretion**

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.

## **7 INSTALLATION OF SHAREHOLDER'S WORKS**

### **7.1 Shareholder must install own 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.

### **7.2 Ownership of Infrastructure**

The Shareholder acknowledges that:



- (a) the infrastructure up to the Connection Point on each Shareholder's Property shall be the property of, and owned by, the Company including all improvements made to the Distribution System up to the Connection Point notwithstanding any payment made by the Shareholder for those improvements.; and
- (b) the Metering Equipment on the Property may be owned by the Shareholder or if supplied by the Company shall be owned by the Company. The Company may also install telemetry relating to the delivery of Water and notwithstanding ownership of the Metering Equipment the Shareholder shall be responsible and liable for all calibration and regular testing of the Metering Equipment and its maintenance;
- (c) If the Shareholder installs any Metering Equipment that relates to the supply of water from the Company then if reasonably and properly required for the purpose of monitoring the supply of Water under these Terms the Company shall be entitled to all data from that metering equipment for monitoring purposes with all such data to remain confidential unless otherwise required to be disclosed by law; and
- (d) The Company shall be entitled at any time to enter the Property of the Shareholder for the purposes of checking any Metering Equipment including the accuracy of the Metering Equipment. If any equipment is out of calibration by more than 5% the Company may adjust charges retrospectively based on the actual reading of that Metering Equipment
- (e) All Metering Equipment must meet the national water standards for equipment which calculates the volume of Water delivered.

### **7.3 Damage to Metering Equipment**

The Shareholder shall be responsible for any damage caused to the Metering Equipment and telemetry (fair wear and tear excepted) and shall pay the costs in replacing the Metering Equipment or telemetry when required if owned by the Shareholder as required by the Company provided the Company will be responsible if the Company or its agent damage or destroy that equipment.

### **7.4 Information from meters provided to Company**

The information available from the Metering Equipment, or from telemetry shall be provided to the Company at such intervals as the Company determines by electronic or other means showing 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.

### **7.5 No operations to damage infrastructure**

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 FARM ENVIRONMENT PLANS**

### **8.1 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.

### **8.2 Audit**

The Company may implement for each Property an audited self management programme approved by the relevant Regulatory Authority under which the following shall occur:

- (a) an audit of the farm practices and environmental management for the relevant Property shall be carried out ; and
- (b) the Shareholder will provide such information, questionnaires and reports to the Company as reasonably required by the Company;
- (c) such audit may be subject to such external audit as determined by the Company to audit the Shareholder's compliance with all Regulatory Policies;
- (d) the Shareholder shall comply with any requirements of any Regulatory Authority and the Company in respect of farm and water management policies required and imposed on all Shareholders taking water from the Company and conveyed using any of the Distribution System.

### **8.3 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 to demonstrate how the Shareholder is actively managing the use of the Water to achieve high standards of environmental management consistent with the farming practices on the relevant Property. That plan shall include such matters as the Company may require from time to time and shall be provided within a time period required by the Company.

#### **8.4 Shareholder must comply with quality standards**

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, specific Regulatory Policies and legal requirements, and all other requirements to ensure Good Management Practice is maintained in respect of the operation of irrigation on the Shareholder's Property.

#### **8.5 Environmental Management Strategy**

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

#### **8.6 Notice of Breach of Plans**

In the event that the Shareholder breaches any of the terms and conditions of the Short Form Agreement or these Terms or any of the provisions contained in the Farm Environment Plan (if applicable) or the Environmental Management Strategy then the Company may give notice of breach to the Shareholder as set out in clause 19 and if necessary terminate the Short Form Agreement and these Terms as set out in clause 20.

#### **8.7 Must use water in accordance with policies**

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 Farm Environment Plan approved by the Company under Clause 8 and the Environmental Management Strategy;
- (d) comply with the policy notified to Shareholders under clause 5.1;
- (e) comply with the requirements in clauses 8.1 and 8.2.

**8.8 Shareholder must comply with good management practice**

The Shareholder shall 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. Those matters shall include and traverse all terms and provisions of Resource Consents, Statutory Requirements, Good Management Practice and company policies that may be applicable from time to time including the Environmental Management Strategy.

**9 MANAGEMENT OF THE SUPPLY OF WATER**

**9.1 Company information on water availability**

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 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 likely river flows and the volume of water that may be available for extraction shall be subject to climatic conditions and other relevant factors. Notices available on the website of the Company shall be deemed sufficient notice to the Shareholder.

**9.2 Shareholder must verify supply**

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 and whether any restrictions apply; and
- (b) the Water may not be potable and may not be suitable for use by stock or for any purpose except irrigation.

**9.3 System for Ordering Water**

All Shareholders will comply with the requirements of the Company for the ordering of water for irrigation. This will include Shareholders giving sufficient notice for the commencement or cessation of supply. The Company will specify the system for water ordering and information on the water ordering system will be maintained and available to all Shareholders on the Company's website;

**9.4 Reduction of Supply if Water Unavailable**

If during the Irrigation Season the availability of Water to the Company for distribution to farmers and other persons is diminished or must be

suspended in any way then the Company shall make Water available to the Shareholder only insofar as it is practicable for it to do so and in an equitable manner between all farmers and other persons entitled to that Water. If the Company has to reduce supply or suspend 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;

**9.5 Restrictions if property has own supply and irrigation water**

If under any Resource Consents relating to the Property there is a restriction as to the volume of water that can be applied per hectare on that Property during a specified period 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 or suspend the volume of water delivered to the Shareholder or cease supplying water until that restriction is met.

**9.6 No right of action against Company**

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;  
or
- (b) as a result of any reduction in the supply or suspension in delivery of Water; or
- (c) if there shall be any matter relating to the quantity or quality of Water supplied to the Shareholder; or
- (d) any failure of any part of any infrastructure or any part of the Distribution System that prevents the delivery of water to a Property;
- (e) if damage occurs to crops or livestock arising from any toxicity or other harmful elements in or relating to the Water supplied to Shareholders.

**9.7 Multiple Connection Points**

The Water may be delivered to the Shareholder at one or more Connection Points on the Property of the Shareholder. Additional Connection Points may be constructed with the prior approval of the Company and with such Metering Equipment and telemetry as reasonably required by the Company.

**9.8 Must not take above entitlement to water**

The Shareholder shall not take from a Connection Point more Water than the Shareholder's entitlement pursuant to these Terms (including any Excess Water allocated to that Shareholder) or otherwise than in accordance with any Resource Consent, Farm Environment Plan or the Environmental Management Strategy including the right to any water stored by the Company for release, or as otherwise agreed in writing with the Company.

**10 INTERRUPTION TO SUPPLY OF WATER**

10.1 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 this clause.

**Planned Interruptions**

- (a) In situations where the Company determines the need for the interruption in accordance with Good Management 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.

**10.2 Notice of planned interruptions**

Where the Company interrupts delivery pursuant to clause 10.1(a) the Company shall give prior notice to the Shareholder, by electronic means including email or texting, 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.

### **10.3 Emergency Interruptions**

Where the Company interrupts supply pursuant to clause 10.1(b), as soon as it is practicable the Company shall advise the Shareholder of:

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

### **10.4 Minimisation of interruption period**

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

## **11 RESPONSIBILITY OF SHAREHOLDER**

### **11.1 Shareholder responsible for works on Property**

The Shareholder shall be responsible for all work carried out on the Shareholder's Property beyond the Connection Point including the installation of all plant, equipment, pipes, electrical connections and other works to distribute Water on the Shareholder's Property provided that the Company shall be responsible for maintaining and replacing all Company infrastructure on the Property of the Shareholder.

### **11.2 Maintenance of Company Works on Property**

If so required or directed by the Company the Shareholder shall be responsible for maintaining, keeping clear, and managing all land above any pipelines within the Property of the Shareholder so that no damage occurs to the pipeline. The Company shall have rights of access to the Property to ensure the obligations under this clause are being met.

### **11.3 Access to Property for Company**

The Shareholder shall give access to the Company, its contractors, agents, and employees at all reasonable times for the purpose of carrying out maintenance, repairs and replacements of all Company infrastructure on the Shareholder's Property. The Company will seek to minimise any disturbance to the farming operations of the Shareholder.

### **11.4 Installation of Improvements on Property**

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. In addition, the

Company may require a Shareholder to install, at the cost of the Shareholder, Metering Equipment.

**11.5 Certain connection Shareholders Responsibility**

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.

**11.6 Special Arrangements for Infrastructure**

The Company may enter into special arrangements with a Shareholder or group of shareholders on the construction of infrastructure, the ownership of that infrastructure, and the charges to be made for the use of that infrastructure.

**11.7 Shareholder liable for damage**

The Shareholder agrees that if any damage is caused to the property of the Company situated on the Shareholder's Property other than by Force Majeure then the Shareholder is liable for all costs relating to any repairs, replacement and reinstatement of that damaged property. If the Company or the agent or contractor of the Company causes the damage the Company is liable.

**11.8 Notice to comply with Company policies**

The Company may require the Shareholder to comply with policies and rules relating to the use of the Water. The policies may be posted on the website of the Company and, if so posted, shall be complied with at all times by the Shareholder. The Company may replace those policies and rules at any time by giving notice to the Shareholder and placing the new rules and policies on the website of the Company.

**11.9 Shareholder must hold shares if required**

The Shareholder shall at all times hold the number and classes of shares if and as specified from time to time by the Company. Such Shares must be held at all times while the Short Form Agreement and these Terms remain in force.

**11.10 Transfer of Property**

If part of the Property, and/or the rights to Water, or the Shares, are to be transferred the Shareholder must agree with the Company the basis for a new Short Form Agreement to be executed by the new Shareholder or the owner of the interest in the Property to which Water is to be supplied by the Company. The Company may withhold the supply of Water until an agreement is entered into, with the Purchaser of a Property or any part of a Property or of any rights to Water until the



rights are contained in an executed Short Form Agreement on such terms and conditions as approved by the Company.

**11.11 Company may withhold supply**

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.

**11.12 Uneconomic water supply may be terminated**

If the continuity of the supply of Water becomes uneconomic for the Company to deliver water to the property of a transferee the Company may refuse to consent to the transfer of any rights to Water.

**11.13 Restriction on taking water if Consents require them**

If under any Statutory Requirements 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 of any consents (including the Resource Consents) are met and complied with in all respects.

**11.14 Use of Water only for Irrigation / Approved Uses**

The Shareholder shall only use the Water for irrigation 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.

**12 CHARGES**

**12.1 Board Determines Charges**

The Company shall in each year prior to the commencement of the Irrigation Season determine and fix 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 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, holding Water in and maintaining the Opuha Lake and dam, and to cover all administration costs of the Company and may include such other charges as are reasonable.

**12.2 Charges may be separated**

The Charges may include separate Charges for:

- (a) the supply of water;

- (b) the use of the Distribution Infrastructure;
- (c) the use, maintenance and capital works on any Specific Infrastructure within the Scheme Area.

### **12.3 Different Charges**

The Charges shall be separated out into:

- (a) A Water Charge that shall be determined for each Year and advised to all Shareholders and applicable from 1 July in each year. The Water Charge shall be payable by all Shareholders in proportion to their holdings of Water Shares. The Water Charge may be determined by levying a charge for 80% of the water to which the Shareholder is entitled (or such other percentage as the Board determines) and making a further charges for water taken above that percentage level;
- (b) Any Infrastructure Charge that shall be payable as determined by the Board and may be a charge payable by all Shareholders, or different charges payable by a specified group of Shareholders who only use Specific Infrastructure in a Specified Area and in such manner and proportions as the Board determines is equitable.
- (c) The decision by the Board on the allocation and recovery of the Water Charges and Infrastructure Charges shall be final and binding on the Shareholder and all shareholders of the Company.
- (d) The Company may levy Special Charges on all farmers or a particular group of farmers if that charge is fair and equitable.

### **12.4 Infrastructure Charges**

The Company and Shareholder agree that where I Shares are held and those I Shares give the right to use Specific Infrastructure that Charges levied as Infrastructure Charges in respect of those I Shares may be reviewed by the Company from time to time to reflect and determine the annual charges on the I Shares to:

- (a) meet all operating, maintenance, repair, reconstruction, and other costs and expenses relating to that Specific Infrastructure; and
- (b) meet the cost of interest and debt amortisation relating to any debt incurred to construct, alter, extend or repair that Specific Infrastructure;
- (c) carry out any capital works on that Specific Infrastructure.

### **12.5 Annual Review of Charges**

All Water Charges may be reviewed annually and may vary as a charge on the Water Shares by such sum as the Company shall determine having regard to the costs (excluding the Infrastructure Charges) to meet:

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

### **12.6 Direct Debit**

The Company may require the Shareholder to pay all Charges by direct debit from the bank account specified by the Shareholder and the parties will sign all forms necessary to enable Charges to be paid by this method.

### **12.7 Charges for Excess Water**

Charges for Excess Water shall be on a litre per second basis or such other basis as the Company shall determine from time to time.

### **12.8 Charges for using Water for Generation**

The Company may determine fees payable by Shareholders 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.

### **12.9 Interest on Overdue Charges**

If the Shareholder does not make payment of 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 and is a secured payment under this encumbrance.

### **12.10 Charges not affected by Supply**

The Shareholder acknowledges that the 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) used any Specific Infrastructure; or
- (c) the Company may have been unable to supply 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).

#### **12.11 GST Exclusive**

All charges shall be on a plus GST basis.

### **13 ADJUSTMENTS TO CHARGES**

Throughout the term of the Short Form Agreement and these Terms the Company may vary the prices which give rise to any charges 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 Charge (including without limitation charges relating to the supply of electricity necessary to operate the Scheme or the finance costs for debt) where any increase or decrease in price may occur.

### **14 EASEMENTS**

#### **14.1 Grant of Easement**

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, 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 the Company having no obligation to pay compensation 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 Company will bear any reasonable costs pre-approved by the Company and incurred by the Shareholder in relation to the registration of those easements.

#### **14.2 Consultation prior to requiring easement**

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. The Company will act reasonably in exercising rights under clause 14.

#### **14.3 Failure 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.

#### **14.4 Soil taken during construction**

The Company and its agents and contractors may remove such soil and gravels (material) as required to construct any infrastructure on the Property as provided for in the easement. The Shareholder may request the Company to transfer that material and utilise the material within the Property in proximity to the location where the material is extracted. Otherwise the Company shall remove the material from the Property and ownership of that material shall pass to the Company. The parties may by agreement determine other methods of disposal of that material.

#### **14.5 Storage and Reinstatement of Soil**

If any material is extracted as set out in clause 14.4 the Company may temporarily store that material on the Property adjacent to the area from which the material is extracted. The Company shall reinstate as near as may be reasonably practicable to its original state the area on which the material is stored after its removal.

### **15 ELECTRICITY LINES**

The parties acknowledge that it may be necessary to upgrade and to construct and maintain electricity cables to enable the Company to establish, extend and operate the Scheme. The Shareholder will not unreasonably withhold consent to such electricity 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 line 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.

### **16 TERM OF AGREEMENT**

These Terms shall come into force and effect on the Commencement Date and subject to the rights to terminate these Terms shall continue until the date on which the Company cannot provide water to the Shareholder. If the Resource Consents held by the Company are not renewed or extended so that Water can continue to be delivered on the terms and conditions of these Terms then the Short Form Agreement and these Terms shall be terminated.

## **17 RIGHT OF ENTRY**

### **17.1 Company right to enter property**

The Company and its servants, agents, employees, contractors and workmen, shall have the right at any time and from time to time without being deemed to commit a trespass, taking due care and attention to minimise any loss or damage for the Shareholder 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 without thereby restricting those purposes:

- (a) to gauge or otherwise determine the quantity of Water used by the Shareholder;
- (b) to view the condition of races, canals, structures, pipes, works telemetry, and Metering Equipment at the Connection Points;
- (c) to enter the Property to carry out inspections, maintenance and replacement of any Company infrastructure;
- (d) to construct any electricity connections or other easement works as permitted by easements to which the Company is entitled under these Terms;
- (e) to repair and replace any works carried out on the Property necessary for the operations of the Distribution System;
- (f) to determine if the policies of the Company or the provisions of a Farm Environmental Plan are being met.

### **17.2 Infrastructure available for inspection**

The Shareholder shall ensure that access to any pipeline, water race or other structure or device used in the control and management of the Water conveyed in the delivery infrastructure for the Scheme is kept open and available for use by the Company and its agents and contractors. In respect of any future structures, works or developments on the Shareholder's land carried out by the Shareholder these shall not be constructed to impede or prevent any future access as aforesaid. The Shareholder will ensure that such development does not impede, restrict, limit or otherwise in any way inhibit or impair access or adversely affect access to or any such pipelines, water races, structures or devices.

## **18 ACCESS TO SHAREHOLDER'S WORKS**

### **18.1 Access to Shareholders Property and Works**

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;
- (b) examine, read or test any metering equipment, measuring supply of Water under these Terms;
- (c) to protect or prevent danger or damage to persons or property;
- (d) to ascertain and remedy the cause of any interference to the supply of Water;
- (e) to disconnect or reconnect the supply of Water;
- (f) any other purpose reasonably connected to the supply of Water by the Company to the Shareholder.

#### **18.2 Company must minimise interference**

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;
- (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.

### **19 BREACH OF AGREEMENT**

19.1 In the event of the Shareholder committing any breach of the terms of these Terms and such breach continues for 20 Business Days after written notice from the Company requiring such breach to be remedied, 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 Charges and any unpaid calls on shares in accordance with these Terms.
- (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 Charges and any call on Shares in accordance with these Terms.

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

19.2 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 20<sup>th</sup> day (or the nearest Business Day thereto) in the next month.

## **20 TERMINATION**

### **20.1 May terminate supply if shares not held**

The Company shall be entitled at any time immediately to terminate the Short Form 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 up to the date of termination of the Short Form Agreement and these Terms and for payment of all Charges until such liability is taken over by another Shareholder or Shareholders.

### **20.2 May terminate if unauthorised water taken**

The Company shall be entitled at any time to immediately terminate or suspend the supply of Water under the Short Form Agreement and these Terms by notice given to the Shareholder if the Shareholder takes Water to which the Shareholder is not entitled without prior authorisation from the Company as set out in clause 6.1, and may then give 30 Business Days notice that it intends to terminate the Short Form Agreement and these Terms if that breach reoccurs but the Shareholder shall remain liable for all monies owing and for any antecedent breach of the Short Form Agreement or these Terms up to the date of such notice or termination as aforesaid.

### **20.3 May terminate if matters fail and not fixed**

The Company shall be entitled to terminate or suspend the Short Form Agreement and these Terms if there is a failure of any metering equipment owned by the Shareholder and relied on by the Company to provide data on the volume of water supplied by the Company to the Shareholder and that failure continues for 30 Business Days after notice thereof is given to the Shareholder.



#### **20.4 May terminate if call on shares 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 the Short Form Agreement and these Terms but the Shareholder shall remain liable for all monies owing and for any antecedent breach of these Terms up to the date of termination and for payment of all Charges on a continuing basis until such liability is taken over by another Shareholder or Shareholders.

#### **20.5 May terminate if charges not paid**

In the event that a Shareholder fails to pay 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 the Short Form Agreement and these Terms and terminate the supply of Water and deny access to infrastructure but reserving the right to recover all Charges and interest thereon.

#### **20.6 Costs payable if termination occurs**

In the event of the Company terminating the Short Form Agreement and these Terms 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.

### **21 ASSIGNMENT**

#### **21.1 Assignment by Shareholder with Prior Approval**

The Shareholder shall not assign transfer mortgage or charge the Shareholder's interest in the Short Form Agreement or these Terms without the prior written approval of the Board of the Company (which consent shall not be unreasonably withheld). No such consent will be granted where there is any actual or contingent breach of the Short Form Agreement or these Terms 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 Short Form Water Agreement agreeing to be bound by these Terms.

#### **21.2 Change of Trustees**

If there is a change of trustees of a trust who are parties to a Short Form Agreement then the rights are assignable to the new trustees.

#### **21.3 Change of control**

Where the Shareholder is a company, then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will require the written consent of the Company (which consent shall not be unreasonably withheld).

#### **21.4 Guarantor**

In the case of any approval or consent required to be given by the Company under this clause 21, the Company may in its discretion require in the case of an assignment to a company that the principal shareholders of the company (or such other persons as the Company may approve) provide a guarantee (and enter into a deed of guarantee in a form approved by the Company) as security for the performance by that company of its obligations under the Short Form Agreement and these Terms. The Company will not be unreasonably withholding its consent under the provisions of this clause 21 where it requires the provision of a guarantee as contemplated by this clause 21.4.

## **22 ASSIGNMENT BY THE COMPANY**

### **22.1 Assignment by Company**

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

### **22.2 Consequent Changes of Assignment**

If any assignment occurs under clause 21.1 all references in any Short Form Agreement and the Terms to the '*Company*' shall thereafter be interpreted and construed as if that reference was to the relevant assignee of that benefit.

## **23 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 waiver by either party of any provision 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.

## **24 FORCE MAJEURE**

24.1 If either party is unable to carry out any of its obligations under these Terms because of any event or circumstance of Force Majeure, these

Terms 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.

24.2 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 Short Form Agreement and these Terms, the parties agree to negotiate in good faith as to how that agreement and these Terms 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 24.

## **25 DISPUTE RESOLUTION**

### **25.1 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 the Short Form Agreement and/or these Terms.

### **25.2 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.

25.3 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.

#### **25.4 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.

25.5 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.

25.6 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.

25.7 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.

#### **26 PARTLY PAID SHARES**

26.1 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.

#### **27 VARIATION/REPLACEMENT TO AGREEMENT**

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

27.1 The Company shall post a notice of the variation, new agreement or new terms on the website of the Company;

- 27.2 Notice that a new agreement or new terms are posted on the website of the Company shall be sent by post or email to the last known address, or email address, of the Shareholder;
- 27.3 On request from any Shareholder a copy of the new agreement or new terms shall be posted to that Shareholder at the last known address of that Shareholder;
- 27.4 The variation, new agreement or new terms shall come into effect 20 Business Days after sub-clauses 27.1 and 27.2 have been complied with by the Company or such later date as specified by the Company.

There shall be no requirement for the Shareholder to execute a new agreement or variation and notice as set out in clause 27.1 above shall be sufficient to create a variation to these Terms, and new binding terms between the Shareholder and the Company.

## **28 REORGANISATION OF RESOURCE CONSENTS**

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

## **29 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 the Company at any time.

## **30 TRUSTEES LIABILITY**

Where a Short Form Agreement is entered into by the trustees of a trust then any independent trustee under that trust, who has no financial or beneficial interest in the trust, shall have no personal liability for any moneys or other monetary liabilities payable or to be complied with under the Short Form Agreement or these Terms.

## **31 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.

## **32 SEVERABILITY**

Should any part or portion of any Short Form Agreement or these Terms be held invalid, the remainder of the agreement and these terms shall continue in force and effect as if the invalid provision had been deleted provided however that the parties 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.

**33 DELEGATION**

The Company may 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.

**34 COSTS**

Each party shall bear its own costs relating to any Short Form Agreement. If a Shareholder shall seek any changes to such agreement or these Terms 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 any Short Form Agreement.

**35 EXECUTION**

35.1 A Short Form Agreement may be executed in any number of counterparts and shall include by reference these Terms. Once the parties have executed the counterparts, and each party has received a copy of each signed counterpart which that party did not execute, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

35.2 The parties may execute a counterpart copy of A Short Form Agreement by photocopying the agreement, executing that photocopy and transmitting that signed copy by pdf email. The transmission by pdf email by a party of a signed counterpart copy of that agreement to the other parties shall be deemed proof of signature of the original and the signed pdf email so transmitted shall be deemed an original for the purposes of these Terms.

**36 NOTICES**

Any notice given by the Company relating to any operational matter may be given by email to the last known email address of the Shareholder or by text message to the last cell phone number provided to the Company. General notice may be given on the website of the Company with advice by email to all Shareholders. If a Shareholder does not have an email address that Shareholder may request notice be given by post to the last known address of that Shareholder. Any notice shall be deemed to have been received on the day it is sent electronically or the third day after posting if posted. Any formal notice shall be given as required by these Terms or if in respect of a default under these Terms shall be sent by post as aforesaid

